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

5275

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 directing the state office of homeland security to conduct a review and analysis of security measures at rail yards

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 718 to read as follows:

S 718. PROTECTION OF CRITICAL INFRASTRUCTURE; RAIL YARDS. 1. NOTWITHSTANDING ANY OTHER PROVISION OF LAW AND SUBJECT TO THE AVAILABILITY OF AN APPROPRIATION, THE COMMISSIONER SHALL CONDUCT A REVIEW AND ANALYSIS OF MEASURES BEING TAKEN BY THE OWNERS AND OPERATORS OF RAIL YARDS FACILITIES TO PROTECT THE SECURITY OF CRITICAL INFRASTRUCTURE RELATED TO SUCH FACILITIES. THE COMMISSIONER SHALL HAVE THE AUTHORITY TO REVIEW ALL AUDITS OR REPORTS RELATED TO THE SECURITY OF SUCH CRITICAL INFRASTRUCTURE, INCLUDING ALL SUCH AUDITS OR REPORTS MANDATED BY STATE AND FEDERAL LAW OR REGULATION, INCLUDING SPILL PREVENTION REPORTS AND RISK MANAGEMENT PLANS, AUDITS AND REPORTS CONDUCTED AT THE REQUEST OF ANY FEDERAL ENTITY, OR ANY OTHER AGENCY OR AUTHORITY OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, AND REPORTS PREPARED BY OWNERS AND OPERATORS OF SUCH FACILITIES AS REQUIRED IN THIS SUBDIVISION. THE OWNERS AND OPERATORS OF SUCH RAIL YARD FACILITIES SHALL, IN COMPLIANCE WITH ANY FEDERAL AND STATE REQUIREMENTS REGARDING THE DISSEMINATION OF SUCH INFORMATION, PROVIDE ACCESS TO THE COMMISSIONER TO SUCH AUDITS AND REPORTS REGARDING SUCH CRITICAL INFRASTRUCTURE PROVIDED, HOWEVER, EXCLUSIVE CUSTODY AND CONTROL OF SUCH AUDITS AND REPORTS SHALL REMAIN SOLELY WITH THE OWNERS AND OPERATORS OF SUCH FACILITIES TO THE EXTENT NOT INCONSISTENT WITH ANY OTHER LAW. FOR THE PURPOSES OF THIS SECTION "CRITICAL INFRASTRUCTURE"

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

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HAS THE MEANING ASCRIBED TO THAT TERM IN SUBDIVISION FIVE OF SECTION EIGHTY-SIX OF THE PUBLIC OFFICERS LAW.

2. TO EFFECTUATE HIS OR HER DUTIES PURSUANT TO THIS SECTION AND IDENTIFY RISKS TO THE PUBLIC, THE COMMISSIONER SHALL:

(A) IDENTIFY AND PREPARE A LIST OF ALL RAIL YARD FACILITIES IN THE STATE;

(B) IN CONSULTATION WITH THE COMMISSIONER OF TRANSPORTATION AND ANY STATE, LOCAL AND MUNICIPAL OFFICIALS AS MAY BE APPROPRIATE, IDENTIFY RAIL YARD FACILITIES, WHICH BECAUSE OF THEIR STORAGE AND/OR TRANSPORTATION OF, OR RELATIONSHIP TO, SUCH SUBSTANCES IDENTIFIED PURSUANT TO PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION SEVEN HUNDRED FOURTEEN OF THIS ARTICLE POSE RISKS TO THE PUBLIC SHOULD AN UNAUTHORIZED RELEASE OF SUCH HAZARDOUS SUBSTANCES OCCUR; AND

(C) REQUIRE SUCH RAIL YARD FACILITIES IDENTIFIED PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION, AS THE COMMISSIONER SO DETERMINES, TO PREPARE A VULNERABILITY ASSESSMENT OF THE SECURITY MEASURES TAKEN BY SUCH FACILITIES TO PREVENT AND RESPOND TO THE UNAUTHORIZED RELEASE OF HAZARDOUS SUBSTANCES AS MAY BE STORED THEREIN, WHICH ASSESSMENTS THE COMMISSIONER OF THE OFFICE OF HOMELAND SECURITY SHALL REVIEW AND CONSIDER IN LIGHT OF THE SERIOUSNESS OF THE RISK POSED AND VULNERABILITY OF SUCH FACILITY AND, WHERE APPROPRIATE, MAKE RECOMMENDATIONS WITH RESPECT THERETO.

