

**ASSEMBLY, No. 414**

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**STATE OF NEW JERSEY**

**219th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**

**Assemblyman GREGORY P. MCGUCKIN**

**District 10 (Ocean)**

**Assemblyman JOHN CATALANO**

**District 10 (Ocean)**

**SYNOPSIS**

Ensures operation of certain motor fuel storage, distribution and dispensing facilities during disasters and emergencies.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



**(Sponsorship Updated As Of: 2/3/2020)**

1    **AN ACT** concerning the operations of certain motor fuel storage,  
2       distribution and dispensing facilities and supplementing Titles 34  
3       and 54 of the Revised Statutes and Title 54A of the New Jersey  
4       Statutes.

5  
6       **BE IT ENACTED** *by the Senate and General Assembly of the State*  
7       *of New Jersey:*

8  
9       1. As used in P.L.     , c.     (C.     )(pending before the  
10      Legislature as this bill):

11      "County emergency management coordinator" means the county  
12      emergency management coordinator appointed pursuant to section  
13      12 of P.L.1953, c.438 (C.App.A:9-42.1).

14      "Declared state of emergency" means any state of emergency  
15      within this State declared by the Governor or by the President of the  
16      United States.

17      "Disaster" means any natural, technological, or civil emergency  
18      that causes damage of sufficient severity and magnitude to result in  
19      a declaration of a state of emergency by the Governor or the  
20      President of the United States.

21      "Duly authorized weights and measures officer" means and  
22      includes the Superintendent of the Division of Weights and  
23      Measures or the superintendent's assistants or inspectors, a county  
24      or assistant county superintendent of weights and measures or  
25      inspectors, or a municipal or assistant municipal superintendent of  
26      weights and measures or inspectors.

27      "Gasoline station" or "station" means a place of business located  
28      in the State and used for the retail sale and dispensing of motor fuel  
29      into the tanks of motor vehicles.

30      "Local building inspector" means any municipal officer charged  
31      with or responsible for the enforcement of building codes.

32      "Motor fuel" means any fuel which is used for the propulsion of  
33      motor vehicles.

34      "New Jersey Disaster Motor Fuel Supplier Program" or  
35      "program" means the "New Jersey Disaster Motor Fuel Supplier  
36      Program" established in section 6 of P.L.     , c.     (C.     )(pending  
37      before the Legislature as this bill).

38      "Retail dealer" means a person operating a gasoline station.

39      "Sale" means any transfer, gift, sale, offer for sale, or  
40      advertisement for sale in any manner or by any means whatsoever,  
41      including any transfer of motor fuel from a person to itself or an  
42      affiliate at another level of distribution, but does not include  
43      product exchanges at the wholesale level of distribution.

44      "State Office of Emergency Management" means the State  
45      Office of Emergency Management in the Division of State Police in  
46      the Department of Law and Public Safety

47      "Terminal facility" means any inland, waterfront, or offshore  
48      appurtenance on land used for the purpose of storing, handling, or

1 transferring motor fuel, but does not include bulk storage facilities  
2 owned or operated by a wholesaler.

3 "Wholesaler" means any person, other than a refiner or dealer,  
4 who purchases motor fuel at a terminal facility and supplies motor  
5 fuel to retail outlets.

6  
7 2. No later than December 31, 2014, each terminal facility and  
8 wholesaler that engages in the sale of motor fuel in this State shall  
9 be capable, in the event of a disaster, of operating its motor fuel  
10 distribution loading racks using an alternate generated power source  
11 for a minimum of 72 hours. Pending a post-disaster examination of  
12 such distribution loading racks to determine any damage that would  
13 render it unsafe to use, each terminal facility and wholesaler shall  
14 have such alternate generated power source available for operation  
15 no later than 24 hours after the disaster. Initial inspection for  
16 proper installation and operation of the alternate generated power  
17 source shall be completed by a local building inspector, and  
18 verification of the inspection shall be submitted to the county  
19 emergency management coordinator. A duly authorized weights  
20 and measures officer shall check to ensure that the alternate  
21 generated power source is available and in good operating order  
22 during regular inspections of the terminal facility's and  
23 wholesaler's operations.

