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

8023

2011-2012 Regular Sessions

I N A S S E M B L Y

May 27, 2011

Introduced by M. of A. GIBSON -- read once and referred to the Committee on Cities

AN ACT to amend the general business law and the penal law, in relation to requiring alternative power sources for motor fuel facilities located within cities having a population of one million or more and creating a class A misdemeanor for willful failure to install an appropriate transfer switch

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

Section 1. The general business law is amended by adding a new section 399-eee to read as follows:

S 399-EEE. ALTERNATIVE POWER SOURCES FOR MOTOR FUEL FACILITIES WITHIN CITIES HAVING A POPULATION OF ONE MILLION OR MORE. 1. FOR THE PURPOSES OF THIS SECTION:

(A) "TRANSFER SWITCH" MEANS A QUICK CONNECT OR A SWITCHBOARD DESIGNED TO ALLOW CONNECTION OF A MOBILE GENERATOR, OR OTHER ALTERNATIVE POWER SOURCE, TO A MOTOR FUEL FACILITY, AS DEFINED AND REQUIRED BY THIS SECTION.

(B) "ALTERNATIVE POWER SOURCE" MEANS A SOURCE OF ELECTRICAL POWER OTHER THAN A SOURCE THAT REQUIRES INTERCONNECTION TO THE FACILITIES OF AN ELECTRIC CORPORATION, AS DEFINED IN SUBDIVISION THIRTEEN OF SECTION TWO OF THE PUBLIC SERVICE LAW, THAT IS: (I) CAPABLE OF PROVIDING ELECTRICAL POWER FOR THE OPERATION OF ALL FUEL PUMPS AND ANY OTHER POWER LOADS NECESSARY FOR THE DISPENSING AND SALE OF MOTOR FUEL CONTINUOUSLY FOR A MINIMUM OF TWENTY-FOUR HOURS; AND (II) GENERATED BY SOLAR OR WIND POWER, OR FUEL THAT HAS A SULFUR CONTENT OF NO MORE THAN FIFTEEN PARTS PER MILLION.

(C) "EXECUTIVE DECLARATION" MEANS A DECLARATION ISSUED BY THE MAYOR OF A CITY HAVING A POPULATION OF ONE MILLION OR MORE DURING A POWER INTERRUPTION THAT MOTOR FUEL FACILITIES AFFECTED BY A POWER INTERRUPTION ARE REQUIRED TO BE CAPABLE OF GENERATING ELECTRICAL POWER USING AN ALTERNA-

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

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TIVE POWER SOURCE PURSUANT TO SUBDIVISION THREE OF THIS SECTION. SUCH DECLARATION MAY BE ISSUED BY ANY AGENCY OF SUCH CITY THAT HAS BEEN DESIGNATED BY SUCH MAYOR FOR THE PURPOSE OF ISSUING SUCH A DECLARATION.

(D) "MOTOR FUEL" MEANS ANY PETROLEUM PRODUCT USED FOR THE PROPULSION OF ANY MOTOR VEHICLE.

(E) "MOTOR FUEL FACILITY" MEANS A FACILITY THAT: (I) IS USED FOR THE PURPOSE OF OFFERING MOTOR FUEL FOR SALE AT RETAIL TO THE PUBLIC OR FOR THE PURPOSE OF RECEIVING, STORING, HANDLING, OR TRANSFERRING MOTOR FUEL; (II) HAS A STORAGE CAPACITY OF AT LEAST TWENTY-FIVE THOUSAND GALLONS OF MOTOR FUEL; AND (III) IS LOCATED WITHIN A CITY HAVING A POPULATION OF ONE MILLION OR MORE. "MOTOR FUEL FACILITY" SHALL NOT INCLUDE AN AUTOMOBILE DEALERSHIP OR ANY FACILITY THAT SELLS OR PROVIDES MOTOR FUEL EXCLUSIVELY TO A FLEET OF TEN OR MORE MOTOR VEHICLES OWNED OR LEASED BY A SINGLE PERSON.

(F) "POWER INTERRUPTION" MEANS THE LOSS OF ELECTRICAL POWER FROM THE FACILITIES OF AN ELECTRIC CORPORATION, AS DEFINED IN SUBDIVISION THIRTEEN OF SECTION TWO OF THE PUBLIC SERVICE LAW, TO A MOTOR FUEL FACILITY.

2. NO LATER THAN JANUARY FIRST, TWO THOUSAND THIRTEEN, EVERY MOTOR FUEL FACILITY SHALL HAVE INSTALLED IN SUCH FACILITY AN APPROPRIATE TRANSFER SWITCH AND ALL OTHER ELECTRICAL WIRING NECESSARY TO EFFECTUATE THE TRANSFER OF POWER TO AN ALTERNATIVE POWER SOURCE.

