



## Legislation Text

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### Int. No. 428-A

By Council Members Liu, Lopez, Gerson, The Speaker (Council Member Miller), Moskowitz, Addabbo Jr., Boyland, Brewer, Clarke, Comrie, Fidler, Gennaro, Gentile, James, Jennings, Koppell, Martinez, Monserrate, Nelson, Palma, Reed, Rivera, Seabrook, Vallone Jr., Weprin, Yassky, Foster, McMahon, DeBlasio, Recchia Jr., Baez, Katz, Avella, Jackson, Gioia, Quinn, Sanders Jr., Barron, Perkins, Gonzalez and The Public Advocate (Ms. Gotbaum)

A Local Law to amend the administrative code of the city of New York, in relation to reducing the emission of pollutants from vehicles that transport children to and from school.

Be it enacted by the Council as follows:

Section 1. Chapter one of Title 24 of the administrative code of the city of New York is amended by adding thereto a new section 24-163.7 to read as follows:

§24-163.7 Use of ultra low sulfur diesel fuel and best available retrofit technology in school bus transportation. a.

Definitions. For the purposes of this section only, the following terms shall have the following meanings:

(1) “Best available retrofit technology” means technology, verified by the United States environmental protection agency 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 e 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.

(2) “Department of education” means the New York city department of education, formerly known as the New York city board of education, and any successor agency or entity thereto, the expenses of which are paid in whole or in part from the city treasury.

(3) “Person” means any natural person, partnership, firm, company, association, joint stock association, corporation or other legal entity.

(4) “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 e of this section, when considering the cost of the strategies, themselves, and the cost of installation.

(5) “School bus” means any vehicle operated pursuant to a school bus contract, designed to transport ten or more children at one time, of the designation “Type C bus” or “Type D bus” as set forth in 17 NYCRR §§ 720.1(Z) and (AA), and used to transport children to or from any school located in the city of New York, and excluding any vehicle utilized primarily to transport children with special educational needs who do not travel to and from school in vehicles used to transport general education students.

(6) “School bus contract” means any agreement between any person and the department of education to transport children on a school bus.

(7) “Ultra low sulfur diesel fuel” means diesel fuel that has a sulfur content of no more than fifteen parts per million.

b. (1) Beginning July 1, 2006, any diesel fuel-powered school bus that is operated by a person who fuels such school bus at any facility at which ultra low sulfur diesel fuel is available, or of which such person has the exclusive use and control, or at which such person has the ability to specify the fuel to be made available, shall be powered by ultra low sulfur diesel fuel.

(2) Beginning September 1, 2006, any diesel fuel-powered school bus to which paragraph one of this subdivision does not apply shall be powered by ultra low sulfur diesel fuel.

c. Diesel fuel-powered school buses shall utilize the best available retrofit technology in accordance with the following schedule:

i. 50% of school buses used to fulfill each school bus contract by September 1, 2006;

ii. 100% of school buses used to fulfill each school bus contract by September 1, 2007.

d. (1) 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 school bus 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.

(2) No person shall be required to replace best available retrofit technology or other authorized technology utilized for a diesel fuel-powered school bus in accordance with the provisions of this section within three years of having first utilized such technology for such bus, except that technology that falls within Level 4, as set forth in subdivision e of this section, shall not be required to be replaced until it has reached the end of its useful life.

(3) For purposes of this subdivision, any best available retrofit technology, or substantially similar technology, purchased or installed in whole or in part with funds provided by the state of New York or the federal government pursuant to a specific diesel emissions reduction program in effect upon the date of enactment of this section, shall constitute the best available retrofit technology for a period of not less than three years from the date on which such equipment was installed.

e. The classification levels for diesel emission control strategies are as follows, with Level 4 being the highest classification

level:

- i. Level 4 - strategy reduces diesel particulate matter emissions by 85 percent or greater or reduces engine emissions to less than or equal to 0.01 grams diesel particulate matter per brake horsepower-hour;
- ii. Level 3 - strategy reduces diesel particulate matter emissions by between 50 and 84 percent;
- iii. Level 2 - strategy reduces diesel particulate matter emissions by between 25 and 49 percent;
- iv. Level 1 - strategy reduces diesel particulate matter emissions by between 20 and 24 percent.

f. 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 subdivision b of this section if ultra low sulfur diesel fuel is not available to meet the needs of school buses to fulfill the requirements of this section. Such determination shall expire after six months and shall be renewed in writing every six months thereafter if such lack of availability persists, but in no event shall be in effect after September 1, 2006.

