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Title: A Local Law to amend the administrative code of the city of New York, in relation to the use of ultra low sulfur diesel fuel and the best available technology for reducing the emission of pollutants by diesel fuel-powered private ferries.

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Attachments:

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Int. No. 569

By Council Members Gerson, Yassky, Barron, Brewer, Clarke, Fidler, Gonzalez, James, Koppell, Lopez, Martinez, McMahon, Nelson, Perkins, Quinn, Recchia Jr., Sanders Jr., Stewart, Weprin, Reed, Reyna, Monserrate, Avella, Sears, Vallone Jr., Gioia and Gentile

A Local Law to amend the administrative code of the city of New York, in relation to the use of ultra low sulfur diesel fuel and the best available technology for reducing the emission of pollutants by diesel fuel-powered private ferries.

Be it enacted by the Council as follows:

Section 1. Title 19 of the administrative code of the city of New York is hereby amended by adding a new section 19-306 to read as follows:

§ 19-306 Use of ultra low sulfur diesel fuel and best available technology by private ferries. a. For purposes of this section only, the following terms shall have the following meanings:

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(1) “Ferry” means any motorized watercraft that is used as a means of commuter passenger mass transportation by water.

(2) “License agreement” means the department’s “Landing Slot License Agreement for Ferry Services with Private Ferry Operators”.

(3)“Operating permit” means a permit granted by the city to operate a private ferry within the limits of New York city.

(4) “Person” means any natural person, partnership, firm, company, association, joint stock association, corporation or other like organization.

(5) “Private ferry” means a ferry that is not owned by, operated by or on behalf of, or leased by the city.

(6) “Private ferry operator” means any person in control of, or having responsibility for, the daily operation of a private ferry.

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

b. Any license agreement, contract or other authorization granted by the city for the use of a city-owned pier, any agreement regarding a city subsidy to a private ferry operator, or any operating permit that is entered into on or after January 1, 2006, shall include the requirement that any diesel fuel-powered private ferry operated pursuant to such agreement, contract, authorization or permit shall be powered by ultra low sulfur diesel fuel.

c. Any license agreement, contract or other authorization granted by the city for the use of a city-owned pier, any agreement regarding a city subsidy to a private ferry operator, or any operating permit that is entered into on or after January 1, 2006, shall include the requirement that any diesel fuel-powered private ferry operated pursuant to such agreement, contract, authorization or permit shall utilize the best available technology for reducing the emission of pollutants.

d. (1) The commissioner shall make determinations, subject to the written approval of the commissioner

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of environmental protection, and shall publish a list of such determinations, as to the best available technology to be used for each type of private ferry to which this section applies for the purposes of subdivision c of this section. Each such determination, which shall be reviewed and revised, as needed, but in no event less often than once every six months, shall be primarily based upon the reduction in emissions of particulate matter and secondarily based upon the reduction in emissions of nitrogen oxides associated with the use of such technology and shall in no event result in an increase in the emissions of either such pollutant.

(2) No private ferry operator shall be required to replace best available technology for reducing the emission of pollutants or other authorized technology utilized for a diesel fuel-powered private ferry in accordance with the provisions of this section within three years of having first utilized such technology for such ferry.

e. This section shall not apply where federal or state funding precludes the city from imposing the requirements of this section.

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 private ferry operators to fulfill the requirements of this section. Such determination shall expire after six months and shall be renewed in writing every six months if ultra low sulfur diesel fuel is not available to meet the needs of private ferry operators to fulfill the requirements of this section, but in no event shall such a determination be in effect after September 1, 2006.

g. Any requirement included in a license agreement, contract or other authorization granted by the city for the use of a city-owned pier, an agreement regarding a city subsidy to a private ferry operator, or an operating permit pursuant to subdivision b of this section shall not apply where a private ferry operator 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

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is in effect pursuant to subdivision f of this section, is not available to meet such requirement, provided that such private ferry operator, 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 finding made pursuant to this subdivision shall expire after two months, at which time the requirement included in any such agreement, contract, authorization or permit pursuant to subdivision b of this section shall be in full force and effect unless the private ferry operator renews the finding in writing and such renewal is approved, in writing, by the commissioner.

