

DRAFT LBDC

A BUDGET BILL submitted by the Governor
in accordance with Article VII of the Constitution

AN ACT to amend the agriculture and markets law and the public
authorities law, in relation to alternate generated power
sources at retail gasoline outlets

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. Legislative findings. The legislature hereby finds and
2 determines:

3 1. In 2011 and 2012, three storms of enormous magnitude - Hurricane
4 Irene, Tropical Storm Lee and Superstorm Sandy - each battered New York,
5 causing billions of dollars of damage to roads, buildings and other
6 infrastructure. The three storms collectively resulted in millions of
7 residential, business and industrial customers of electric utilities
8 losing electricity for extended periods of time.

9 2. Each of these storms caused, among other things, a disruption in
10 the distribution and supply of motor fuels, and in the case of Super-
11 storm Sandy, motorists were unable to obtain routine supplies of fuel
12 for several weeks.

13 3. In addition, temporary fuel distribution disruptions associated
14 with the aftermath of a storm can result in emergency vehicles and
15 responders unable to adequately address ongoing public safety and health
16 emergencies, delay an appropriate response to infrastructure damages
17 caused by a storm, and otherwise disrupt commerce in the state due to
18 difficulty to obtain readily available motor fuels.

19 4. On November 15, 2012, in response to Superstorm Sandy, Governor
20 Andrew M. Cuomo announced the creation of the NYS Ready Commission and

1 tasked it with finding ways to ensure critical systems and services are
2 prepared for future natural disasters and other emergencies. As related
3 to this act, the Commission was tasked with addressing vulnerabilities
4 in the state's energy systems.

5 5. The NYS Ready Commission recommended, among other things, to
6 require that retail gasoline outlets located in strategic locations have
7 on-site back-up power capacity to ensure that such outlets can continue
8 fuel sales operations during a long-term electric outage. The purpose of
9 this act is to ensure that the state is better situated in the future to
10 address the temporary disruption of retail fuel supplies.

11 § 2. The agriculture and markets law is amended by adding a new
12 section 192-h to read as follows:

13 § 192-h. Alternate generated power source at retail gasoline outlets.

14 1. Definitions. When used in this section:

15 (a) "Alternate generated power source" means electric generating
16 equipment that is of a capacity that is capable of providing adequate
17 electricity to operate all dispensers, dispensing equipment, life safety
18 systems and payment-acceptance equipment located at a retail outlet and
19 which can operate independent of the local electric utility distribution
20 system and provide electricity during a general power outage or declared
21 fuel supply energy emergency to operate the systems named herein.

22 (b) "Chain of retail outlets" means a network of subsidiaries, affil-
23 iates or other retail outlets, under direct or indirect common control,
24 with ten or more retail outlets located in a single region; provided,
25 however that this term does not include any franchisor of the brand of
26 motor fuel being sold at such outlet.

27 (c) "Controlled access highway" means every highway, street, or road-
28 way in respect to which owners or occupants of abutting lands and other

1 persons have no legal right of access to or from the same except at such
2 points only and in such manner as may be determined by the public
3 authority having jurisdiction over such highway, street, or roadway.

4 (d) "Diesel motor fuel" means any fuel sold in this state and for use
5 in diesel engines which is commercially known or offered for sale as
6 diesel motor fuel.

7 (e) "Dispenser" means a device located at a retail outlet that is used
8 to pump motor fuel from an above ground or underground storage tank into
9 a motor vehicle.

10 (f) "Evacuation route" means those roads designated by each county
11 that are to be used by motorists in case of a hurricane or other natural
12 disaster.

13 (g) "Gasoline" means any fuel sold in this state for use in internal
14 combustion engines which is commercially known or offered for sale as
15 gasoline, whether or not blended with ethanol or other chemicals.

16 (h) "Motor fuel" means any petroleum product, including any gasoline
17 or diesel motor fuel, which is used for the propulsion of motor vehi-
18 cles.

