S T A T E O F N E W Y O R K

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2011-2012 Regular Sessions

I N S E N A T E

January 14, 2011

Introduced by Sen. GIANARIS -- read twice and ordered printed, and when printed to be committed to the Committee on Veterans, Homeland Security and Military Affairs

AN ACT to amend the executive law, in relation to creation of security measures for the transportation facilities of the metropolitan transportation authority

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraph (q) of subdivision 2 of section 709 of the executive law, as amended by section 14 of part B of chapter 56 of the laws of 2010, is amended to read as follows:

(q) request from any department, division, office, commission or other agency of the state or any political subdivision thereof, OR ANY PUBLIC AUTHORITY OR PUBLIC BENEFIT CORPORATION, and the same are authorized to provide, such assistance, services and data as may be required by the division of homeland security and emergency services in carrying out the purposes of this article, subject to applicable laws, rules, and regulations;

S 2. The executive law is amended by adding a new section 718 to read as follows:

S 718. PROTECTION OF CRITICAL INFRASTRUCTURE; METROPOLITAN TRANSPORTATION AUTHORITY FACILITIES. 1. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE DIRECTOR OF THE OFFICE OF HOMELAND SECURITY SHALL CONDUCT A REVIEW AND ANALYSIS OF MEASURES BEING TAKEN BY THE METROPOLITAN TRANSPORTATION AUTHORITY AND ANY OTHER AGENCY OR AUTHORITY OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF AND, TO THE EXTENT PRACTICABLE, OF ANY FEDERAL ENTITY, TO PROTECT THE SECURITY OF CRITICAL INFRASTRUCTURE RELATED TO THE TRANSPORTATION FACILITIES, WHICH SHALL INCLUDE THOSE FACILITIES SET FORTH IN SUBDIVISION FOURTEEN OF SECTION TWELVE HUNDRED SIXTY-ONE OF THE PUBLIC AUTHORITIES LAW AND SHALL ALSO INCLUDE, FOR PURPOSES OF THIS SECTION, BRIDGES AND TUNNELS, OF THE METROPOLITAN

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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TRANSPORTATION AUTHORITY AND OF ALL SUBSIDIARIES OF SUCH AUTHORITY. THE DIRECTOR OF THE OFFICE OF HOMELAND SECURITY SHALL HAVE THE AUTHORITY TO REVIEW ANY AUDITS OR REPORTS RELATED TO THE SECURITY OF SUCH CRITICAL INFRASTRUCTURE, INCLUDING AUDITS OR REPORTS CONDUCTED AT THE REQUEST OF THE METROPOLITAN TRANSPORTATION AUTHORITY OR ANY OTHER AGENCY OR AUTHORITY OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF OR, TO THE EXTENT PRACTICABLE, OF ANY FEDERAL ENTITY. THE OPERATORS OF SUCH TRANSPORTATION FACILITIES SHALL, IN COMPLIANCE WITH ANY FEDERAL AND STATE REQUIREMENTS REGARDING THE DISSEMINATION OF SUCH INFORMATION, PROVIDE ACCESS TO THE DIRECTOR OF THE OFFICE OF HOMELAND SECURITY TO SUCH AUDITS OR REPORTS REGARDING SUCH CRITICAL INFRASTRUCTURE PROVIDED, HOWEVER, THAT EXCLUSIVE CUSTODY AND CONTROL OF SUCH AUDITS AND REPORTS SHALL REMAIN SOLELY WITH THE OPERATORS OF SUCH TRANSPORTATION FACILITIES. FOR THE PURPOSES OF THIS ARTICLE, THE TERM "CRITICAL INFRASTRUCTURE" HAS THE MEANING ASCRIBED TO THAT TERM IN SUBDIVISION FIVE OF SECTION EIGHTY-SIX OF THE PUBLIC OFFICERS LAW.

