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

4857

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 increasing port security; and to amend chapter 154 of the laws of 1921 relating to the Port Authority of New York and New Jersey, in relation to contracts with foreign persons, corporations, or entities

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

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

S 716. PORT SECURITY ENHANCEMENT PLAN. THE OFFICES OF HOMELAND SECURITY FOR THE STATES OF NEW YORK AND NEW JERSEY, IN COOPERATION WITH THE WATERFRONT COMMISSION OF NEW YORK HARBOR SHALL, ON OR BEFORE THE FIFTEENTH DAY OF FEBRUARY, TWO THOUSAND ELEVEN, PREPARE, AND DELIVER TO THE GOVERNORS OF THE STATES OF NEW YORK AND NEW JERSEY, THE PRESIDENTS PRO TEMPORE OF THE SENATES OF NEW YORK AND NEW JERSEY AND THE SPEAKERS OF THE ASSEMBLIES OF NEW YORK AND NEW JERSEY, A COMPREHENSIVE REPORT, WHICH PROVIDES A PLAN OF ACTION AND INCLUDES RECOMMENDATIONS, FOR THE IMPROVEMENT OF PORT AND WATERWAY SECURITY FOR THE PORT OF NEW YORK AND NEW JERSEY, AS WELL AS THE PORTS, WATERWAYS AND COASTLINES OF THE STATES OF NEW YORK AND NEW JERSEY.

SUCH REPORT SHALL INCLUDE:

1. AN EXAMINATION OF THE OVERALL SECURITY ISSUES OF THE PORT OF NEW YORK AND NEW JERSEY, AND MAKING RECOMMENDATIONS WITH RESPECT TO SUCH ISSUES, INCLUDING:

A. THE OVERALL PROVISION AND STATUS OF PORT SECURITY;

B. THE DIVISION OF RESPONSIBILITY FOR ALL FACETS OF PORT SECURITY;

C. CURRENT IMPEDIMENTS TO PROVIDING OPTIMAL LEVELS OF SECURITY;

D. POLICE PATROLS OF THE PORT;

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

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E. INTERAGENCY COOPERATION BETWEEN FEDERAL, STATE AND LOCAL AUTHORITIES;
F. EMPLOYEE, CREW, SHIPPER, TRANSPORTER AND VISITOR BACKGROUND CHECKS;
G. CURRENT AND POTENTIAL TECHNOLOGY ENHANCEMENTS;
H. ECONOMIC CONSIDERATIONS;
I. REAL PROPERTY AND LEASEHOLD ISSUES; AND
J. SUCH OTHER AND FURTHER ITEMS AS THE COMMISSION DEEMS IMPORTANT.

2. SUCH REPORT SHALL ALSO INCLUDE AN EXAMINATION OF THE OVERALL SECURITY ISSUES OF THE PORTS, WATERWAYS AND COASTLINES OF THE STATES OF NEW YORK AND NEW JERSEY, MAKING RECOMMENDATIONS WITH RESPECT TO SUCH ISSUES.

S 2. Section 1 of chapter 154 of the laws of 1921 relating to the Port Authority of New York and New Jersey is amended by adding a new article VI-A to read as follows:

ARTICLE VI-A.

1. LEGISLATIVE FINDINGS AND DETERMINATIONS. THE LEGISLATURE FINDS AND DETERMINES THAT THE SAFE AND EFFECTIVE OPERATION OF TRANSPORTATION FACILITIES, INCLUDING PORTS AND TERMINALS, IS AN ESSENTIAL STATE FUNCTION AND IS CRITICAL TO BOTH THE NATIONAL AND STATE ECONOMY AND SECURITY.

THE LEGISLATURE FURTHER FINDS AND DETERMINES THAT THE PURCHASE, CONSTRUCTION, LEASING AND/OR OPERATION OF ANY TERMINAL OR PORT FACILITY, AND THE OWNERSHIP, HOLDING, LEASING AND/OR OPERATING OF ANY REAL OR PERSONAL PROPERTY INCUMBENT AND/OR ASSOCIATED THEREWITH, WHEREIN ANY RIGHTS, POWERS OR DUTIES OF THE PORT AUTHORITY ARE GIVEN, AWARDED, TRANSFERRED OR ASSIGNED IN THE OWNERSHIP, HOLDING, LEASING AND/OR OPERATION OF ANY SUCH TERMINAL OR PORT FACILITY, OR SUCH REAL OR PERSONAL PROPERTY, TO ANY FOREIGN PERSON, CORPORATION OR ENTITY, CAN POSE BY ITS VERY NATURE A SERIOUS AND SUBSTANTIAL PUBLIC SECURITY CONCERN.

