

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:

1 Section 1. The executive law is amended by adding a new section 718 to
2 read as follows:
3 S 718. PROTECTION OF CRITICAL INFRASTRUCTURE; RAIL YARDS. 1. NOTWITH-
4 STANDING ANY OTHER PROVISION OF LAW AND SUBJECT TO THE AVAILABILITY OF
5 AN APPROPRIATION, THE COMMISSIONER SHALL CONDUCT A REVIEW AND ANALYSIS
6 OF MEASURES BEING TAKEN BY THE OWNERS AND OPERATORS OF RAIL YARDS FACIL-
7 ITIES TO PROTECT THE SECURITY OF CRITICAL INFRASTRUCTURE RELATED TO SUCH
8 FACILITIES. THE COMMISSIONER SHALL HAVE THE AUTHORITY TO REVIEW ALL
9 AUDITS OR REPORTS RELATED TO THE SECURITY OF SUCH CRITICAL INFRASTRUC-
10 TURE, INCLUDING ALL SUCH AUDITS OR REPORTS MANDATED BY STATE AND FEDERAL
11 LAW OR REGULATION, INCLUDING SPILL PREVENTION REPORTS AND RISK MANAGE-
12 MENT PLANS, AUDITS AND REPORTS CONDUCTED AT THE REQUEST OF ANY FEDERAL
13 ENTITY, OR ANY OTHER AGENCY OR AUTHORITY OF THE STATE OR ANY POLITICAL
14 SUBDIVISION THEREOF, AND REPORTS PREPARED BY OWNERS AND OPERATORS OF
15 SUCH FACILITIES AS REQUIRED IN THIS SUBDIVISION. THE OWNERS AND OPERA-
16 TORS OF SUCH RAIL YARD FACILITIES SHALL, IN COMPLIANCE WITH ANY FEDERAL
17 AND STATE REQUIREMENTS REGARDING THE DISSEMINATION OF SUCH INFORMATION,
18 PROVIDE ACCESS TO THE COMMISSIONER TO SUCH AUDITS AND REPORTS REGARDING
19 SUCH CRITICAL INFRASTRUCTURE PROVIDED, HOWEVER, EXCLUSIVE CUSTODY AND
20 CONTROL OF SUCH AUDITS AND REPORTS SHALL REMAIN SOLELY WITH THE OWNERS
21 AND OPERATORS OF SUCH FACILITIES TO THE EXTENT NOT INCONSISTENT WITH ANY
22 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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1 HAS THE MEANING ASCRIBED TO THAT TERM IN SUBDIVISION FIVE OF SECTION
2 EIGHTY-SIX OF THE PUBLIC OFFICERS LAW.

3 2. TO EFFECTUATE HIS OR HER DUTIES PURSUANT TO THIS SECTION AND IDEN-
4 TIFY RISKS TO THE PUBLIC, THE COMMISSIONER SHALL:

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

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

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

22 3. (A) ON OR BEFORE JUNE FIRST, TWO THOUSAND TWELVE, THE COMMISSIONER
23 SHALL MAKE A PRELIMINARY REPORT TO THE GOVERNOR, THE TEMPORARY PRESIDENT
24 OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE COMMISSIONER OF TRANS-
25 PORTATION AND THE CHIEF EXECUTIVE OFFICER OF ANY SUCH AFFECTED FACILITY
26 OR HIS OR HER DESIGNEE, AND ON OR BEFORE DECEMBER THIRTY-FIRST, TWO
27 THOUSAND TWELVE, AND NOT LATER THAN THREE YEARS AFTER SUCH DATE, AND
28 EVERY FIVE YEARS THEREAFTER, THE COMMISSIONER SHALL REPORT TO THE GOVER-
29 NOR, THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY,
30 THE COMMISSIONER OF TRANSPORTATION AND THE CHIEF EXECUTIVE OFFICER OF
31 ANY SUCH AFFECTED FACILITY OR HIS OR HER DESIGNEE. SUCH REPORT SHALL
32 REVIEW THE SECURITY MEASURES BEING TAKEN REGARDING CRITICAL INFRASTRUC-
33 TURE RELATED TO RAIL YARD FACILITIES, ASSESS THE EFFECTIVENESS THEREOF,
34 AND INCLUDE RECOMMENDATIONS TO THE LEGISLATURE, THE DEPARTMENT OF TRANS-
35 PORTATION IF THE COMMISSIONER DETERMINES THAT ADDITIONAL MEASURES ARE
36 REQUIRED TO BE IMPLEMENTED.

37 (B) BEFORE THE RECEIPT OF SUCH REPORT IDENTIFIED IN PARAGRAPH (A) OF
38 THIS SUBDIVISION, EACH RECIPIENT OF SUCH REPORT SHALL DEVELOP CONFIDEN-
39 TIALITY PROTOCOLS WHICH SHALL BE BINDING UPON THE RECIPIENT WHO ISSUES
40 THE PROTOCOLS AND ANYONE TO WHOM THE RECIPIENT SHOWS A COPY OF THE
41 REPORT IN CONSULTATION WITH THE COMMISSIONER, FOR THE MAINTENANCE AND
42 USE OF SUCH REPORT SO AS TO ENSURE THE CONFIDENTIALITY OF THE REPORT AND
43 ALL INFORMATION CONTAINED THEREIN, PROVIDED, HOWEVER, THAT SUCH PROTO-
44 COLS SHALL NOT BE BINDING UPON A PERSON WHO IS PROVIDED ACCESS TO SUCH
45 REPORT OR ANY INFORMATION CONTAINED THEREIN PURSUANT TO SECTION EIGHTY-
46 NINE OF THE PUBLIC OFFICERS LAW AFTER A FINAL DETERMINATION THAT ACCESS
47 TO SUCH REPORT OR ANY INFORMATION CONTAINED THEREIN COULD NOT BE DENIED
48 PURSUANT TO SUBDIVISION TWO OF SECTION EIGHTY-SEVEN OF THE PUBLIC OFFI-
49 CERS LAW. THE COMMISSIONER SHALL ALSO DEVELOP PROTOCOLS FOR SUCH OFFICE
50 RELATED TO THE MAINTENANCE AND USE OF SUCH REPORT SO AS TO ENSURE THE
51 CONFIDENTIALITY OF ALL SENSITIVE INFORMATION CONTAINED IN SUCH REPORT.
52 ON EACH REPORT, THE COMMISSIONER SHALL PROMINENTLY DISPLAY THE FOLLOWING
53 STATEMENT: "THIS REPORT MAY CONTAIN INFORMATION THAT IF DISCLOSED COULD
54 ENDANGER THE LIFE OR SAFETY OF THE PUBLIC, AND THEREFORE, PURSUANT TO
55 SECTION SEVEN HUNDRED ELEVEN OF THE EXECUTIVE LAW, THIS REPORT IS TO BE
56 MAINTAINED AND USED IN A MANNER CONSISTENT WITH PROTOCOLS ESTABLISHED

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

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

6 S 2. This act shall take effect immediately.