g. The commissioner may issue a waiver for the use of ultra low sulfur diesel fuel where the department of education 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 f of this section, is not available to meet the requirements of this section, provided that school buses, 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. 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 renewal, in writing.

h. The commissioner may issue a waiver for the use of the best available retrofit technology by a diesel fuel-powered school bus where the department of education makes a written finding, which is approved, in writing, by the commissioner, that such technology is unavailable for purchase for such bus, in which case the owner or operator of such school bus shall be required to use the technology for reducing the emission of pollutants that would be the next best best available retrofit technology and that is available for purchase for such bus. Any waiver issued pursuant to this subdivision shall expire after three years.

i. Subdivision c of this section shall not apply to a diesel-fuel powered school bus that is equipped with an engine certified to the applicable 2007 United States environmental protection agency 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 United States environmental protection agency standard for such pollutant that is at least as stringent.

j. (1) Not later than January 1, 2007, and not later than January 1 of each year thereafter, the commissioner shall submit a

report to the comptroller and the speaker of the council regarding, among other things, the use of ultra low sulfur diesel fuel and the use of the best available retrofit technology by school buses during the immediately preceding fiscal year. The information contained in this report shall also be included in the mayor's preliminary management report and the mayor's management report for the relevant fiscal year and shall include, but not be limited to: (i) the number of school buses used to fulfill the requirements of school bus contracts; (ii) the number of such buses that were powered by ultra low sulfur diesel fuel; (iii) the number of such buses that utilized the best available retrofit technology, including a breakdown by vehicle model, engine year and the type of technology used for each vehicle; (iv) the number of such buses that utilized other authorized technology in accordance with this section, including a breakdown by vehicle model, engine age and the type of technology used for each vehicle; (v) the number of such buses that are equipped with an engine certified to the applicable United States environmental protection agency standard for particulate matter in accordance with subdivision i of this section; (vi) the school districts where such buses that were powered by ultra low sulfur diesel fuel, utilized the best available retrofit technology, utilized such other authorized technology in accordance with this section or were equipped with an engine certified to the applicable United States environmental protection agency standard for particulate matter were used; (vii) all waivers, findings and renewals of such findings issued pursuant to subdivision g of this section, which shall include, but not be limited to, for each waiver, the quantity of diesel fuel needed by the school bus owner or operator to power diesel fuel-powered school buses used to fulfill the requirements of a school bus contract; 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 f of this section; and detailed information concerning the school bus owner's or operator'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 f of this section; and (viii) all waivers issued pursuant to subdivision h of this section, which shall include, but not be limited to, all findings and specific information submitted by the department of education or a school bus owner or operator upon which such waivers are based and the type of other authorized technology utilized in accordance with this section in relation to each waiver, instead of the best available retrofit technology.

(2) Where a determination is in effect pursuant to subdivision f 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 one of this subdivision.

k. This section shall not apply:

- (1) where federal or state funding precludes the city from imposing the requirements of this section;
- (2) to purchases that are emergency procurements pursuant to section three

hundred fifteen of the New York city charter; or

(2) where federal or state law prohibits the application of the requirements of this section.

l. Any person who violates any provision of this section, except as provided in subdivision m of this section, shall be liable for a civil penalty of not less than one thousand dollars and not more than ten thousand dollars, in addition to twice the amount of money saved by such person for failure to comply with this section.

m. Where a person has been found to have made a false claim with respect to the provisions of this section, such person shall be liable for an additional civil penalty of twenty thousand dollars.

n. This section shall not apply to any school bus contract entered into or renewed prior to the effective date of this section.

o. Nothing in this section shall be construed to limit the authority of the department of education or of the city of New York to cancel or terminate a contract, deny or withdraw approval to perform a subcontract or provide supplies, issue a non-responsibility finding, issue a non-responsiveness finding, deny a person or entity pre-qualification as a vendor, or otherwise deny a person or entity city business.

§ 2. Subparagraph (i) of paragraph 5 of subdivision b of section 24-178 of the administrative code of the city of New York is amended by inserting the following lines in the Table of Civil Penalties, immediately following the line regarding civil penalties for a violation of section 24-163.6 of this chapter:

24-163.7; plus twice the amount of money saved by the school bus owner or operator for failure to comply with such section; provided that such \$1,000 - \$10,000 penalty and additional penalty shall not apply to

<u>24-163.7(m).....</u>	<u>10,000</u>	<u>1,000</u>
<u>24-163.7(m).....</u>	<u>20,000</u>	<u>20,000</u>

§ 3. If any section, subsection, sentence, clause, phrase or other portion of this local law 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 law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect immediately.

MHG, DD  
LS # 276, 330, 1271  
4/12/05 10:00 p.m.