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:

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

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

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

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

4. On November 15, 2012, in response to Superstorm Sandy, Governor
Andrew M. Cuomo announced the creation of the NYS Ready Commission and
tasked it with finding ways to ensure critical systems and services are prepared for future natural disasters and other emergencies. As related to this act, the Commission was tasked with addressing vulnerabilities in the state's energy systems.

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

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

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

1. Definitions. When used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Mid-Hudson Region: Includes Dutchess, Orange, Putnam, Rockland,
    Sullivan, Ulster and Westchester counties.
(6) Mohawk Valley Region: Includes Fulton, Herkimer, Montgomery, Oneida, Otsego and Schoharie counties.

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


(9) Southern Tier Region: Includes Broome, Chemung, Chenango, Delaware, Schuyler, Steuben, Tioga and Tompkins counties.

(10) Western New York Region: Includes Allegany, Cattaraugus, Chautauqua, Erie and Niagara counties.

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

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

(l) "Substantial improvement" means any repair, reconstruction, rehabilitation, addition or improvement of a retail outlet, the cost of which equals or exceeds fifty percent of the market value of the retail outlet before the improvement or repair is started.

2. Prewiring and transfer switch. (a) Each newly constructed retail outlet and each retail outlet modified by a substantial improvement for which a building permit is issued on or after March first, two thousand fourteen, shall be prewired with an appropriate transfer switch for using an alternate generated power source capable of providing adequate electricity to operate all dispensers, dispensing equipment, life safety systems, and payment-acceptance equipment at each such retail outlet.
(b) No later than March first, two thousand fourteen: (i) each existing retail outlet that is located within one-half mile by road measurement, exclusive of the exit road, from an evacuation route or controlled access highway; or (ii) fifty percent of all existing retail outlets that are part of a chain of retail outlets exclusive of those included in subparagraph (i) of this paragraph shall be prewired with an appropriate transfer switch for using an alternate generated power source capable of providing adequate electricity to operate all dispensers, dispensing equipment, life safety systems, and payment-acceptance equipment at such retail outlet; provided, however, that each retail outlet that does not meet the criteria in subparagraph (i) of this paragraph that is part of a chain of retail outlets shall be required to install such equipment by no later than March first, two thousand sixteen; and further provided that the requirements of this paragraph are inapplicable to any retail outlet that sold less than seventy-five thousand gallons per month on average of motor fuel in calendar year two thousand twelve.

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

(d) Each retailer shall keep on file at the retail outlet a written statement in a form approved by the department and containing an attestation by a licensed electrician that the wiring and transfer switch were installed in accordance with the manufacturer's specifications. In addition, each such retailer must keep on file at the retail outlet a
written statement attesting to the periodic testing of and ensured operational capacity of the equipment.

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

4. Inspection; recordkeeping; reporting. The commissioner or the commissioner's designee shall be authorized to enter during regular business hours upon a retail outlet subject to the requirements of this section for the purpose of determining compliance with the provisions of
this section and any rules or regulations promulgated hereunder. All
documents required pursuant to subdivisions two and three of this
section shall be maintained at the applicable retail outlet and made
available to the commissioner or the commissioner's designee upon
request. In addition, each retailer of a retail outlet shall provide to
the department by March first, two thousand fourteen and every two years
thereafter written documentation in a form approved by the department
certifying that such retail outlet is in compliance with the require-
ments of subdivisions two and three of this section, and any other
requirement specified by any rules or regulations promulgated hereunder;
provided, however, that, for each retail outlet that is part of a chain
of retail outlets, such written notification shall be provided to the
department within ten days after the date of installation of the prewir-
ing and transfer switch required to be installed under subdivision two
of this section and every two years thereafter.

5. Emergency deployment. In the event that a declaration of an energy
or fuel supply emergency issued by the governor, the county executive or
chief elected official of a county or the mayor of a city with a popu-
lation in excess of one million inhabitants, is in effect and a retail
outlet subject to the requirements of this section is without electric
power, each retailer shall deploy and install an alternate generated
power source to provide adequate electricity to operate all dispensers,
dispensing equipment, life safety systems and payment-acceptance equip-
ment located at each retail outlet subject to the requirements of this
section within twenty-four hours of either the declaration of such emer-
gency or the loss of electric power, whichever is later; provided that
in the case of a retailer that is part of a chain of retail outlets and
to which subparagraph (i) of paragraph (b) of subdivision two of this
section does not apply, the deployment and installation shall occur within forty-eight hours of either the declaration of such emergency or the loss of electric power, whichever is later. Notwithstanding the foregoing, such retailer shall not be in violation of this subdivision if he or she is unable to deploy, install or operate an alternate generated power source because of uncontrollable circumstances, including but not limited to restrictions imposed by public safety officers to address an emergency situation or that such retail station is made unsafe or unable to operate due to acts of God, fires, floods, explosions or the safety of personnel needed to operate such equipment.

6. Rules and regulations; notification of applicability. The commissioner shall have the authority, with the assistance of the commissioner of transportation, the commissioner of homeland security and emergency services and the secretary of state, to promulgate such rules and regulations as the commissioner shall deem necessary to effectuate the purposes of this section. The commissioner shall by May first, two thousand thirteen: (a) notify by first class mail all existing retail outlets that appear to meet the criteria specified in paragraph (b) of subdivision two of this section of the requirements of this section and include with such notification any other information deemed necessary by the commissioner, including information regarding applicability criteria, compliance measures and potential grant assistance; (b) provide a list of all such retail outlets to the governor, the temporary president of the senate and the speaker of the assembly; and (c) post such list on the department's website. Any retailer of a retail outlet specified on such list shall be subject to the requirements of this section unless he or she provides written documentation to the department by July first, two thousand thirteen proving that such outlet does not qualify pursuant
to paragraph (b) of subdivision two of this section. The commissioner shall update such list every five years thereafter and notify all new retail outlets that become subject to the requirements of this section; provided, however, that compliance with the requirements of this section is not conditioned on such notification.

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

8. The provisions of this section shall supersede all local laws or ordinances relating to the installation and deployment of an alternate generated power source or any related electrical or other equipment at any retail outlet.
9. The provisions of this section shall be contingent on the approval of federal mitigation funds for the program established under subdivision twenty of section eighteen hundred fifty-four of the public authorities law.

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

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

§ 4. This act shall take effect immediately.