24  
25 3. Each newly constructed or substantially renovated gasoline  
26 station for which a certificate of occupancy is issued on or after  
27 September 1, 2014 shall be pre-wired with an appropriate transfer  
28 switch, and capable of operating all fuel pumps, dispensing  
29 equipment, life-safety systems, and payment acceptance equipment  
30 using an alternate generated power source. A local building  
31 inspector shall verify the installation and operational capability of  
32 the transfer switch and alternate generated power source in the  
33 normal inspection process before issuing a certificate of occupancy.  
34 A copy of the certificate of occupancy shall be provided to the  
35 county emergency management coordinator upon issuance of the  
36 certificate. A duly authorized weights and measures officer shall  
37 check to ensure that the transfer switch and alternate generated  
38 power source is available and in good operating order during  
39 regular inspections of the gasoline station. As used in this section,  
40 "substantially renovated" means a renovation that results in an  
41 increase of greater than 50 percent in the assessed value of the  
42 gasoline station.

43  
44 4. No later than December 31, 2014, all gasoline stations  
45 having eight or more fueling positions that are within five miles of  
46 an interstate highway or a State or federally-designated evacuation  
47 route shall be pre-wired with an appropriate transfer switch and  
48 capable of operating all fuel pumps, dispensing equipment, life-

1 safety systems, and payment acceptance equipment using an  
2 alternate generated power source. The initial inspection for the  
3 proper installation and operability of the transfer switch and  
4 alternate generated power source shall be completed by a local  
5 building inspector, and verification of the inspection shall be  
6 submitted to the county emergency management coordinator. A  
7 duly authorized weights and measures official shall check to assure  
8 that the transfer switch and alternate generated power source is  
9 available and in good operating order during regular inspections of  
10 those gasoline stations.

11

12 5. a. Sections 3 and 4 of P.L. , c. (C. )(pending before  
13 the Legislature as this bill) shall apply to any gasoline station  
14 regardless of whether the gasoline station is located on the grounds  
15 of, or is owned by, a retail business establishment that does not  
16 engage in the sale of motor fuel.

17 b. Sections 3 and 4 of P.L. , c. (C. )(pending before the  
18 Legislature as this bill) shall not apply to:

19 (1) A person licensed as a motor vehicle dealer under  
20 R.S.39:10-19;

21 (2) A person who operates a fleet of motor vehicles; or

22 (3) A person who engages in the sale of motor fuel exclusively  
23 to operators of fleets of motor vehicles.

24

25 6. There is established the "New Jersey Disaster Motor Fuel  
26 Supplier Program" within the Department of Law and Public Safety.  
27 The program shall allow any retail dealer doing business in this  
28 State to participate in a network of emergency responders to  
29 provide motor fuel supplies and services at their gasoline stations to  
30 government, medical, critical infrastructure, and other emergency  
31 responders, as well as the general public, during a declared state of  
32 emergency. Participation in the program shall require a pre-  
33 certification by the State Office of Emergency Management of  
34 preparedness of the retail dealer to provide emergency motor fuel  
35 supplies and services. The Director of the State Office of  
36 Emergency Management shall establish the requirements for pre-  
37 certification no later than September 1, 2014. The Director of the  
38 State Office of Emergency Management shall issue to retail dealers  
39 that are pre-certified a logo decal for public display to alert  
40 emergency response personnel and the public that the retail dealer is  
41 capable of assisting in a declared state of emergency.

42

43 7. A retail dealer shall not be pre-certified, pursuant to section  
44 6 of P.L. , c. (C. )(pending before the Legislature as this  
45 bill), unless that retail dealer shall have the on-site capability to  
46 provide motor fuel dispensing services to emergency responders,  
47 demonstrates the ability to have those services available within 24  
48 hours after a declared state of emergency, and agrees to make those

1 services available as needed. A retail dealer may choose to sell  
2 motor fuel through pre-existing contracts with local, State, and  
3 federal emergency response agencies or may provide point-of-sale  
4 service to those agencies. In addition, a retail dealer may choose to  
5 sell to the general public, or may be directed to provide that service  
6 by county or State emergency management personnel. If requested  
7 by a participating retail dealer, State Police officers may be  
8 provided to a retail dealer for the purpose of maintaining civil order  
9 during operating hours.