2. (A) ON OR BEFORE DECEMBER THIRTY-FIRST, TWO THOUSAND TWELVE, AND NOT LATER THAN THREE YEARS AFTER SUCH DATE, AND EVERY FIVE YEARS THEREAFTER, THE DIRECTOR OF THE OFFICE OF HOMELAND SECURITY SHALL REPORT TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, AND THE BOARD OF ANY SUCH AFFECTED TRANSPORTATION AUTHORITY. SUCH REPORT SHALL REVIEW THE SECURITY MEASURES BEING TAKEN REGARDING CRITICAL INFRASTRUCTURE RELATED TO TRANSPORTATION FACILITIES, AS DEFINED IN SUBDIVISION FOURTEEN OF SECTION TWELVE HUNDRED SIXTY-ONE OF THE PUBLIC AUTHORITIES LAW, ASSESS THE EFFECTIVENESS THEREOF, AND INCLUDE RECOMMENDATIONS TO THE LEGISLATURE, OR THE METROPOLITAN TRANSPORTATION AUTHORITY IF THE DIRECTOR OF THE OFFICE OF HOMELAND SECURITY DETERMINES THAT ADDITIONAL MEASURES ARE REQUIRED TO BE IMPLEMENTED, CONSIDERING AMONG OTHER FACTORS, THE UNIQUE CHARACTERISTICS OF EACH TRANSPORTATION FACILITY. ON OR BEFORE APRIL THIRTIETH, TWO THOUSAND TWELVE, THE DIRECTOR OF THE OFFICE OF HOMELAND SECURITY SHALL MAKE A PRELIMINARY REPORT TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, AND THE BOARD OF ANY SUCH AFFECTED TRANSPORTATION AUTHORITY.

(B) BEFORE THE RECEIPT OF SUCH REPORT IDENTIFIED IN PARAGRAPH (A) OF THIS SUBDIVISION, EACH RECIPIENT OF SUCH REPORT SHALL DEVELOP CONFIDENTIALITY PROTOCOLS, WHICH SHALL BE BINDING UPON THE RECIPIENT WHO ISSUES THE PROTOCOLS AND ANYONE TO WHOM THE RECIPIENT SHOWS A COPY OF THE REPORT, IN CONSULTATION WITH THE DIRECTOR OF THE OFFICE OF HOMELAND SECURITY FOR THE MAINTENANCE AND USE OF SUCH REPORT SO AS TO ENSURE THE CONFIDENTIALITY OF THE REPORT AND ALL INFORMATION CONTAINED THEREIN, PROVIDED, HOWEVER, THAT SUCH PROTOCOLS SHALL NOT BE BINDING UPON A PERSON WHO IS PROVIDED ACCESS TO SUCH REPORT OR ANY INFORMATION CONTAINED THEREIN PURSUANT TO SECTION EIGHTY-NINE OF THE PUBLIC OFFICERS LAW AFTER A FINAL DETERMINATION THAT ACCESS TO SUCH REPORT OR ANY INFORMATION CONTAINED THEREIN COULD NOT BE DENIED PURSUANT TO SUBDIVISION TWO OF SECTION EIGHTY-SEVEN OF THE PUBLIC OFFICERS LAW. THE DIRECTOR OF THE OFFICE OF HOMELAND SECURITY SHALL ALSO DEVELOP PROTOCOLS FOR HIS OR HER OFFICE RELATED TO THE MAINTENANCE AND USE OF SUCH REPORT SO AS TO ENSURE THE CONFIDENTIALITY OF THE REPORT AND ALL INFORMATION CONTAINED THEREIN. ON EACH REPORT, THE DIRECTOR OF THE OFFICE OF HOMELAND SECURITY SHALL PROMINENTLY DISPLAY THE FOLLOWING STATEMENT: "THIS REPORT MAY CONTAIN INFORMATION THAT IF DISCLOSED COULD ENDANGER THE LIFE OR SAFETY OF THE PUBLIC, AND THEREFORE, PURSUANT TO SECTION SEVEN HUNDRED TEN OF THE EXECUTIVE LAW, THIS REPORT IS TO BE MAINTAINED AND USED IN A MANNER

CONSISTENT WITH PROTOCOLS ESTABLISHED TO PRESERVE THE CONFIDENTIALITY OF THE INFORMATION CONTAINED HEREIN IN A MANNER CONSISTENT WITH LAW".

(C) THE METROPOLITAN TRANSPORTATION AUTHORITY SHALL HAVE THE DISCRETION TO REQUIRE THAT THE RECOMMENDATIONS OF THE DIRECTOR OF THE OFFICE OF HOMELAND SECURITY BE IMPLEMENTED BY ANY OPERATOR OF A TRANSPORTATION FACILITY.

S 3. This act shall take effect immediately.