

4724

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 giving the state office of homeland security the power to decide if the sale, lease or operation of state-owned critical infrastructure would threaten public security and establishing the critical infrastructure advisory council; to amend the public service law, in relation to requiring the public service commission to consult with the office of homeland security whenever there is a proposed sale or lease of an electric generating facility; and to amend the public officers law, in relation to the definition of critical infrastructure

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

1 Section 1. Paragraph (j) of subdivision 2 of section 709 of the execu-  
2 tive law, as added by section 2 of part B of chapter 1 of the laws of  
3 2004, is amended and a new paragraph (j-1) is added to read as follows:  
4 (j) work with local, state and federal agencies and private entities  
5 to conduct assessments of the vulnerability of critical infrastructure,  
6 AS DEFINED IN SUBDIVISION FIVE OF SECTION EIGHTY-SIX OF THE PUBLIC OFFI-  
7 CERS LAW, to terrorist attack[, including, but not limited to, nuclear  
8 facilities, power plants, telecommunications systems, mass transporta-  
9 tion systems, public roadways, railways, bridges and tunnels,] and  
10 develop strategies that may be used to protect such infrastructure from  
11 terrorist attack;  
12 (J-1) DECIDE, IF AND TO THE EXTENT REQUIRED BY SECTION SEVEN HUNDRED  
13 SIXTEEN OF THIS ARTICLE, UPON A VOTE OF THE CRITICAL INFRASTRUCTURE  
14 ADVISORY COUNCIL ESTABLISHED PURSUANT TO SUCH SECTION, IF THE SALE,  
15 LEASE OR OPERATION OF ANY CRITICAL INFRASTRUCTURE OWNED BY THE STATE OR  
16 PUBLIC AUTHORITY WOULD THREATEN PUBLIC SECURITY;

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

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1 S 2. The executive law is amended by adding a new section 716 to read  
2 as follows:

3 S 716. CRITICAL INFRASTRUCTURE ADVISORY COUNCIL. 1. THERE IS HEREBY  
4 ESTABLISHED A CRITICAL INFRASTRUCTURE ADVISORY COUNCIL CONSISTING OF THE  
5 DIRECTOR OF THE OFFICE OF HOMELAND SECURITY WHO SHALL ACT AS CHAIR OF  
6 THE COUNCIL, THE COMMISSIONER OF TRANSPORTATION, THE SUPERINTENDENT OF  
7 STATE POLICE, THE CHAIR OF THE PUBLIC AUTHORITIES CONTROL BOARD, A  
8 MEMBER APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE AND A MEMBER  
9 APPOINTED BY THE SPEAKER OF THE ASSEMBLY. THE TEMPORARY PRESIDENT OF THE  
10 SENATE AND THE SPEAKER OF THE ASSEMBLY SHALL HAVE NINETY DAYS FROM THE  
11 EFFECTIVE DATE OF THIS SECTION TO APPOINT MEMBERS TO THIS COUNCIL.

12 2. (A) A FIRM OR CORPORATION PROPOSING TO PURCHASE OR LEASE CRITICAL  
13 INFRASTRUCTURE OWNED BY A STATE OR PUBLIC AUTHORITY SHALL NOTIFY THE  
14 DIRECTOR WITHIN NINETY DAYS OF THE PROPOSED TRANSFER OF RIGHTS TO SUCH  
15 CRITICAL INFRASTRUCTURE. SUCH NOTICE SHALL INCLUDE:

16 (I) THE NATURE OF TRANSFER FROM THE STATE OR PUBLIC AUTHORITY TO THE  
17 TRANSFEREE INCLUDING THE IDENTIFICATION OF WHAT RIGHTS WILL BE TRANS-  
18 FERRED, THE DURATION OF TRANSFER AND REASON FOR SUCH TRANSFER AS GIVEN  
19 BY THE STATE OR PUBLIC AUTHORITY OR CORPORATION TRANSFERRING AN ELECTRIC  
20 GENERATING FACILITY; AND

21 (II) MANAGEMENT AND OWNERSHIP DETAILS OF THE FIRM OR CORPORATION  
22 INCLUDING SHAREHOLDERS, CORPORATE OFFICERS AND DESIGNATION OF WHO WILL  
23 BE RESPONSIBLE FOR SECURITY AT THE FACILITY; AND

24 (III) A PROPOSAL FOR SECURITY MEASURES TO BE TAKEN AT THE FACILITY  
25 INCLUDING SECURITY PLANS TO PREVENT A TERRORIST ATTACK AND SCREENING OF  
26 PERSONNEL INCLUDING ANY CRIMINAL BACKGROUND CHECKS.