10  
11 8. During a declared state of emergency, emergency response  
12 personnel who can produce appropriate identification, as  
13 determined by State or county emergency management officials,  
14 shall be given priority for motor fuel purchases at gasoline stations  
15 operated by retail dealers that are certified under the program. A  
16 gasoline station so certified may be directed by county or State  
17 emergency management officials to remain open for a period during  
18 a declared curfew to provide service for emergency personnel.  
19 Under that direction, a gasoline station shall not be in violation of  
20 the curfew and shall not be penalized for such operation, nor shall  
21 the emergency personnel be in violation of such curfew.

22  
23 9. A retail dealer that is pre-certified, pursuant to section 6 of  
24 P.L. , c. (C. )(pending before the Legislature as this bill),  
25 may request the Director of the State Office of Emergency  
26 Management for priority re-supply fueling in order to continue  
27 service to emergency responders during a declared state of  
28 emergency. The request shall not be binding, but shall be  
29 considered by emergency response personnel in determining  
30 appropriate response actions.

31  
32 10. a. A retail dealer that participates in the program  
33 established pursuant to section 6 of P.L. , c. (C. )(pending  
34 before the Legislature as this bill), shall be allowed a credit against  
35 the tax imposed pursuant to section 5 of P.L.1945, c.162  
36 (C.54:10A-5), in an amount equal to 25 percent of the cost of the  
37 purchase and installation during the privilege period of the transfer  
38 switch and alternate generated power source required to meet the  
39 certification requirements established by the State Office of  
40 Emergency Management. The total tax credit to be allowed to a  
41 taxpayer for such costs shall not exceed \$15,000.

42 The amount of any credit otherwise allowable under this section  
43 that cannot be applied for the privilege period due to the limitations  
44 of subsection b. of this section, may be carried forward for use in  
45 the seven privilege periods following the privilege period for which  
46 the credit is allowed.

47 b. The order of priority of the application of the credit allowed  
48 under this section and any other credits allowed by law shall be as

1 prescribed by the director. Credits allowable pursuant to this  
2 section shall be applied in the order of the credits' privilege periods.  
3 The amount of the credit applied under this section against the tax  
4 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) for  
5 a privilege period, together with any other credits allowed by law,  
6 shall not exceed 50 percent of the tax liability otherwise due and  
7 shall not reduce the tax liability to an amount less than the statutory  
8 minimum provided in subsection (e) of section 5 of P.L.1945, c.162  
9 (C.54:10A-5).

10  
11 11. a. A retail dealer that participates in the program  
12 established pursuant to section 6 of P.L. , c. (C. )(pending  
13 before the Legislature as this bill) shall be allowed a credit against  
14 the tax otherwise due for the taxable year under the "New Jersey  
15 Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal  
16 to 25 percent of the cost of the purchase and installation during the  
17 taxable year of the transfer switch and alternate generated power  
18 source required to meet the certification requirements established  
19 by the State Office of Emergency Management. The total tax credit  
20 to be allowed to a taxpayer for such costs shall not exceed \$15,000.

21 b. The amount of the credit applied under this section for a  
22 taxable year, when taken together with any other credits allowed  
23 against the tax imposed pursuant to N.J.S.54A:1-1 et seq., shall not  
24 exceed 50 percent of that amount of the taxpayer's liability for tax  
25 for the taxable year that bears the same proportional relationship to  
26 the total amount of that liability as the amount of the taxpayer's  
27 gross income, derived from New Jersey sources and attributable to  
28 the business or professional activity of the taxpayer's entire gross  
29 income for that year. A credit allowed pursuant to this section shall  
30 be taken only after the taxpayer has taken all credits allowed under  
31 section 2 of P.L.2000, c.80 (C.54A:4-7). The amount of the credit  
32 otherwise allowable under this section which cannot be applied for  
33 the taxable year due to the limitations of this subsection may be  
34 carried for use in the seven taxable years following the taxable year  
35 for which the credit was allowed.

36 c. A partnership shall not be allowed a credit under this section  
37 directly, but the amount of credit of a taxpayer in respect of a  
38 distributive share of partnership income under the "New Jersey  
39 Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be determined  
40 by allocating to the taxpayer that proportion of the credit acquired  
41 by the partnership that is equal to the taxpayer's share, whether or  
42 not distributed, of the total distributive income or gain of the  
43 partnership for its taxable year ending within or with the taxpayer's  
44 taxable year.

