

BILL ANALYSIS

Senate Research Center

H.B. 13
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Transportation & Homeland Security
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas has made great strides in improving its efforts to provide homeland security. However, current law does not provide for strong executive authority to make broad homeland security strategic decisions.

H.B. 13 seeks to improve homeland security in Texas by creating the homeland security law enforcement integrity unit within the Office of the Attorney General, the State Office of Homeland Security associated with the office of the governor, and the Border Security Council appointed by the governor, and by setting forth the duties of such entities. The bill provides that the Department of Public Safety has the sole responsibility to analyze and disseminate criminal intelligence information and to develop and operate a comprehensive intelligence database. H.B. 13 requires the Texas Department of Transportation to erect and maintain border inspection facilities in certain municipalities. This bill also authorizes private institutions of higher education to increase the security of their campuses and enforcement of state and local law.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the governmental entities and political subdivisions of this state is modified in SECTION 12 (Section 421.071, Government Code) of this bill.

Rulemaking authority previously granted to the governmental entities and municipalities of this state is modified in SECTION 20 (Article 2.13, Code of Criminal Procedure) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 51.212, Education Code as follows:

Sec. 51.212. New heading: PEACE OFFICERS AT PRIVATE INSTITUTIONS. (a) Authorizes the governing boards (boards) of private institutions of higher education (private institutions), including private junior colleges, to employ and commission peace officers, rather than campus security personnel, for the purpose of enforcing state law on their campuses and state and local law, including applicable municipal ordinances, at other locations, as permitted by Subsection (b) or Section 51.2125. Makes conforming and nonsubstantive changes.

(b) Provides that any peace officer commissioned under the provisions of this section is vested with all the powers, privileges, and immunities of peace officers if the officer is on the property under the control and jurisdiction of the respective private institution of higher education or is otherwise performing duties assigned to the officer by the institution, regardless of whether the officer is on property under the control and jurisdiction of the institution, or, to the extent authorized by Section 51.2125, is assisting another law enforcement agency as set forth in this subsection. Makes conforming changes.

(c) Creates this subsection from existing text of Subsection (a). Makes nonsubstantive changes.

(d) Redesignated from existing text of Subsection (b). Makes a nonsubstantive change.

(e) Redesignated from existing text of Subsection (b). Redefines “private institution of higher education.”

SECTION 2. Amends Subchapter E, Chapter 51, Education Code, by adding Sections 51.2125 and 51.2126, as follows:

Sec. 51.2125. PRIVATE INSTITUTIONS: AUTHORITY TO ENTER INTO MUTUAL ASSISTANCE AGREEMENT. (a) Provides that this section applies only to a private institution, as defined by Section 61.003, with a fall head count enrollment of more than 10,000 students.

(b) Authorizes the board to which this section applies, in addition to exercising the authority provided under Section 51.212(d), if the applicable private institution has under its control and jurisdiction property that is contiguous to, or located in any part within the boundaries of a municipality with a population of more than one million, and the governing body of each municipality, regardless of its population, that is contiguous to or the boundaries of which contain any part of property under the control and jurisdiction of the private institution, to enter into a written mutual assistance agreement (agreement) in which peace officers commissioned by the institution or the applicable municipality serve the public interest by assisting, without any form of additional compensation or other financial benefit, the officers of the other party to the agreement in enforcing state or local law, including applicable municipal ordinances. Requires the agreement to be reviewed at least annually by the institution and the municipality and authorizes it to be modified at that time by a written agreement signed by each party. Authorizes the agreement to be terminated at any time by a party to the agreement on the provision of reasonable notice to the other party to the agreement.

(c) Authorizes an agreement authorized by this section to designate the geographic area in which the campus peace officers are authorized to provide assistance to the officers of the municipality.

(d) Provides that this section does not affect a municipality's duty to provide law enforcement services to any location within the boundaries of the municipality.