27 (B) WITHIN THIRTY DAYS OF THE INITIAL NOTIFICATION THE PROPOSED TRANS-  
28 FERE MAY SUBMIT AN ADDENDUM TO THE ORIGINAL NOTICE.

29 3. WITHIN NINETY DAYS OF NOTICE TO THE DIRECTOR OF THE OFFICE OF HOME-  
30 LAND SECURITY, THE OFFICE OF HOMELAND SECURITY SHALL EVALUATE THE  
31 PROPOSED TRANSFER INCLUDING THE SECURITY PLAN AND CRIMINAL HISTORY OF  
32 THOSE WITH OPERATIONAL RESPONSIBILITY OF THE FACILITY INCLUDING CHIEF  
33 SECURITY PERSONNEL AND SHALL SUBMIT A REPORT TO THE CRITICAL INFRASTRUC-  
34 TURE ADVISORY COUNCIL.

35 4. WITHIN SIXTY DAYS OF SUBMISSION OF THE REPORT, THE CRITICAL INFRAS-  
36 TRUCTURE ADVISORY COUNCIL SHALL, BY MAJORITY VOTE, CHOOSE TO PROHIBIT OR  
37 APPROVE THE TRANSFER OF THE RIGHTS OF CRITICAL INFRASTRUCTURE. THE COUN-  
38 CIL SHALL INFORM THE PROPOSED TRANSFEREE OF ITS DECISION INCLUDING  
39 SPECIFIC REASONS WHY THE TRANSFER IS DECLINED. THE TRANSFEREE MAY RESUB-  
40 MIT ITS PROPOSAL WITHIN THIRTY DAYS OF THE DECISION TO ADDRESS ANY  
41 SPECIFIC REASON FOR DECLINATION. THE COMMITTEE MAY CHOOSE TO ACCEPT OR  
42 DECLINE ANY RESUBMISSION BY MAJORITY VOTE WITHIN THIRTY DAYS OF SUCH  
43 RESUBMISSION.

44 5. UPON THE APPROVAL OF TRANSFER, THE TRANSFEREE SHALL FILE A YEARLY  
45 STATEMENT FROM THE DATE OF TRANSFER, CHANGES TO ITS SECURITY PLAN AND  
46 ANY CHANGES IN CORPORATE OFFICERS OR SECURITY MANAGEMENT PERSONNEL.

47 6. THE PROVISIONS OF SUBDIVISIONS TWO, THREE, FOUR AND FIVE OF THIS  
48 SECTION SHALL NOT APPLY IN ANY RESPECT TO, NOR SHALL THE CRITICAL  
49 INFRASTRUCTURE ADVISORY COUNCIL HAVE ANY AUTHORITY IN CONNECTION WITH,  
50 ANY PURCHASE, LEASE, TRANSFER OF RIGHTS, OR OTHER TRANSACTION THAT WILL  
51 BE THE SUBJECT OF A NOTICE FILING WITH THE FEDERAL COMMITTEE ON FOREIGN  
52 INVESTMENT IN THE UNITED STATES (CFIUS).

53 S 3. Section 66 of the public service law is amended by adding a new  
54 subdivision 29 to read as follows:

1 29. THE COMMISSION SHALL CONSULT WITH THE OFFICE OF HOMELAND SECURITY  
2 WHEN THERE IS A PROPOSED SALE OR LEASE OF AN ELECTRIC GENERATING FACILI-  
3 TY.

4 S 4. Subdivision 5 of section 86 of the public officers law, as added  
5 by chapter 403 of the laws of 2003, is amended to read as follows:

6 5. "Critical infrastructure" means systems, assets, places or things,  
7 whether physical or virtual, so vital to the state that the disruption,  
8 incapacitation or destruction of such systems, assets, places or things  
9 could jeopardize the health, safety, welfare or security of the state,  
10 its residents or its economy AND SHALL INCLUDE BUT IS NOT LIMITED TO  
11 NUCLEAR FACILITIES, POWER PLANTS, TELECOMMUNICATIONS SYSTEMS, MASS  
12 TRANSPORTATION SYSTEMS, PUBLIC ROADWAYS, RAILWAYS, BRIDGES AND TUNNELS,  
13 MARINE TERMINALS, AIRPORTS, HELIPORTS AND OTHER AIRCRAFT FACILITIES,  
14 WATER SUPPLIERS, AS DEFINED IN SUBDIVISION ONE OF SECTION ELEVEN HUNDRED  
15 TWENTY-FIVE OF THE PUBLIC HEALTH LAW, PRISONS AND JAILS.

16 S 5. This act shall take effect immediately.