THE LEGISLATURE ADDITIONALLY FINDS AND DETERMINES THAT THE PROTECTION OF THE PUBLIC AND THEIR INTERESTS DEMAND A THOROUGH AND SERIOUS REVIEW OF ALL SUCH PUBLIC SECURITY ISSUES CONCERNING ANY SUCH CONTRACTS, AGREEMENTS AND/OR DELEGATIONS, AND THAT ANY SUCH CONTRACT, AGREEMENT AND/OR DELEGATION MUST CONTAIN WITHIN THEIR PROVISIONS CERTAIN SECURITY REQUIREMENTS TO PROTECT AND PROMOTE THE PUBLIC SECURITY OF THE PEOPLE AND THE GOVERNMENTS OF THE STATES OF NEW YORK AND NEW JERSEY, AND THE UNITED STATES OF AMERICA.

2. SECURITY AGREEMENTS REQUIRED FOR FOREIGN CONTRACTS. THE PORT AUTHORITY SHALL NOT HAVE THE AUTHORITY TO PURCHASE, CONSTRUCT, LEASE AND/OR OPERATE ANY TERMINAL OR PORT FACILITY; OR TO MAKE CHARGES FOR THE USE THEREOF; OR TO OWN, HOLD, LEASE AND/OR OPERATE REAL OR PERSONAL PROPERTY, WHEREIN ANY RIGHTS, POWERS OR DUTIES OF THE PORT AUTHORITY ARE GIVEN, AWARDED, TRANSFERRED OR ASSIGNED IN THE OWNERSHIP, HOLDING, LEASING AND/OR OPERATION OF ANY SUCH TERMINAL OR PORT FACILITY, OR SUCH REAL OR PERSONAL PROPERTY, TO ANY FOREIGN BASED PERSON, CORPORATION OR ENTITY WITHOUT MAINTAINING WITHIN SUCH CONTRACTS A FOREIGN CONTRACT SECURITY AGREEMENT.

A. FOR PURPOSES OF THIS SECTION, A FOREIGN BASED PERSON, CORPORATION OR ENTITY SHALL INCLUDE:
(I) ANY NATURAL PERSON WHO IS NOT A CITIZEN OF THE UNITED STATES; OR
(II) ANY CORPORATION OR ENTITY THAT:
(1) IS NOT HEADQUARTERED IN THE UNITED STATES, OR
(2) IS NOT CHARTERED BY A STATE OR FEDERAL GOVERNMENT, OR
(3) HAS NOT LESS THAN 51 PERCENT OF THEIR STOCK OR ASSETS OWNED OR HELD BY:
(A) A PERSON OR PERSONS WHO ARE NOT CITIZENS OF THE UNITED STATES, OR
(B) A CORPORATION OR ENTITY, OR COLLECTION THEREOF, THAT ARE:

