

4875

2011-2012 Regular Sessions

I N A S S E M B L Y

February 8, 2011

Introduced by M. of A. SIMOTAS -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to giving the state division of homeland security and emergency services 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 division of homeland security and emergency services 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 executive law, as amended by section 14 of part B of chapter 56 of the laws
2 of 2010, is amended and a new paragraph (j-1) is added to read as
3 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 and other natural and man-made disasters[,
8 including, but not limited to, nuclear facilities, power plants, tele-
9 communications systems, mass transportation systems, public roadways,
10 railways, bridges and tunnels,] and develop strategies that may be used
11 to protect such infrastructure from terrorist attack and other natural
12 and man-made disasters;
13 (J-1) DECIDE, IF AND TO THE EXTENT REQUIRED BY SECTION SEVEN HUNDRED
14 SIXTEEN-A OF THIS ARTICLE, UPON A VOTE OF THE CRITICAL INFRASTRUCTURE
15 ADVISORY COUNCIL ESTABLISHED PURSUANT TO SUCH SECTION, IF THE SALE,
16

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

LBD05773-01-1

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 716-a to
4 read as follows:

5 S 716-A. 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 AND EMERGENCY SERVICES
8 WHO SHALL ACT AS CHAIR OF THE COUNCIL, THE COMMISSIONER OF TRANSPORTA-
9 TION, THE SUPERINTENDENT OF STATE POLICE, THE CHAIR OF THE PUBLIC
10 AUTHORITIES CONTROL BOARD, A MEMBER APPOINTED BY THE TEMPORARY PRESIDENT
11 OF THE SENATE AND A MEMBER APPOINTED BY THE SPEAKER OF THE ASSEMBLY. THE
12 TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY SHALL
13 HAVE NINETY DAYS FROM THE EFFECTIVE DATE OF THIS SECTION TO APPOINT
14 MEMBERS TO THIS COUNCIL.

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

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

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

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

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

32 3. WITHIN NINETY DAYS OF NOTICE TO THE COMMISSIONER OF THE DIVISION OF
33 HOMELAND SECURITY AND EMERGENCY SERVICES, THE DIVISION OF HOMELAND SECU-
34 RITY AND EMERGENCY SERVICES SHALL EVALUATE THE PROPOSED TRANSFER INCLUD-
35 ING THE SECURITY PLAN AND CRIMINAL HISTORY OF THOSE WITH OPERATIONAL
36 RESPONSIBILITY OF THE FACILITY INCLUDING CHIEF SECURITY PERSONNEL AND
37 SHALL SUBMIT A REPORT TO THE CRITICAL INFRASTRUCTURE ADVISORY COUNCIL.

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

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

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

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

3 29. THE COMMISSION SHALL CONSULT WITH THE DIVISION OF HOMELAND SECURI-
4 TY AND EMERGENCY SERVICES WHEN THERE IS A PROPOSED SALE OR LEASE OF AN
5 ELECTRIC GENERATING FACILITY.

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

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

18 S 5. This act shall take effect immediately.