45  
46 12. The Department of Law and Public Safety shall study the  
47 progress in post-disaster motor fuel supply distribution and provide

1 a report to the Governor and the Legislature, pursuant to section 2  
2 of P.L.1991, c.164 (C.52:14-19.1), by March 1, 2015. The report  
3 shall include information on the compliance with P.L. ,  
4 c. (C. ) (pending before the Legislature as this bill), and the  
5 identification of all retailers that are participating in the program.  
6

7 13. The Department of Law and Public Safety, in consultation  
8 with the Department of the Treasury, shall adopt rules and  
9 regulations, pursuant to the "Administrative Procedure Act,"  
10 P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to implement the  
11 provisions of P.L. , c. (C. ) (pending before the Legislature  
12 as this bill).  
13

14 14. This act shall take effect on the 60th day after the date of  
15 enactment, but the Director of the State Office of Emergency  
16 Management may take such anticipatory administrative action in  
17 advance thereof as shall be necessary for the implementation of this  
18 act.  
19  
20

#### 21 STATEMENT

22

23 This bill provides for a number of measures designed to assure  
24 the operation of certain motor fuel storage, distribution and  
25 dispensing facilities during disasters and emergencies.

26 Specifically, the bill requires that no later than December 31,  
27 2014, each motor fuel terminal facility and wholesaler that sells  
28 motor fuel in this State shall be capable, in the event of a disaster,  
29 of operating its motor fuel distribution loading racks using an  
30 alternate generated power source for a minimum of 72 hours. The  
31 bill further requires that each newly constructed or substantially  
32 renovated gasoline station for which a certificate of occupancy is  
33 issued on or after September 1, 2014, and all gasoline stations  
34 having eight or more fueling positions that are within five miles of  
35 an interstate highway or a State or federally-designated evacuation  
36 route by no later than December 31, 2014, are to be pre-wired with  
37 an appropriate transfer switch, and be capable of operating all fuel  
38 pumps, dispensing equipment, life-safety systems, and payment  
39 acceptance equipment using an alternate generated power source.

40 The bill establishes the "New Jersey Disaster Motor Fuel  
41 Supplier Program" (program) within the Department of Law and  
42 Public Safety. The program is to allow any motor fuel retail dealer  
43 doing business in this State to participate in a network of  
44 emergency responders to provide motor fuel supplies and services  
45 at their gasoline stations to government, medical, critical  
46 infrastructure, and other emergency responders, as well as the  
47 general public, during a declared state of emergency. Participation  
48 in the program would require a pre-certification of preparedness of

1 the retail dealer by the State Office of Emergency Management  
2 (OEM) to provide emergency motor fuel supplies and services. The  
3 Director of the State OEM is to establish requirements for pre-  
4 certification by no later than September 1, 2014. A retail dealer is  
5 not to be pre-certified unless that retail dealer has the on-site  
6 capability to provide motor fuel dispensing services to emergency  
7 responders, demonstrates the ability to have the service available  
8 within 24 hours after a declared state of emergency, and agrees to  
9 make the service available as needed.

10 The bill provides that, during a declared state of emergency,  
11 emergency response personnel who can produce appropriate  
12 identification, as determined by State or county emergency  
13 management officials, are to be given priority for motor fuel  
14 purchases at gasoline stations operated by retail dealers that are  
15 certified under the program. Certified gasoline stations may be  
16 directed by county or state emergency management officials to  
17 remain open for a period during a declared curfew to provide  
18 service for emergency personnel. Under that direction, certified  
19 gasoline stations are not to be deemed in violation of the curfew and  
20 are not to be penalized for such operation, nor shall the emergency  
21 personnel be in violation of such curfew. Retail dealers that are  
22 pre-certified may request the Director of the State OEM for priority  
23 re-supply fueling in order to continue service to emergency  
24 responders.

25 The bill provides to a retail dealer participating in the program a  
26 tax credit in an amount equal to 25 percent of the cost of the  
27 purchase and installation during the taxable year of the transfer  
28 switch and alternate generated power source required to meet the  
29 certification requirements established by the State OEM. The total  
30 tax credit to be given to a retail dealer is not to exceed \$15,000.