(e) Authorizes a peace officer providing assistance under an agreement authorized by this section to make arrests and exercise all other authority given to peace officers under other state law. Provides that the municipal law enforcement agency (municipal agency) has exclusive authority to supervise any campus peace officer operating under the agreement to assist the peace officers of the municipality. Provides that a municipal peace officer operating under the agreement to assist the campus peace officers remains under the supervision of the municipal agency.

(f) Provides that a private institution is liable for an act or omission of a campus peace officer operating under an agreement authorized by this section at a location other than property under the control and jurisdiction of the institution in the same manner and to the same extent as a municipality is liable for an act or omission of a peace officer employed by the municipality.

(g) Provides that this section does not limit the authority of a campus peace officer to make a warrantless arrest outside the officer's jurisdiction as described by Article 14.03(d), Code of Criminal Procedure.

Sec. 51.2126. APPEAL BY CAMPUS PEACE OFFICER OF DISCIPLINARY ACTION OR PROMOTIONAL BYPASS RELATED TO PROVISION OF ASSISTANCE UNDER MUTUAL ASSISTANCE AGREEMENT. (a) Authorizes a campus peace officer acting under an agreement authorized by Section 51.2125 who is demoted, suspended, or terminated by the applicable private institution or who

experiences a promotional bypass by the institution to elect to appeal the institution's action to an independent third party hearing examiner (examiner) under this section.

(b) Requires the campus peace officer, to elect to appeal to an examiner under this section, to submit to the head of the institution's law enforcement agency a written request stating the officer's decision to appeal to such an examiner not later than the 30th day after the date of the action being appealed.

(c) Provides that the examiner's decision is final and binding on all parties. Authorizes the peace officer or institution, if the officer elects to appeal the institution's action to an examiner under this section, to appeal the examiner's decision to a district court only as provided by Subsection (j).

(d) Requires the peace officer and the head of the institution's law enforcement agency or their designees, if a campus peace officer elects to appeal to an examiner, to attempt to agree on the selection of an impartial examiner. Requires the parties, if they do not agree on the selection of an examiner before the 10th day after the date the appeal is filed, immediately to request a list of seven qualified neutral arbitrators from the American Arbitration Association or the Federal Mediation and Conciliation Service, or their successors in function. Authorizes the officer and the agency head or their designees to agree on one of the seven neutral arbitrators on the list. Requires the parties or their designees, if the parties do not agree before the fifth business day after the date the parties receive the list, to alternate striking a name from the list, and the single name remaining after all other names have been struck is selected as the examiner. Requires the parties or their designees to agree on a date for the hearing.

(e) Requires the appeal hearing to begin as soon as an appearance by the examiner can be scheduled. Authorizes the campus peace officer, if the examiner cannot begin the hearing before the 45th day after the date of selection, to call for the selection of a new examiner using the procedure prescribed by Subsection (d) within 48 hours after learning of that fact.

(f) Provides that, in a hearing conducted under this section, the examiner has the same duties and powers that a civil service commission has in conducting a hearing or hearing an appeal under Chapter 143 (Municipal Civil Service for Firefighters and Police Officers), Local Government Code, including the right to issue subpoenas. Authorizes the examiner to take certain actions set forth in this subsection related to remedying the grievance of the peace officer.

(g) Authorizes the parties to agree to an expedited hearing procedure in a hearing conducted under this section. Requires the examiner, in an expedited procedure, to issue a decision on the appeal not later than the 10th day after the date the hearing is completed unless otherwise agreed by the parties.

(h) Requires the examiner, in an appeal that does not involve an expedited hearing procedure, to make a reasonable effort to issue a decision on the appeal not later than the 30th day after the later of the date the hearing is completed or the briefs are filed. Provides that the examiner's inability to meet the time requirements imposed by this section does not affect the examiner's jurisdiction, the validity of the disciplinary action or promotional bypass, or the examiner's final decision.