h. Any requirement included in a license agreement, contract or other authorization granted by the city for the use of a city-owned pier, an agreement regarding a city subsidy to a private ferry operator, or an operating permit pursuant to subdivision c of this section shall not apply to a diesel fuel-powered private ferry where a private ferry operator makes a written finding, which is approved in writing by the commissioner and commissioner of environmental protection, that the best available technology for reducing the emission of pollutants as required by that subdivision is unavailable for such ferry, in which case such operator shall use whatever technology for reducing the emission of pollutants, if any, is available and appropriate for such ferry.

i. In determining which technology to use for the purposes of subdivision h of this section, a private ferry operator shall primarily consider the reduction in emissions of particulate matter and secondarily consider the reduction in emissions of nitrogen oxides associated with the use of such technology, which shall in no event result in an increase in the emissions of either such pollutant.

j. Any finding made pursuant to subdivision h of this section shall expire after six months, at which time the requirement included in an agreement, contract, authorization or permit pursuant to subdivision c of this section shall be in full force and effect unless the private ferry operator renews the finding, in writing, and the commissioner and commissioner of environmental protection approve such finding, in writing.

k. (1) On or before October 1, 2006, and every succeeding October 1, the mayor shall submit to the comptroller and the speaker of the council a report regarding the use of ultra low sulfur diesel fuel and the best

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available technology for reducing the emission of pollutants and such other authorized technology in accordance with this section for diesel fuel-powered private ferries during the immediately preceding fiscal year, which shall be disaggregated according to private ferry operator. 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 total number of diesel fuel-powered private ferries that operated pursuant to license agreements, contracts or other authorizations granted by the city for the use of a city-owned pier, agreements regarding a city subsidy to a private ferry operator, or operating permits; (ii) the number of such diesel fuel-powered private ferries that were powered by ultra low sulfur diesel fuel; (iii) the number of such diesel fuel-powered private ferries that utilized the best available technology for reducing the emission of pollutants, including a breakdown by the type of technology used for each ferry; (iv) the number of such diesel fuel-powered private ferries that utilized other authorized technology in accordance with this section, including a breakdown by the type of technology used for each ferry; (v) all findings, and renewals of such findings, issued pursuant to subdivision g of this section, which, for each finding and renewal, shall include, but not be limited to, the quantity of diesel fuel needed to power the diesel fuel-powered private ferries in question; 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 efforts by the applicable private ferry operator 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 (vi) all findings and renewals of such findings issued pursuant to subdivision h of this section, which shall include, but not be limited to, all specific information submitted by the private ferry operator in question upon which such findings and renewals are based and the type of other authorized technology, if any, utilized in accordance with this section in relation to each finding and renewal, instead of the best available technology for reducing the emission of pollutants.

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l. Any private ferry operator who violates any provision of this section or the requirements of a license agreement, contract or other authorization granted by the city for the use of a city-owned pier, an agreement regarding a city subsidy to a private ferry operator, or an operating permit as provided by 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 private ferry operator for the failure to comply with this section or the provisions of such agreement, contract, authorization or permit.

m. Where a private ferry operator has been found to have made a false claim with respect to the provisions of this section or the requirements of a license agreement, contract or other authorization granted by the city for the use of a city-owned pier, an agreement regarding a city subsidy to a private ferry operator, or an operating permit as provided by this section, such ferry operator shall be liable for an additional civil penalty of twenty thousand dollars.

n. The department and the department of environmental protection shall have the authority to enforce the provisions of this section.

o. The civil penalties provided for in this section may be recovered in a proceeding before the environmental control board or in an action in any court of competent jurisdiction.

§ 2. 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.

§ 3. This local law shall take effect ninety days after its enactment, except that the commissioners of transportation and environmental protection shall take all actions necessary, including the promulgation of rules, to implement this local law on or before such effective date.

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