19 (i) "Region" means each of the following regions of the state:

20 (1) Capital Region: Includes Albany, Columbia, Greene, Rensselaer,
21 Saratoga, Schenectady, Warren and Washington counties.

22 (2) Central New York Region: Includes Cayuga, Cortland, Madison, Onon-
23 daga and Oswego counties.

24 (3) Finger Lakes Region: Includes Genesee, Livingston, Monroe, Ontar-
25 io, Orleans, Seneca, Wayne, Wyoming and Yates counties.

26 (4) Long Island Region: Includes Nassau and Suffolk counties.

27 (5) Mid-Hudson Region: Includes Dutchess, Orange, Putnam, Rockland,
28 Sullivan, Ulster and Westchester counties.

1 (6) Mohawk Valley Region: Includes Fulton, Herkimer, Montgomery, Onei-
2 da, Otsego and Schoharie counties.

3 (7) New York City Region: Includes Bronx, Kings, New York, Queens and
4 Richmond counties.

5 (8) North Country Region: Includes Clinton, Essex, Franklin, Hamilton,
6 Jefferson, Lewis and St. Lawrence counties.

7 (9) Southern Tier Region: Includes Broome, Chemung, Chenango, Dela-
8 ware, Schuyler, Steuben, Tioga and Tompkins counties.

9 (10) Western New York Region: Includes Allegany, Cattaraugus, Chautau-
10 qua, Erie and Niagara counties.

11 (j) "Retailer" shall mean any person who owns, leases, operates,
12 controls, or supervises a retail outlet that is subject to the require-
13 ments of subdivision two of this section.

14 (k) "Retail outlet" means a facility, including all land, improvements
15 and associated structures and equipment, that dispenses motor fuel for
16 sale to the general public.

17 (l) "Substantial improvement" means any repair, reconstruction, reha-
18 ilitation, addition or improvement of a retail outlet, the cost of
19 which equals or exceeds fifty percent of the market value of the retail
20 outlet before the improvement or repair is started.

21 2. Prewiring and transfer switch. (a) Each newly constructed retail
22 outlet and each retail outlet modified by a substantial improvement for
23 which a building permit is issued on or after March first, two thousand
24 fourteen, shall be prewired with an appropriate transfer switch for
25 using an alternate generated power source capable of providing adequate
26 electricity to operate all dispensers, dispensing equipment, life safety
27 systems, and payment-acceptance equipment at each such retail outlet.

1 (b) No later than March first, two thousand fourteen: (i) each exist-
2 ing retail outlet that is located within one-half mile by road measure-
3 ment, exclusive of the exit road, from an evacuation route or controlled
4 access highway; or (ii) fifty percent of all existing retail outlets
5 that are part of a chain of retail outlets exclusive of those included
6 in subparagraph (i) of this paragraph shall be prewired with an appro-
7 priate transfer switch for using an alternate generated power source
8 capable of providing adequate electricity to operate all dispensers,
9 dispensing equipment, life safety systems, and payment-acceptance equip-
10 ment at such retail outlet; provided, however, that each retail outlet
11 that does not meet the criteria in subparagraph (i) of this paragraph
12 that is part of a chain of retail outlets shall be required to install
13 such equipment by no later than March first, two thousand sixteen; and
14 further provided that the requirements of this paragraph are inapplica-
15 ble to any retail outlet that sold less than seventy-five thousand
16 gallons per month on average of motor fuel in calendar year two thousand
17 twelve.

18 (c) Such transfer switch and all associated electrical wiring shall be
19 installed, operated, and maintained in compliance with all applicable
20 provisions of the New York state uniform fire prevention and building
21 code or any applicable local building code or standard. Installation of
22 appropriate wiring and transfer switches shall be performed by a
23 licensed electrical contractor.

