

4699

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. LEIBELL -- 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 directing the state office of homeland security to conduct a review and analysis of security measures at rail yards

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

1 Section 1. The executive law is amended by adding a new section 716 to
2 read as follows:
3 S 716. PROTECTION OF CRITICAL INFRASTRUCTURE; RAIL YARDS. 1. NOTWITH-
4 STANDING ANY OTHER PROVISION OF LAW AND SUBJECT TO THE AVAILABILITY OF
5 AN APPROPRIATION, THE DIRECTOR SHALL CONDUCT A REVIEW AND ANALYSIS OF
6 MEASURES BEING TAKEN BY THE OWNERS AND OPERATORS OF RAIL YARDS FACILI-
7 TIES TO PROTECT THE SECURITY OF CRITICAL INFRASTRUCTURE RELATED TO SUCH
8 FACILITIES. THE DIRECTOR SHALL HAVE THE AUTHORITY TO REVIEW ALL AUDITS
9 OR REPORTS RELATED TO THE SECURITY OF SUCH CRITICAL INFRASTRUCTURE,
10 INCLUDING ALL SUCH AUDITS OR REPORTS MANDATED BY STATE AND FEDERAL LAW
11 OR REGULATION, INCLUDING SPILL PREVENTION REPORTS AND RISK MANAGEMENT
12 PLANS, AUDITS AND REPORTS CONDUCTED AT THE REQUEST OF ANY FEDERAL ENTI-
13 TY, OR ANY OTHER AGENCY OR AUTHORITY OF THE STATE OR ANY POLITICAL
14 SUBDIVISION THEREOF, AND REPORTS PREPARED BY OWNERS AND OPERATORS OF
15 SUCH FACILITIES AS REQUIRED IN THIS SUBDIVISION. THE OWNERS AND OPERA-
16 TORS OF SUCH RAIL YARD FACILITIES SHALL, IN COMPLIANCE WITH ANY FEDERAL
17 AND STATE REQUIREMENTS REGARDING THE DISSEMINATION OF SUCH INFORMATION,
18 PROVIDE ACCESS TO THE DIRECTOR TO SUCH AUDITS AND REPORTS REGARDING SUCH
19 CRITICAL INFRASTRUCTURE PROVIDED, HOWEVER, EXCLUSIVE CUSTODY AND CONTROL
20 OF SUCH AUDITS AND REPORTS SHALL REMAIN SOLELY WITH THE OWNERS AND OPER-
21 ATORS OF SUCH FACILITIES TO THE EXTENT NOT INCONSISTENT WITH ANY OTHER
22 LAW. FOR THE PURPOSES OF THIS SECTION "CRITICAL INFRASTRUCTURE" HAS THE

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

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1 MEANING ASCRIBED TO THAT TERM IN SUBDIVISION FIVE OF SECTION EIGHTY-SIX
2 OF THE PUBLIC OFFICERS LAW.

3 2. TO EFFECTUATE HIS OR HER DUTIES PURSUANT TO THIS SECTION AND IDEN-
4 TIFY RISKS TO THE PUBLIC, THE DIRECTOR SHALL:

5 (A) IDENTIFY AND PREPARE A LIST OF ALL RAIL YARD FACILITIES IN THE
6 STATE;

7 (B) IN CONSULTATION WITH THE COMMISSIONER OF TRANSPORTATION AND ANY
8 STATE, LOCAL AND MUNICIPAL OFFICIALS AS MAY BE APPROPRIATE, IDENTIFY
9 RAIL YARD FACILITIES, WHICH BECAUSE OF THEIR STORAGE AND/OR TRANSPORTA-
10 TION OF, OR RELATIONSHIP TO, SUCH SUBSTANCES IDENTIFIED PURSUANT TO
11 PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION SEVEN HUNDRED FOURTEEN OF
12 THIS ARTICLE POSE RISKS TO THE PUBLIC SHOULD AN UNAUTHORIZED RELEASE OF
13 SUCH HAZARDOUS SUBSTANCES OCCUR; AND

14 (C) REQUIRE SUCH RAIL YARD FACILITIES IDENTIFIED PURSUANT TO PARAGRAPH
15 (A) OF THIS SUBDIVISION, AS THE DIRECTOR SO DETERMINES, TO PREPARE A
16 VULNERABILITY ASSESSMENT OF THE SECURITY MEASURES TAKEN BY SUCH FACILI-
17 TIES TO PREVENT AND RESPOND TO THE UNAUTHORIZED RELEASE OF HAZARDOUS
18 SUBSTANCES AS MAY BE STORED THEREIN, WHICH ASSESSMENTS THE DIRECTOR OF
19 THE OFFICE OF HOMELAND SECURITY SHALL REVIEW AND CONSIDER IN LIGHT OF
20 THE SERIOUSNESS OF THE RISK POSED AND VULNERABILITY OF SUCH FACILITY
21 AND, WHERE APPROPRIATE, MAKE RECOMMENDATIONS WITH RESPECT THERETO.

22 3. (A) ON OR BEFORE JUNE FIRST, TWO THOUSAND TEN, THE DIRECTOR SHALL
23 MAKE A PRELIMINARY REPORT TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF
24 THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE COMMISSIONER OF TRANSPORTA-
25 TION AND THE CHIEF EXECUTIVE OFFICER OF ANY SUCH AFFECTED FACILITY OR
26 HIS OR HER DESIGNEE, AND ON OR BEFORE DECEMBER THIRTY-FIRST, TWO THOU-
27 SAND TEN, AND NOT LATER THAN THREE YEARS AFTER SUCH DATE, AND EVERY FIVE
28 YEARS THEREAFTER, THE DIRECTOR SHALL REPORT TO THE GOVERNOR, THE TEMPO-
29 RARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE COMMIS-
30 SIONER OF TRANSPORTATION AND THE CHIEF EXECUTIVE OFFICER OF ANY SUCH
31 AFFECTED FACILITY OR HIS OR HER DESIGNEE. SUCH REPORT SHALL REVIEW THE
32 SECURITY MEASURES BEING TAKEN REGARDING CRITICAL INFRASTRUCTURE RELATED
33 TO RAIL YARD FACILITIES, ASSESS THE EFFECTIVENESS THEREOF, AND INCLUDE
34 RECOMMENDATIONS TO THE LEGISLATURE, THE DEPARTMENT OF TRANSPORTATION IF
35 THE DIRECTOR DETERMINES THAT ADDITIONAL MEASURES ARE REQUIRED TO BE
36 IMPLEMENTED.

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

1 CONFIDENTIALITY OF THE INFORMATION CONTAINED HEREIN IN A MANNER CONSIST-
2 ENT WITH LAW."

3 (C) THE DEPARTMENTS OF TRANSPORTATION AND ENVIRONMENTAL CONSERVATION
4 SHALL HAVE THE DISCRETION TO REQUIRE THAT RECOMMENDATIONS OF THE DIREC-
5 TOR BE IMPLEMENTED BY ANY OWNER OR OPERATOR OF A RAIL YARD FACILITY.

6 S 2. This act shall take effect immediately.