(i) Requires the examiner's fees and expenses to be paid in equal amounts by the parties, and the costs of a witness to be paid by the party who calls the witness.

(j) Authorizes a district court to hear an appeal of a examiner's decision only on the grounds that the examiner was without jurisdiction or exceeded the examiner's jurisdiction or that the decision was procured by fraud, collusion, or other unlawful means. Requires an appeal to be brought in the district court having jurisdiction in the municipality in which the institution is located.

SECTION 3. Amends Subchapter B, Chapter 402, Government Code, by adding Section 402.031, as follows:

Sec. 402.031. HOMELAND SECURITY LAW ENFORCEMENT INTEGRITY UNIT.
(a) Defines “law enforcement corruption.”

(b) Provides that the homeland security law enforcement integrity unit (unit) is created within the office of the attorney general to assist in the enforcement of laws relating to law enforcement corruption in law enforcement units that protect the state's homeland security and border security. Requires the unit to serve as a clearinghouse for information relating to the investigation and prosecution of law enforcement corruption in this state.

(c) Authorizes the unit to take certain actions set forth in this subsection relating to assisting local, state, and federal governmental entities in investigating and prosecuting law enforcement corruption.

(d) Requires a state agency or local law enforcement agency to cooperate with the unit by providing information requested by the unit as necessary to carry out the purposes of this section to the extent authorized by law. Provides that information disclosed under this subsection is confidential and not subject to disclosure under Chapter 552 (Public Information).

SECTION 4. Amends Section 418.042(a), Government Code, to authorize the comprehensive state emergency management plan to include the provision of funding to support the Texas Data Exchange (exchange) or any other similar comprehensive intelligence database.

SECTION 5. Amends Subchapter C, Chapter 418, Government Code, by adding Section 418.0431, as follows:

Sec. 418.0431. FUNDING OF CERTAIN DATABASES. Authorizes the division of emergency management in the governor's office (division) to provide funding to the Department of Public Safety (DPS) for the exchange or any other similar comprehensive intelligence database and requires the division to participate in the transfer described by Section 421.0035(2) (transfer of the control of the exchange or any other similar comprehensive intelligence database to DPS) and the cooperation described by Section 421.0035(3) (transfer of any federal funds for the operation of the exchange or any other similar comprehensive intelligence database to DPS) to any extent necessary.

SECTION 6. Amends Section 421.002, Government Code, as follows:

Sec. 421.002. New heading: STATE OFFICE OF HOMELAND SECURITY; HOMELAND SECURITY STRATEGY. (a) Requires the director (director) of the State Office of Homeland Security (office), rather than the governor, to direct homeland security in this state. Provides that the director is appointed by the governor with the advice and consent of the senate and serves a two-year term expiring February 1 of each odd-numbered year, and that the office is administratively attached to the governor's office.

(a-1) Creates this subsection from existing text of Subsection (a). Requires the governor to develop a statewide homeland security strategy that improves certain state abilities related to detecting and deterring threats related to, responding to, and recovering from homeland security emergencies.

(b) Requires the office, rather than the governor's homeland security strategy, to coordinate homeland security activities among and between local, state, and federal agencies and the private sector.

(c) Creates this subsection from existing text of Subsection (b). Requires the governor's strategy to include specific plans for establishing and directing the

Texas Fusion Center, rather than the Texas Infrastructure Protection Communications Center, and creating and operating a multi-agency coordination system as outlined in the federal Department of Homeland Security publication "National Incident Management System," published March 1, 2004, in addition to other plans previously set forth in this subsection.

(d) Redesignated from existing Subsection (c).

SECTION 7. Amends Subchapter A, Chapter 421, Government Code, by adding Section 421.0025, as follows:

Sec. 421.0025. **BORDER SECURITY COUNCIL.** (a) Provides that the Border Security Council (council) consists of members appointed by the governor.

