

3882

2013-2014 Regular Sessions

I N S E N A T E

February 26, 2013

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 division of homeland security and emergency services 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 719 to
2 read as follows:
3 S 719. 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 OF THE DIVISION OF HOMELAND SECURITY
6 AND EMERGENCY SERVICES SHALL CONDUCT A REVIEW AND ANALYSIS OF MEASURES
7 BEING TAKEN BY THE OWNERS AND OPERATORS OF RAIL YARDS FACILITIES TO
8 PROTECT THE SECURITY OF CRITICAL INFRASTRUCTURE RELATED TO SUCH FACILI-
9 TIES. SUCH COMMISSIONER SHALL HAVE THE AUTHORITY TO REVIEW ALL AUDITS OR
10 REPORTS RELATED TO THE SECURITY OF SUCH CRITICAL INFRASTRUCTURE, INCLUD-
11 ING ALL SUCH AUDITS OR REPORTS MANDATED BY STATE AND FEDERAL LAW OR
12 REGULATION, INCLUDING SPILL PREVENTION REPORTS AND RISK MANAGEMENT
13 PLANS, AUDITS AND REPORTS CONDUCTED AT THE REQUEST OF ANY FEDERAL ENTI-
14 TY, OR ANY OTHER AGENCY OR AUTHORITY OF THE STATE OR ANY POLITICAL
15 SUBDIVISION THEREOF, AND REPORTS PREPARED BY OWNERS AND OPERATORS OF
16 SUCH FACILITIES AS REQUIRED IN THIS SUBDIVISION. THE OWNERS AND OPERA-
17 TORS OF SUCH RAIL YARD FACILITIES SHALL, IN COMPLIANCE WITH ANY FEDERAL
18 AND STATE REQUIREMENTS REGARDING THE DISSEMINATION OF SUCH INFORMATION,
19 PROVIDE ACCESS TO THE COMMISSIONER TO SUCH AUDITS AND REPORTS REGARDING
20 SUCH CRITICAL INFRASTRUCTURE PROVIDED, HOWEVER, EXCLUSIVE CUSTODY AND
21 CONTROL OF SUCH AUDITS AND REPORTS SHALL REMAIN SOLELY WITH THE OWNERS
22 AND OPERATORS OF SUCH FACILITIES TO THE EXTENT NOT INCONSISTENT WITH ANY
23 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.

LBD07308-01-3

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 OF THE DIVISION OF HOMELAND
5 SECURITY AND EMERGENCY SERVICES SHALL:

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

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

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

23 3. (A) ON OR BEFORE JUNE FIRST, TWO THOUSAND FOURTEEN, THE COMMISSION-
24 ER OF THE DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES SHALL
25 MAKE A PRELIMINARY REPORT TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF
26 THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE COMMISSIONER OF TRANSPORTA-
27 TION AND THE CHIEF EXECUTIVE OFFICER OF ANY SUCH AFFECTED FACILITY OR
28 HIS OR HER DESIGNEE, AND ON OR BEFORE DECEMBER THIRTY-FIRST, TWO THOU-
29 SAND FOURTEEN, AND NOT LATER THAN THREE YEARS AFTER SUCH DATE, AND EVERY
30 FIVE YEARS THEREAFTER, THE COMMISSIONER SHALL REPORT TO THE GOVERNOR,
31 THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE
32 COMMISSIONER OF TRANSPORTATION AND THE CHIEF EXECUTIVE OFFICER OF ANY
33 SUCH AFFECTED FACILITY OR HIS OR HER DESIGNEE. SUCH REPORT SHALL REVIEW
34 THE SECURITY MEASURES BEING TAKEN REGARDING CRITICAL INFRASTRUCTURE
35 RELATED TO RAIL YARD FACILITIES, ASSESS THE EFFECTIVENESS THEREOF, AND
36 INCLUDE RECOMMENDATIONS TO THE LEGISLATURE AND THE DEPARTMENT OF TRANS-
37 PORTATION IF THE COMMISSIONER DETERMINES THAT ADDITIONAL MEASURES ARE
38 REQUIRED TO BE IMPLEMENTED.

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

1 CONTAIN INFORMATION THAT IF DISCLOSED COULD ENDANGER THE LIFE OR SAFETY
2 OF THE PUBLIC, AND THEREFORE, PURSUANT TO SECTION SEVEN HUNDRED ELEVEN
3 OF THE EXECUTIVE LAW, THIS REPORT IS TO BE MAINTAINED AND USED IN A
4 MANNER CONSISTENT WITH PROTOCOLS ESTABLISHED TO PRESERVE THE CONFIDEN-
5 TIALITY OF THE INFORMATION CONTAINED HEREIN IN A MANNER CONSISTENT WITH
6 LAW."

7 (C) THE DEPARTMENTS OF TRANSPORTATION AND ENVIRONMENTAL CONSERVATION
8 SHALL HAVE THE DISCRETION TO REQUIRE THAT RECOMMENDATIONS OF THE COMMIS-
9 SIONER OF THE DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES BE
10 IMPLEMENTED BY ANY OWNER OR OPERATOR OF A RAIL YARD FACILITY.

11 S 2. This act shall take effect immediately.