3. BEGINNING NO LATER THAN JANUARY FIRST, TWO THOUSAND THIRTEEN, EVERY MOTOR FUEL FACILITY AFFECTED BY A POWER INTERRUPTION SHALL, NO LATER THAN TWENTY-FOUR HOURS AFTER THE ISSUANCE OF AN EXECUTIVE DECLARATION OR SUCH LATER TIME AS SET FORTH IN SUCH DECLARATION, BE CAPABLE OF GENERATING ELECTRICAL POWER USING AN ALTERNATIVE POWER SOURCE TO OPERATE AT SUCH MOTOR FUEL FACILITY ALL FUEL PUMPS AND ANY OTHER POWER LOADS NECESSARY FOR THE DISPENSING AND SALE OF MOTOR FUEL.

4. THE INSTALLATION AND MAINTENANCE OF THE TRANSFER SWITCH AND ALL OTHER ELECTRICAL WORK NECESSARY TO EFFECTUATE THE TRANSFER OF POWER TO AN ALTERNATIVE POWER SOURCE, AS REQUIRED BY SUBDIVISION TWO OF THIS SECTION, AND THE ALTERNATIVE POWER SOURCE, AS REQUIRED BY SUBDIVISION THREE OF THIS SECTION, SHALL COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS, INCLUDING LOCAL CONSTRUCTION AND FIRE CODES.

5. EACH PERSON WHO OWNS, LEASES, OPERATES OR OTHERWISE MANAGES OR CONTROLS A MOTOR FUEL TERMINAL FACILITY SHALL MAINTAIN AT SUCH FACILITY DOCUMENTATION OF THE INSTALLATION REQUIRED BY SUBDIVISION TWO OF THIS SECTION, AS WELL AS ANY PERIODIC TESTING NECESSARY TO ENSURE THE OPERATIONAL CAPABILITY OF SUCH INSTALLATION. SUCH DOCUMENTATION SHALL BE MADE AVAILABLE, UPON REQUEST, TO THE LOCAL EMERGENCY MANAGEMENT OFFICER.

6. (A) THE WILLFUL FAILURE OF ANY PERSON WHO OWNS, LEASES, OPERATES OR OTHERWISE MANAGES OR CONTROLS A MOTOR FUEL FACILITY TO COMPLY WITH ANY OF THE PROVISIONS OF THIS SECTION SHALL BE A CLASS A MISDEMEANOR. IF SUCH FAILURE TO COMPLY RESULTS FROM THE BREAKDOWN OF OR ANY DAMAGE TO AN ALTERNATIVE POWER SOURCE, TRANSFER SWITCH OR ELECTRICAL WIRING NECESSARY TO EFFECTUATE THE TRANSFER OF POWER TO AN ALTERNATIVE POWER SOURCE IN THE EVENT OF A POWER INTERRUPTION, THE FAILURE TO REPAIR OR REPLACE SUCH ALTERNATIVE POWER SOURCE, TRANSFER SWITCH OR ELECTRICAL WIRING WITHIN A REASONABLE TIME SHALL CONSTITUTE WILLFUL CONDUCT.

(B) THE PROVISIONS OF THIS SECTION SHALL BE ENFORCED BY OFFICERS OR EMPLOYEES OF ANY GOVERNMENTAL AGENCY DESIGNATED BY THE MAYOR OF A CITY HAVING A POPULATION OF ONE MILLION OR MORE, IN ADDITION TO ANY ENFORCEMENT PERSONNEL AUTHORIZED TO ENFORCE SUCH PROVISIONS IN ACCORDANCE WITH ANY STATE OR LOCAL LAW.

7. NOTHING IN THIS SECTION SHALL PRECLUDE THE APPLICATION OF LOCAL LAWS AND REGULATIONS, NOT INCONSISTENT WITH THIS SECTION, GOVERNING THE

INSTALLATION, MAINTENANCE AND INSPECTION OF, AND OTHER REQUIREMENTS RELATING TO, ALTERNATIVE POWER SOURCES.

S 2. The penal law is amended by adding a new section 270.40 to read as follows:

S 270.40 WILLFUL FAILURE TO INSTALL AN APPROPRIATE TRANSFER SWITCH.

A PERSON IS GUILTY OF WILLFUL FAILURE TO INSTALL AN APPROPRIATE TRANSFER SWITCH WHEN, AS ACTING AS OWNER, LESSEE, OPERATOR OF OR OTHERWISE MANAGING OR CONTROLLING A MOTOR FUEL FACILITY, AS DEFINED BY PARAGRAPH (E) OF SUBDIVISION ONE OF SECTION THREE HUNDRED NINETY-NINE-EEE OF THE GENERAL BUSINESS LAW, SUCH PERSON FAILS TO COMPLY WITH ANY OF THE PROVISIONS OF SECTION THREE HUNDRED NINETY-NINE-EEE OF THE GENERAL BUSINESS LAW.

WILLFUL FAILURE TO INSTALL AN APPROPRIATE TRANSFER SWITCH IS A CLASS A MISDEMEANOR.

S 3. This act shall take effect on the first of November next succeeding the date on which is shall have become a law.