(a-1) Requires at least one-third of the members appointed under Subsection (a) to be residents of the Texas-Mexico border region, as defined by Section 2056.002.

(b) Requires the council to develop and recommend to the office performance standards, reporting requirements, audit methods, and other procedures to ensure that funds allocated by the office for purposes related to security at or near this state's international border are used properly and that the recipients of the funds are accountable for their proper usage.

(c) Requires the council to advise the office regarding the allocation of funds by the office for purposes related to security at or near this state's international border. Requires recommendations relating to the allocation of those funds to be made by a majority of council members.

(d) Requires the governor to designate one member of the council as the chair. Requires the chair to arrange council meetings at times determined by council members.

(e) Provides that council meetings are subject to the requirements of Chapter 551 (Open Meetings) to the same extent as similar meetings of the Public Safety Commission. Provides that the council's plans and recommendations are subject to the requirements of Chapter 552 to the same extent as similar plans and recommendations of DPS.

(f) Provides that council service by a state officer or employee or by an officer or employee of a local government is an additional duty of the member's office or employment.

SECTION 8. Amends Section 421.003, Government Code, as follows:

Sec. 421.003. New heading: **CRIMINAL INTELLIGENCE INFORMATION; DATABASE MAINTENANCE.** (a) Creates this subsection from existing text. Provides that DPS is the state agency that has sole, rather than primary, responsibility to analyze and disseminate criminal intelligence information about terrorist activities or information otherwise related to homeland security activities.

(b) Provides that DPS is the only state agency or state governmental entity that is authorized to develop, maintain, operate, and control access to the exchange or any other similar comprehensive intelligence database, notwithstanding Section 421.002 or any other law.

SECTION 9. Amends Subchapter A, Chapter 421, Government Code, by adding Section 421.0035, as follows:

Sec. 421.0035. CERTAIN COOPERATION REQUIRED. Requires the governor and the governor's office to cooperate with DPS to take certain actions set forth in this section.

SECTION 10. Amends Subchapter A, Chapter 421, Government Code, by adding Section 421.005, as follows:

Sec. 421.005. INTERIM COMMITTEE ON BORDER SECURITY. (a) Sets forth the composition of the interim committee on border security (committee).

(b) Provides that committee members appointed under Subsections (a)(7) and (8) (by the speaker of the house of representatives and the lieutenant governor) serve at the will of the appointing officer.

(c) Requires the speaker of the house of representatives and the lieutenant governor to each designate a co-chair from among the committee members.

(d) Requires the committee to meet initially at the joint call of the co-chairs and to subsequently hold meetings and public hearings at the call of the co-chairs.

(e) Requires the committee to conduct an interim study of border security issues in this state, and to issue a report to the legislature not later than December 1, 2008.

(f) Provides that this section expires January 1, 2009.

SECTION 11. Amends Subchapter A, Chapter 421, Government Code, by adding Section 421.006, as follows:

Sec. 421.006. AUDIT BY STATE AUDITOR. Provides that the office, the Texas Fusion Center, the council, the exchange, and other offices, agencies, and programs under this chapter (Homeland Security) are subject to audit by the state auditor in accordance with Chapter 321 (State Auditor).

SECTION 12. Amends Section 421.071, Government Code, as follows:

Sec. 421.071. New heading: COOPERATION AND ASSISTANCE; COMPLIANCE WITH APPLICABLE LAW. (a) Creates this subsection from existing text. Makes a conforming change.

(b) Prohibits a state governmental entity (entity) or political subdivision (subdivision) from adopting a rule, policy, or ordinance under which the entity or subdivision will not enforce certain state and federal drug laws, refuse to cooperate with federal authorities in enforcing 8 U.S.C. Section 1252c (regarding the requirements of a petition for review or for the habeas corpus of an order of removal), or violate 8 U.S.C. 1342 (Bringing In and Harboring Certain Aliens).

