**§ 716. Protection of critical infrastructure; commercial aviation, petroleum and natural gas fuel transmission facilities and pipelines.** 1. Notwithstanding any other provision of law, the commissioner of the division of homeland security and emergency services shall conduct a review and analysis of measures being taken by any other agency or authority of the state or any political subdivision thereof and, to the extent practicable, of any federal entity, to protect the security, and cyber security, of critical infrastructure related to commercial aviation fuel, petroleum and natural gas transmission facilities and pipelines in this state which are not located upon the premises of a commercial airport. As deemed appropriate by such commissioner, the division of homeland security and emergency services shall have the authority to physically inspect the premises and review any audits or reports related to the security of such critical infrastructure, including audits or reports conducted at the request of any other agency or authority of the state or any political subdivision thereof or, to the extent practicable, of any federal entity. The operators of such commercial aviation fuel, petroleum or natural gas transmission facilities and pipelines shall, in compliance with any federal and state requirements regarding the dissemination of such information, provide access to the commissioner of the division of homeland security and emergency services to such audits or reports regarding such critical infrastructure provided, however, that exclusive custody and control of such audits and reports shall remain solely with the operators of such commercial aviation fuel, petroleum or natural gas transmission facilities and pipelines. For the purposes of this article, the term "critical infrastructure" has the meaning ascribed to that term in subdivision five of section eighty-six of the public officers law.

2. (a) On or before December thirty-first, two thousand eleven, and every five years thereafter, the commissioner of the division of homeland security and emergency services shall report to the governor, the temporary president of the senate, the speaker of the assembly, the public service commission, and the operator of any such affected commercial aviation fuel, petroleum or natural gas transmission facility or pipeline. Such report shall review the security measures being taken regarding critical infrastructure related to commercial aviation fuel,

petroleum or natural gas transmission facilities and pipelines, assess the effectiveness thereof, and include recommendations to the legislature, the public service commission, or the operator of a commercial aviation fuel, petroleum or natural gas transmission facility or pipeline, or any appropriate state or federal regulating entity or agency if the commissioner of the division of homeland security and emergency services determines that additional measures are required to be implemented, considering among other factors, the unique characteristics of each commercial aviation fuel, petroleum or natural gas transmission facility or pipeline.

(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 of the division of homeland security and emergency services 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 report and any information contained or used in its preparation shall be exempt and not made available pursuant to article six of the public officers law. The commissioner of the division of homeland security and emergency services shall also develop protocols for his or her office related to the maintenance and use of such report so as to ensure the confidentiality of the report and all information contained therein. On each report, the commissioner of the division of homeland security and emergency services 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 public service commission shall have the discretion to require, through regulation or otherwise, that the recommendations of the commissioner of the division of homeland security and emergency services be implemented at an affected commercial aviation fuel, petroleum or natural gas transmission facility or pipeline.

(d) The division of homeland security and emergency services shall receive necessary appropriations for the performance of its duties pursuant to this section.