

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 -- recommitted to the Committee on Veterans, Homeland Security and Military Affairs in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 amended by section 14 of part B of chapter 56 of the laws
3 of 2010, 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 division of homeland security and emergency services in carrying out the
9 purposes of this article, subject to applicable laws, rules, and regu-
10 lations;
11 S 2. The executive law is amended by adding a new section 718 to read
12 as follows:
13 S 718. PROTECTION OF CRITICAL INFRASTRUCTURE; METROPOLITAN TRANSPORTA-
14 TION AUTHORITY FACILITIES. 1. NOTWITHSTANDING ANY OTHER PROVISION OF
15 LAW, THE DIRECTOR OF THE OFFICE OF HOMELAND SECURITY AND EMERGENCY
16 SERVICES SHALL CONDUCT A REVIEW AND ANALYSIS OF MEASURES BEING TAKEN BY
17 THE METROPOLITAN TRANSPORTATION AUTHORITY AND ANY OTHER AGENCY OR
18 AUTHORITY OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF AND, TO THE
19 EXTENT PRACTICABLE, OF ANY FEDERAL ENTITY, TO PROTECT THE SECURITY OF
20 CRITICAL INFRASTRUCTURE RELATED TO THE TRANSPORTATION FACILITIES, WHICH

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

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

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

40 (B) BEFORE THE RECEIPT OF SUCH REPORT IDENTIFIED IN PARAGRAPH (A) OF
41 THIS SUBDIVISION, EACH RECIPIENT OF SUCH REPORT SHALL DEVELOP CONFIDEN-
42 TIALITY PROTOCOLS, WHICH SHALL BE BINDING UPON THE RECIPIENT WHO ISSUES
43 THE PROTOCOLS AND ANYONE TO WHOM THE RECIPIENT SHOWS A COPY OF THE
44 REPORT, IN CONSULTATION WITH THE DIRECTOR OF THE OFFICE OF HOMELAND
45 SECURITY AND EMERGENCY SERVICES FOR THE MAINTENANCE AND USE OF SUCH
46 REPORT SO AS TO ENSURE THE CONFIDENTIALITY OF THE REPORT AND ALL INFOR-
47 MATION CONTAINED THEREIN, PROVIDED, HOWEVER, THAT SUCH PROTOCOLS SHALL
48 NOT BE BINDING UPON A PERSON WHO IS PROVIDED ACCESS TO SUCH REPORT OR
49 ANY INFORMATION CONTAINED THEREIN PURSUANT TO SECTION EIGHTY-NINE OF THE
50 PUBLIC OFFICERS LAW AFTER A FINAL DETERMINATION THAT ACCESS TO SUCH
51 REPORT OR ANY INFORMATION CONTAINED THEREIN COULD NOT BE DENIED PURSUANT
52 TO SUBDIVISION TWO OF SECTION EIGHTY-SEVEN OF THE PUBLIC OFFICERS LAW.
53 THE DIRECTOR OF THE OFFICE OF HOMELAND SECURITY AND EMERGENCY SERVICES
54 SHALL ALSO DEVELOP PROTOCOLS FOR HIS OR HER OFFICE RELATED TO THE MAIN-
55 TENANCE AND USE OF SUCH REPORT SO AS TO ENSURE THE CONFIDENTIALITY OF
56 THE REPORT AND ALL INFORMATION CONTAINED THEREIN. ON EACH REPORT, THE

1 DIRECTOR OF THE OFFICE OF HOMELAND SECURITY AND EMERGENCY SERVICES SHALL
2 PROMINENTLY DISPLAY THE FOLLOWING STATEMENT: "THIS REPORT MAY CONTAIN
3 INFORMATION THAT IF DISCLOSED COULD ENDANGER THE LIFE OR SAFETY OF THE
4 PUBLIC, AND THEREFORE, PURSUANT TO SECTION SEVEN HUNDRED TEN OF THE
5 EXECUTIVE LAW, THIS REPORT IS TO BE MAINTAINED AND USED IN A MANNER
6 CONSISTENT WITH PROTOCOLS ESTABLISHED TO PRESERVE THE CONFIDENTIALITY OF
7 THE INFORMATION CONTAINED HEREIN IN A MANNER CONSISTENT WITH LAW".
8 (C) THE METROPOLITAN TRANSPORTATION AUTHORITY SHALL HAVE THE
9 DISCRETION TO REQUIRE THAT THE RECOMMENDATIONS OF THE DIRECTOR OF THE
10 OFFICE OF HOMELAND SECURITY AND EMERGENCY SERVICES BE IMPLEMENTED BY ANY
11 OPERATOR OF A TRANSPORTATION FACILITY.
12 S 3. This act shall take effect immediately.