24 (d) Each retailer shall keep on file at the retail outlet a written
25 statement in a form approved by the department and containing an attes-
26 tation by a licensed electrician that the wiring and transfer switch
27 were installed in accordance with the manufacturer's specifications. In
28 addition, each such retailer must keep on file at the retail outlet a

1 written statement attesting to the periodic testing of and ensured oper-
2 ational capacity of the equipment.

3 3. Plan for alternate generated power source. Each retailer shall by
4 March first, two thousand fourteen have in place at each applicable
5 retail outlet a written plan in a form approved by the department to
6 deploy and install within twenty-four hours of either the declaration of
7 an energy or fuel supply emergency issued by the governor, the county
8 executive or chief elected official of a county or the mayor of a city
9 with a population in excess of one million inhabitants or the loss of
10 electric power, whichever is later, an alternate generated power source
11 capable of providing adequate electricity to operate all dispensers,
12 dispensing equipment, life safety systems and payment-acceptance equip-
13 ment located at such retail outlet; provided, however, that, for each
14 retailer that is part of a chain of retail outlets, such written plan
15 shall be in place by the date of installation of the rewiring and
16 transfer switch required to be installed under subdivision two of this
17 section; and further provided that in the case of a retailer that is
18 part of a chain of retail outlets and to which subparagraph (i) of para-
19 graph (b) of subdivision two of this section does not apply, the plan
20 shall provide for the deployment and installation within forty-eight
21 hours. Such plan shall include, among other things, either a receipt
22 showing ownership of such power source or a contract with a supplier of
23 such power source stating that such power source will be provided and
24 installed within the twenty-four hour period.

25 4. Inspection; recordkeeping; reporting. The commissioner or the
26 commissioner's designee shall be authorized to enter during regular
27 business hours upon a retail outlet subject to the requirements of this
28 section for the purpose of determining compliance with the provisions of

1 this section and any rules or regulations promulgated hereunder. All
2 documents required pursuant to subdivisions two and three of this
3 section shall be maintained at the applicable retail outlet and made
4 available to the commissioner or the commissioner's designee upon
5 request. In addition, each retailer of a retail outlet shall provide to
6 the department by March first, two thousand fourteen and every two years
7 thereafter written documentation in a form approved by the department
8 certifying that such retail outlet is in compliance with the require-
9 ments of subdivisions two and three of this section, and any other
10 requirement specified by any rules or regulations promulgated hereunder;
11 provided, however, that, for each retail outlet that is part of a chain
12 of retail outlets, such written notification shall be provided to the
13 department within ten days after the date of installation of the prewir-
14 ing and transfer switch required to be installed under subdivision two
15 of this section and every two years thereafter.

16 5. Emergency deployment. In the event that a declaration of an energy
17 or fuel supply emergency issued by the governor, the county executive or
18 chief elected official of a county or the mayor of a city with a popu-
19 lation in excess of one million inhabitants, is in effect and a retail
20 outlet subject to the requirements of this section is without electric
21 power, each retailer shall deploy and install an alternate generated
22 power source to provide adequate electricity to operate all dispensers,
23 dispensing equipment, life safety systems and payment-acceptance equip-
24 ment located at each retail outlet subject to the requirements of this
25 section within twenty-four hours of either the declaration of such emer-
26 gency or the loss of electric power, whichever is later; provided that
27 in the case of a retailer that is part of a chain of retail outlets and
28 to which subparagraph (i) of paragraph (b) of subdivision two of this

1 section does not apply, the deployment and installation shall occur
2 within forty-eight hours of either the declaration of such emergency or
3 the loss of electric power, whichever is later. Notwithstanding the
4 foregoing, such retailer shall not be in violation of this subdivision
5 if he or she is unable to deploy, install or operate an alternate gener-
6 ated power source because of uncontrollable circumstances, including but
7 not limited to restrictions imposed by public safety officers to address
8 an emergency situation or that such retail station is made unsafe or
9 unable to operate due to acts of God, fires, floods, explosions or the
10 safety of personnel needed to operate such equipment.

