

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

2369--C

2011-2012 Regular Sessions

I N S E N A T E

January 19, 2011

Introduced by Sens. SEWARD, LARKIN, LIBOUS, MAZIARZ, RANZENHOFER, SALAND, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to the use of ultra low sulfur diesel fuel and best available technology by the state

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

1 Section 1. Section 19-0323 of the environmental conservation law, as
2 added by chapter 629 of the laws of 2006, subdivision 3 as amended by
3 section 1 of part BB of chapter 60 of the laws of 2011, subdivision 5 as
4 added and subdivisions 6, 7 and 8 as renumbered by section 1 of part C
5 of chapter 59 of the laws of 2010, is amended to read as follows:
6 S 19-0323. Use of ultra low sulfur diesel fuel and best available tech-
7 nology by the state.
8 1. As used in this section, the terms:
9 a. "Ultra low sulfur diesel fuel" means diesel fuel having sulfur
10 content of 0.0015 per cent of sulfur or less.
11 b. "Heavy duty vehicle" or "vehicle" means any on and off-road vehicle
12 powered by diesel fuel and having a gross vehicle weight of greater than
13 8,500 pounds, except that those vehicles defined in section 101 of the
14 vehicle and traffic law, paragraph 2 of schedule E and paragraph (a) of
15 schedule F of subdivision 7 of section 401 of such law, and vehicles
16 specified in subdivision 13 of section 401 of such law, and farm type
17 tractors and all terrain type vehicles used exclusively for agricultural
18 or mowing purposes, or for snow plowing, other than for hire, farm

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

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1 equipment, including self-propelled machines used exclusively in grow-
2 ing, harvesting or handling farm produce, and self-propelled caterpillar
3 or crawler-type equipment while being operated on the contract site, and
4 timber harvesting equipment such as harvesters, wood chippers, forward-
5 ers, log skidders, and other processing equipment used exclusively off
6 highway for timber harvesting and logging purposes, shall not be deemed
7 heavy duty vehicles for purposes of this section. This term shall not
8 include vehicles that are specially equipped for emergency response by
9 the department, office of emergency management, sheriff's office of the
10 department of finance, police department or fire department.

11 c. "Best available retrofit technology" means technology, verified by
12 the United States environmental protection agency for reducing the emis-
13 sion of pollutants that achieves reductions in particulate matter emis-
14 sions at the highest classification level for diesel emission control
15 strategies that is applicable to the particular engine and application.
16 Such technology shall also, at a reasonable cost, achieve the greatest
17 reduction in emissions of nitrogen oxides at such particulate matter
18 reduction level and shall in no event result in a net increase in the
19 emissions of either particulate matter or nitrogen oxides.

20 d. "Reasonable cost" means that such technology does not cost greater
21 than 30 percent more than other technology applicable to the particular
22 engine and application that falls within the same classification level
23 for diesel emission control strategies, as set forth in paragraph c of
24 this subdivision, when considering the cost of the strategies, them-
25 selves, and the cost of installation.

26 2. Any diesel powered heavy duty vehicle that is owned by, operated by
27 [or on behalf of,] or leased by a state agency and state and regional
28 public authority shall be powered by ultra low sulfur diesel fuel.

29 3. Any diesel powered heavy duty vehicle that is owned by, operated by
30 [or on behalf of,] or leased by a state agency and state and regional
31 public authority with more than half of its governing body appointed by
32 the governor shall utilize the best available retrofit technology for
33 reducing the emission of pollutants. The commissioner shall promulgate
34 regulations for the implementation of this subdivision specifying that
35 all vehicles covered by this subdivision shall have best available
36 retrofit technology on or before December 31, [2012] 2014.

37 This subdivision shall not apply to any vehicle subject to a lease or
38 public works contract entered into or renewed prior to the effective
39 date of this section.

40 4. In addition to other provisions for regulations in this section,
41 the commissioner shall promulgate regulations as necessary and appropri-
42 ate to carry out the provisions of this act including but not limited to
43 provision for waivers upon written finding by the commissioner that (a)
44 best available retrofit technology for reducing the emissions of pollu-
45 tants as required by subdivision 3 of this section is not available for
46 a particular vehicle or class of vehicles and (b) that ultra low sulfur
47 diesel fuel is not available.

48 5. In addition to any waiver which may be issued pursuant to subdivi-
49 sion four of this section, the department shall issue a waiver to a
50 state agency[,] OR a state or regional public authority, [or a person
51 operating any diesel-powered heavy duty vehicle on behalf of a state
52 agency, state or regional public authority], upon a request in a form
53 acceptable to the department for a waiver from the provisions of subdivi-
54 sion three of this section for a vehicle engine provided that such
55 vehicle engine will cease to be used in the state on or before December
56 thirty-first, two thousand thirteen. Any waiver issued pursuant to this

1 subdivision shall expire when a state agency[, a state or regional
2 public authority, or a person operating any diesel-powered heavy duty
3 vehicle on behalf of a state agency,] OR A state or regional public
4 authority ceases to use the engine in the state but not later than
5 December thirty-first, two thousand [thirteen] FOURTEEN.

6 6. This section shall not apply where federal law or funding precludes
7 the state from imposing the requirements of this section.

8 7. On or before January 1, 2008 and every year thereafter, the commis-
9 sioner shall report to the governor and legislature on the use of ultra
10 low sulfur diesel fuel and the use of the best available retrofit tech-
11 nology as required under this section. The information contained in this
12 report shall include, but not be limited to, for each state agency and
13 public authority covered by this section: (a) the total number of diesel
14 fuel-powered motor vehicles owned or operated by such agency and author-
15 ity; (b) the number of such motor vehicles that were powered by ultra
16 low sulfur diesel fuel; (c) the total number of diesel fuel-powered
17 motor vehicles owned or operated by such agency and authority having a
18 gross vehicle weight rating of more than 8,500 pounds; (d) the number of
19 such motor vehicles that utilized the best available retrofit technolo-
20 gy, including a breakdown by motor vehicle model, engine year and the
21 type of technology used for each vehicle; (e) the number of such motor
22 vehicles that are equipped with an engine certified to the applicable
23 2007 United States environmental protection agency standard for particu-
24 late matter as set forth in section 86.007-11 of title 40 of the code of
25 federal regulations or to any subsequent United States environmental
26 protection agency standard for particulate matter that is at least as
27 stringent; and (f) all waivers, findings, and renewals of such findings,
28 which, for each waiver, shall include, but not be limited to, the quan-
29 tity of diesel fuel needed to power diesel fuel-powered motor vehicles
30 owned or operated by such agency and authority; specific information
31 concerning the availability of ultra low sulfur diesel fuel.

32 8. The department shall, to the extent practicable, coordinate with
33 regions which have proposed or adopted heavy duty emission inspection
34 programs to promote regional consistency in such programs.

35 S 2. This act shall take effect immediately.