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2009-2010 Regular Sessions

I N A S S E M B L Y

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Introduced by M. of A. GIANARIS, JOHN, PERALTA, GALEF, ESPAILLAT, EDDINGTON, COOK -- Multi-Sponsored by -- M. of A. ABBATE, BRENNAN, DESTITO, DIAZ, HOOPER, MAYERSOHN, MILLMAN, PERRY, PHEFFER, ROBINSON, SWEENEY -- read once and referred to the Committee on Governmental Operations

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:

1 Section 1. Paragraph (q) of subdivision 2 of section 709 of the execu-  
2 tive law, as separately amended by chapters 537 and 620 of the laws of  
3 2005, is amended to read as follows:  
4 (q) request from any department, division, office, commission or other  
5 agency of the state or any political subdivision thereof, OR ANY PUBLIC  
6 AUTHORITY OR PUBLIC BENEFIT CORPORATION, and the same are authorized to  
7 provide, such assistance, services and data as may be required by the  
8 office of homeland security in carrying out the purposes of this arti-  
9 cle, subject to applicable laws, rules, and regulations; and  
10 S 2. The executive law is amended by adding a new section 716 to read  
11 as follows:  
12 S 716. PROTECTION OF CRITICAL INFRASTRUCTURE; METROPOLITAN TRANSPORTA-  
13 TION AUTHORITY FACILITIES. 1. NOTWITHSTANDING ANY OTHER PROVISION OF  
14 LAW, THE DIRECTOR OF THE OFFICE OF HOMELAND SECURITY SHALL CONDUCT A  
15 REVIEW AND ANALYSIS OF MEASURES BEING TAKEN BY THE METROPOLITAN TRANS-  
16 PORTATION AUTHORITY AND ANY OTHER AGENCY OR AUTHORITY OF THE STATE OR  
17 ANY POLITICAL SUBDIVISION THEREOF AND, TO THE EXTENT PRACTICABLE, OF ANY  
18 FEDERAL ENTITY, TO PROTECT THE SECURITY OF CRITICAL INFRASTRUCTURE  
19 RELATED TO THE TRANSPORTATION FACILITIES, WHICH SHALL INCLUDE THOSE  
20 FACILITIES SET FORTH IN SUBDIVISION FOURTEEN OF SECTION TWELVE HUNDRED  
21 SIXTY-ONE OF THE PUBLIC AUTHORITIES LAW AND SHALL ALSO INCLUDE, FOR

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

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1 PURPOSES OF THIS SECTION, BRIDGES AND TUNNELS, OF THE METROPOLITAN  
2 TRANSPORTATION AUTHORITY AND OF ALL SUBSIDIARIES OF SUCH AUTHORITY. THE  
3 DIRECTOR OF THE OFFICE OF HOMELAND SECURITY SHALL HAVE THE AUTHORITY TO  
4 REVIEW ANY AUDITS OR REPORTS RELATED TO THE SECURITY OF SUCH CRITICAL  
5 INFRASTRUCTURE, INCLUDING AUDITS OR REPORTS CONDUCTED AT THE REQUEST OF  
6 THE METROPOLITAN TRANSPORTATION AUTHORITY OR ANY OTHER AGENCY OR AUTHOR-  
7 ITY OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF OR, TO THE EXTENT  
8 PRACTICABLE, OF ANY FEDERAL ENTITY. THE OPERATORS OF SUCH TRANSPORTATION  
9 FACILITIES SHALL, IN COMPLIANCE WITH ANY FEDERAL AND STATE REQUIREMENTS  
10 REGARDING THE DISSEMINATION OF SUCH INFORMATION, PROVIDE ACCESS TO THE  
11 DIRECTOR OF THE OFFICE OF HOMELAND SECURITY TO SUCH AUDITS OR REPORTS  
12 REGARDING SUCH CRITICAL INFRASTRUCTURE PROVIDED, HOWEVER, THAT EXCLUSIVE  
13 CUSTODY AND CONTROL OF SUCH AUDITS AND REPORTS SHALL REMAIN SOLELY WITH  
14 THE OPERATORS OF SUCH TRANSPORTATION FACILITIES. FOR THE PURPOSES OF  
15 THIS ARTICLE, THE TERM "CRITICAL INFRASTRUCTURE" HAS THE MEANING  
16 ASCRIBED TO THAT TERM IN SUBDIVISION FIVE OF SECTION EIGHTY-SIX OF THE  
17 PUBLIC OFFICERS LAW.

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

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

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

3 (C) THE METROPOLITAN TRANSPORTATION AUTHORITY SHALL HAVE THE  
4 DISCRETION TO REQUIRE THAT THE RECOMMENDATIONS OF THE DIRECTOR OF THE  
5 OFFICE OF HOMELAND SECURITY BE IMPLEMENTED BY ANY OPERATOR OF A TRANS-  
6 PORTATION FACILITY.

7 S 3. This act shall take effect immediately.