3. (A) ON OR BEFORE JUNE FIRST, TWO THOUSAND TWELVE, THE COMMISSIONER SHALL MAKE A PRELIMINARY REPORT TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE COMMISSIONER OF TRANSPORTATION AND THE CHIEF EXECUTIVE OFFICER OF ANY SUCH AFFECTED FACILITY OR HIS OR HER DESIGNEE, AND ON OR BEFORE DECEMBER THIRTY-FIRST, TWO THOUSAND TWELVE, AND NOT LATER THAN THREE YEARS AFTER SUCH DATE, AND EVERY FIVE YEARS THEREAFTER, THE COMMISSIONER SHALL REPORT TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE COMMISSIONER OF TRANSPORTATION AND THE CHIEF EXECUTIVE OFFICER OF ANY SUCH AFFECTED FACILITY OR HIS OR HER DESIGNEE. SUCH REPORT SHALL REVIEW THE SECURITY MEASURES BEING TAKEN REGARDING CRITICAL INFRASTRUCTURE RELATED TO RAIL YARD FACILITIES, ASSESS THE EFFECTIVENESS THEREOF, AND INCLUDE RECOMMENDATIONS TO THE LEGISLATURE, THE DEPARTMENT OF TRANSPORTATION IF THE COMMISSIONER DETERMINES THAT ADDITIONAL MEASURES ARE REQUIRED TO BE IMPLEMENTED.

(B) BEFORE THE RECEIPT OF SUCH REPORT IDENTIFIED IN PARAGRAPH (A) OF THIS SUBDIVISION, EACH RECIPIENT OF SUCH REPORT SHALL DEVELOP CONFIDENTIALITY PROTOCOLS WHICH SHALL BE BINDING UPON THE RECIPIENT WHO ISSUES THE PROTOCOLS AND ANYONE TO WHOM THE RECIPIENT SHOWS A COPY OF THE REPORT IN CONSULTATION WITH THE COMMISSIONER, FOR THE MAINTENANCE AND USE OF SUCH REPORT SO AS TO ENSURE THE CONFIDENTIALITY OF THE REPORT AND ALL INFORMATION CONTAINED THEREIN, PROVIDED, HOWEVER, THAT SUCH PROTOCOLS SHALL NOT BE BINDING UPON A PERSON WHO IS PROVIDED ACCESS TO SUCH REPORT OR ANY INFORMATION CONTAINED THEREIN PURSUANT TO SECTION EIGHTY-NINE OF THE PUBLIC OFFICERS LAW AFTER A FINAL DETERMINATION THAT ACCESS TO SUCH REPORT OR ANY INFORMATION CONTAINED THEREIN COULD NOT BE DENIED PURSUANT TO SUBDIVISION TWO OF SECTION EIGHTY-SEVEN OF THE PUBLIC OFFICERS LAW. THE COMMISSIONER SHALL ALSO DEVELOP PROTOCOLS FOR SUCH OFFICE RELATED TO THE MAINTENANCE AND USE OF SUCH REPORT SO AS TO ENSURE THE CONFIDENTIALITY OF ALL SENSITIVE INFORMATION CONTAINED IN SUCH REPORT. ON EACH REPORT, THE COMMISSIONER SHALL PROMINENTLY DISPLAY THE FOLLOWING STATEMENT: "THIS REPORT MAY CONTAIN INFORMATION THAT IF DISCLOSED COULD ENDANGER THE LIFE OR SAFETY OF THE PUBLIC, AND THEREFORE, PURSUANT TO SECTION SEVEN HUNDRED ELEVEN OF THE EXECUTIVE LAW, THIS REPORT IS TO BE MAINTAINED AND USED IN A MANNER CONSISTENT WITH PROTOCOLS ESTABLISHED

TO PRESERVE THE CONFIDENTIALITY OF THE INFORMATION CONTAINED HEREIN IN A MANNER CONSISTENT WITH LAW."

(C) THE DEPARTMENTS OF TRANSPORTATION AND ENVIRONMENTAL CONSERVATION SHALL HAVE THE DISCRETION TO REQUIRE THAT RECOMMENDATIONS OF THE COMMISSIONER BE IMPLEMENTED BY ANY OWNER OR OPERATOR OF A RAIL YARD FACILITY.

S 2. This act shall take effect immediately.