

5272

2011-2012 Regular Sessions

I N S E N A T E

May 3, 2011

Introduced by Sen. BALL -- 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 amended by section 14 of part B of chapter 56 of the laws
3 of 2010, is amended and a new paragraph (j-1) is added to read as
4 follows:
5 (j) work with local, state and federal agencies and private entities
6 to conduct assessments of the vulnerability of critical infrastructure,
7 AS DEFINED IN SUBDIVISION FIVE OF SECTION EIGHTY-SIX OF THE PUBLIC OFFI-
8 CERS LAW, to terrorist attack and other natural and man-made disasters,
9 [including, but not limited to, nuclear facilities, power plants, tele-
10 communications systems, mass transportation systems, public roadways,
11 railways, bridges and tunnels,] and develop strategies that may be used
12 to protect such infrastructure from terrorist attack and other natural
13 and man-made disasters;
14 (J-1) DECIDE, IF AND TO THE EXTENT REQUIRED BY SECTION SEVEN HUNDRED
15 EIGHTEEN OF THIS ARTICLE, UPON A VOTE OF THE CRITICAL INFRASTRUCTURE
16 ADVISORY COUNCIL ESTABLISHED PURSUANT TO SUCH SECTION, IF THE SALE,

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

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1 LEASE OR OPERATION OF ANY CRITICAL INFRASTRUCTURE OWNED BY THE STATE OR
2 PUBLIC AUTHORITY WOULD THREATEN PUBLIC SECURITY;

3 S 2. The executive law is amended by adding a new section 718 to read
4 as follows:

5 S 718. CRITICAL INFRASTRUCTURE ADVISORY COUNCIL. 1. THERE IS HEREBY
6 ESTABLISHED A CRITICAL INFRASTRUCTURE ADVISORY COUNCIL CONSISTING OF THE
7 COMMISSIONER OF THE DIVISION OF HOMELAND SECURITY WHO SHALL ACT AS CHAIR
8 OF THE COUNCIL, THE COMMISSIONER OF TRANSPORTATION, THE SUPERINTENDENT
9 OF STATE POLICE, THE CHAIR OF THE PUBLIC AUTHORITIES CONTROL BOARD, A
10 MEMBER APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE AND A MEMBER
11 APPOINTED BY THE SPEAKER OF THE ASSEMBLY. THE TEMPORARY PRESIDENT OF THE
12 SENATE AND THE SPEAKER OF THE ASSEMBLY SHALL HAVE NINETY DAYS FROM THE
13 EFFECTIVE DATE OF THIS SECTION TO APPOINT MEMBERS TO THIS COUNCIL.

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

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

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

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

29 (B) WITHIN THIRTY DAYS OF THE INITIAL NOTIFICATION THE PROPOSED TRANS-
30 FEREER MAY SUBMIT AN ADDENDUM TO THE ORIGINAL NOTICE.

31 3. WITHIN NINETY DAYS OF NOTICE TO THE COMMISSIONER OF THE DIVISION OF
32 HOMELAND SECURITY, THE DIVISION SHALL EVALUATE THE PROPOSED TRANSFER
33 INCLUDING THE SECURITY PLAN AND CRIMINAL HISTORY OF THOSE WITH OPERA-
34 TIONAL RESPONSIBILITY OF THE FACILITY INCLUDING CHIEF SECURITY PERSONNEL
35 AND SHALL SUBMIT A REPORT TO THE CRITICAL INFRASTRUCTURE ADVISORY COUN-
36 CIL.

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

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

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

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

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

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.