(I) NOT HEADQUARTERED IN THE UNITED STATES, OR
(II) NOT CHARTERED BY A STATE OR FEDERAL GOVERNMENT.
B. FOR PURPOSES OF THIS ARTICLE, A FOREIGN CONTRACT SECURITY AGREEMENT SHALL INCLUDE THE FOLLOWING REQUIREMENTS:
(I) AN AGREEMENT THAT ALL EMPLOYEES OF THE FOREIGN BASED PERSON, CORPORATION OR ENTITY SHALL, PRIOR TO THEIR EMPLOYMENT OR CONTINUATION OF EMPLOYMENT, WITH THE FOREIGN BASED PERSON, CORPORATION OR ENTITY, OR ANY SUBSIDIARY THEREOF, AT ANY TERMINAL OR PORT OWNED, LEASED OR CONTROLLED BY THE PORT AUTHORITY, PASS A BACKGROUND SECURITY CHECK, WHICH SHALL BE ADMINISTERED AND DESIGNED BY THE WATERFRONT COMMISSION OF NEW YORK HARBOR AND THAT ALL COSTS OF DESIGNING AND THE ADMINISTRATION OF SUCH BACKGROUND SECURITY CHECKS SHALL BE PAID FOR BY THE FOREIGN BASED PERSON, CORPORATION OR ENTITY; AND
(II) AN AGREEMENT THAT ALL CONSTRUCTION, FIT UP AND/OR MODIFICATIONS OF THE TERMINAL OR PORT FACILITY, OWNED, LEASED OR CONTROLLED BY THE PORT AUTHORITY, INCLUDING THE PURCHASE, INSTALLATION AND/OR MAINTENANCE OF EQUIPMENT FOR USE AT SUCH FACILITY, SHALL BE EXCLUSIVELY PERFORMED BY A PERSON, CORPORATION OR ENTITY WHICH IS NOT FOREIGN BASED OR CONTROLLED, AND WHICH HAS BEEN PRE-CLEARED BY THE WATERFRONT COMMISSION OF NEW YORK HARBOR, AND IN NO EVENT SHALL THE FOREIGN BASED PERSON, CORPORATION OR ENTITY BE PROVIDED WITH, OR BE GIVEN ACCESS TO, ANY MAPS, DRAWINGS, DIAGRAMS, BLUEPRINTS OR ANY OTHER SECURE DOCUMENTS CONCERNING THE BUILDINGS AND GROUNDS OF THE TERMINAL OR PORT FACILITY, ITS EQUIPMENT AND/OR OPERATIONAL INFRASTRUCTURE; AND
(III) AN AGREEMENT THAT THE FOREIGN BASED PERSON, CORPORATION OR ENTITY SHALL FUND REGULAR AND NECESSARY PATROLS AND INSPECTIONS OF THE TERMINAL OR PORT FACILITY, AND ITS EQUIPMENT, CARGO AND OPERATIONS BY THE PORT AUTHORITY POLICE, THE WATERFRONT COMMISSION POLICE, PERSONNEL OF THE UNITED STATES COAST GUARD, AND/OR PERSONNEL OF THE UNITED STATES CUSTOMS, TO THE EXTENT AND NUMBER AS SHALL BE REQUIRED BY REGULATION BY THE STATE POLICE OF THE STATES OF NEW YORK AND NEW JERSEY, IN COOPERATION AND CONSULTATION WITH THE DEPARTMENTS OF HOMELAND SECURITY OF THE UNITED STATES, THE STATE OF NEW YORK AND THE STATE OF NEW JERSEY.
3. REPORT ON FOREIGN CONTRACTS. THE PORT AUTHORITY SHALL, WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS SUBDIVISION, AND EVERY 180 DAYS THEREAFTER, SUBMIT TO THE CHAIR OF THE NEW YORK STATE SENATE STANDING COMMITTEE ON VETERANS, HOMELAND SECURITY AND MILITARY AFFAIRS, THE CHAIR OF THE NEW YORK STATE ASSEMBLY STANDING COMMITTEE ON GOVERNMENTAL OPERATIONS, THE CHAIR OF THE NEW JERSEY STATE SENATE STANDING COMMITTEE ON LAW, PUBLIC SAFETY AND VETERANS AFFAIRS, AND THE CHAIR OF THE NEW JERSEY STATE ASSEMBLY STANDING COMMITTEE ON HOMELAND SECURITY AND STATE PREPAREDNESS, A COMPLETE REPORT OF ALL CURRENT AND PROPOSED CONTRACTS, AGREEMENTS AND DELEGATIONS BETWEEN THE PORT AUTHORITY AND ANY FOREIGN BASED PERSON, CORPORATION AND ENTITY. SUCH REPORT SHALL INCLUDE A DETAILED DESCRIPTION OF SUCH CURRENT OR PROPOSED CONTRACT, AGREEMENT OR DELEGATION, INCLUDING BUT NOT LIMITED TO:
A. THE NAMES AND ADDRESSES OF THE PARTIES TO THE CONTRACT, AGREEMENT OR DELEGATION;
B. THE AMOUNT THE CONTRACT, AGREEMENT OR DELEGATION IS FOR;
C. THE DURATION OF THE CONTRACT, AGREEMENT OR DELEGATION;
D. THE NATURE OF THE PROPERTY AND/OR SERVICES TO BE RECEIVED AND/OR PERFORMED PURSUANT TO THE CONTRACT, AGREEMENT OR DELEGATION; AND
E. THE JUSTIFICATION, ON BEHALF OF THE PORT AUTHORITY, IF ANY, AS TO WHY SUCH CONTRACT, AGREEMENT OR DELEGATION SHOULD BE APPROVED SO AS TO BE EXECUTED, CONTINUED OR MAINTAINED.

4. TERMINATION OF CONTRACTS. ANY CONTRACT, AGREEMENT OR DELEGATION BY THE PORT AUTHORITY TO ANY FOREIGN PERSON, CORPORATION OR ENTITY, WHICH DOES NOT CONTAIN THE SECURITY AGREEMENT ESTABLISHED PURSUANT TO SUBDIVISION 2 OF THIS ARTICLE ON OR BEFORE JANUARY 1, 2009, SHALL BE DEEMED VOID AND CANCELLED, WITH THE PORT AUTHORITY BEING RESPONSIBLE FOR THE PAYMENT OF DAMAGES, IF ANY, FOR THE VOIDING AND CANCELLING OF THE SAME.

S 3. This act shall take effect immediately; provided, however, that section two of this act shall take effect upon the enactment into law by the state of New Jersey of legislation having an identical effect with this act, but if the state of New Jersey shall have already enacted such legislation, this act shall take effect immediately; provided that the chair of the port authority shall notify the legislative bill drafting commission upon the occurrence of the enactment of the legislation provided for in section two of this act in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.