11 6. Rules and regulations; notification of applicability. The commis-
12 sioner shall have the authority, with the assistance of the commissioner
13 of transportation, the commissioner of homeland security and emergency
14 services and the secretary of state, to promulgate such rules and requ-
15 lations as the commissioner shall deem necessary to effectuate the
16 purposes of this section. The commissioner shall by May first, two thou-
17 sand thirteen: (a) notify by first class mail all existing retail
18 outlets that appear to meet the criteria specified in paragraph (b) of
19 subdivision two of this section of the requirements of this section and
20 include with such notification any other information deemed necessary by
21 the commissioner, including information regarding applicability crite-
22 ria, compliance measures and potential grant assistance; (b) provide a
23 list of all such retail outlets to the governor, the temporary president
24 of the senate and the speaker of the assembly; and (c) post such list on
25 the department's website. Any retailer of a retail outlet specified on
26 such list shall be subject to the requirements of this section unless he
27 or she provides written documentation to the department by July first,
28 two thousand thirteen proving that such outlet does not qualify pursuant

1 to paragraph (b) of subdivision two of this section. The commissioner
2 shall update such list every five years thereafter and notify all new
3 retail outlets that become subject to the requirements of this section;
4 provided, however, that compliance with the requirements of this section
5 is not conditioned on such notification.

6 7. Violations and penalties. Any retailer who violates, disobeys or
7 disregards any provision of this section, or any rule or regulation
8 promulgated hereunder, shall be liable to the people of the state for a
9 civil penalty of up to two thousand dollars per day for every such
10 violation, to be assessed by the commissioner, after a hearing or oppor-
11 tunity to be heard upon due notice and with the right to representation
12 by counsel. Such penalty may be recovered in an action brought by the
13 attorney general at the request and in the name of the commissioner in
14 any court of competent jurisdiction. Such civil penalty may be released
15 or compromised by the commissioner before the matter has been referred
16 to the attorney general. Additionally, after such hearing and a finding
17 that such retailer has violated the provisions of this section, or of
18 any rule or regulation promulgated thereunder, the commissioner may
19 issue and cause to be served upon such person an order enjoining such
20 person from violating such provisions and taking all necessary actions
21 for such person to come into compliance with such provisions. Any such
22 order of the commissioner may be enforced in an action brought by the
23 attorney general at the request and in the name of the commissioner in
24 any court of competent jurisdiction.

25 8. The provisions of this section shall supersede all local laws or
26 ordinances relating to the installation and deployment of an alternate
27 generated power source or any related electrical or other equipment at
28 any retail outlet.

1 9. The provisions of this section shall be contingent on the approval
2 of federal mitigation funds for the program established under subdivi-
3 sion twenty of section eighteen hundred fifty-four of the public author-
4 ities law.

5 § 3. Section 1854 of the public authorities law is amended by adding a
6 new subdivision 20 to read as follows:

7 20. To administer a program, using funds provided for such purpose, to
8 provide a grant for costs required to: (a) prewire an existing retail
9 outlet with an appropriate transfer switch for using an alternate gener-
10 ated power source capable of providing adequate electricity to operate
11 all dispensers, dispensing equipment, life safety systems, and payment-
12 acceptance equipment at such retail outlet; and/or (b) purchase such
13 power source of no greater than ten thousand dollars for each existing
14 retail outlet subject to the requirements of section one hundred nine-
15 ty-two-h of the agriculture and markets law based on standards and
16 guidelines established by the authority. The authority may offer any
17 funds provided for such purpose and not expended to existing retail
18 outlets that are not required to comply with the requirements of section
19 one hundred ninety-two-h of the agriculture and markets law but that
20 agree to comply with the requirements therein as a condition of receipt
21 of such grant.

22 § 4. This act shall take effect immediately.