(c) Requires an entity or subdivision, if the attorney general determines that the entity or subdivision violated Subsection (b), to promptly forfeit and repay to the appropriate entity all funds granted to the violating entity or subdivision for purposes related to homeland security, including border security. Requires the attorney general to stay the duty to repay pending the outcome of an appeal under Subsection (d).

(d) Authorizes an entity or subdivision to appeal a determination under Subsection (c) to a Travis County district court, or the district court with jurisdiction in the county in which the subdivision is located, respectively, not later than the 21st day after the date of receiving notice of the determination.

SECTION 13. Amends Section 421.072, Government Code, by amending Subsection (a) and adding Subsections (d) and (e), as follows:

(a) Requires the office, rather than the governor's office, with the advice of the council, to develop objective criteria to evaluate the use of grants and other funds allocated to an entity under this section, to include taking into consideration certain factors, in addition to taking other actions set forth in this subsection.

(d) Authorizes the governor's office and the office to allocate grants for homeland security purposes only to public law enforcement agencies or other public entities as provided by Subsection (a).

(e) Requires the office, in allocating grants and other funds to law enforcement entities for border security purposes under Subsection (a), to consider the portion of the Texas-Mexico border for which the entity has jurisdiction and the extent to which the entity provides law enforcement services along the border.

SECTION 14. Amends the heading to Subchapter E, Chapter 421, Government Code, to read as follows:

SUBCHAPTER E. TEXAS FUSION CENTER

SECTION 15. Amends Section 421.081, Government Code, to require DPS at the request of the governor to provide facilities and administrative support for the Texas Fusion Center, rather than the Texas Infrastructure Protection Communications Center.

SECTION 16. Amends Subchapter H, Chapter 2155, Government Code, by adding Section 2155.452, as follows:

Sec. 2155.452. CERTAIN CONTRACTS FOR HOMELAND SECURITY OR LAW ENFORCEMENT TECHNOLOGY. Requires an entity that issues a request for proposals for technological products or services for homeland security or law enforcement purposes to allow a business entity to substitute the qualifications of its executive officers or managers for the qualifications required of the business entity in the request for proposals.

SECTION 17. Amends Section 370.003, Local Government Code, as follows:

Sec. 370.003. New heading: MUNICIPAL OR COUNTY POLICY REGARDING DRUG LAWS OR CERTAIN LAWS RELATING TO IMMIGRATION. Makes conforming changes.

SECTION 18. Amends Chapter 370, Local Government Code, by adding Section 370.004, as follows:

Sec. 370.004. PERFORMANCE OF IMMIGRATION OFFICER FUNCTIONS. Authorizes a subdivision to enter into an agreement under Section 287(g), Immigration and Nationality Act (8 U.S.C. Section 1357(g)), to perform a function of an immigration officer, notwithstanding any other law.

SECTION 19. Amends the heading to Chapter 370, Local Government Code, to read as follows:

CHAPTER 370. MISCELLANEOUS PROVISIONS RELATING TO HEALTH AND PUBLIC SAFETY AFFECTING MORE THAN ONE TYPE OF LOCAL GOVERNMENT

SECTION 20. Amends Article 2.13, Code of Criminal Procedure, by adding Subsection (d), to prohibit a state governmental entity or a municipality from adopting a rule, policy, or ordinance, or follow or establish a commonly accepted practice, that requires a peace officer to violate a state or federal criminal law.

SECTION 21. Amends Article 61.02(c), Code of Criminal Procedure, to require criminal information collected under this chapter relating to a criminal street gang to consist of a

judgment under any law that includes, as a finding or as an element of a criminal offense, participation in a criminal street gang; a self-admission by the individual of criminal street gang membership that is made during a judicial proceeding; or a self-admission by the individual of criminal street gang membership that is not made during a judicial proceeding, evidence that the individual uses, in more than an incidental manner, certain criminal street indicators, or a combination of certain other factors previously set forth in this subsection. Makes conforming changes.

SECTION 22. Amends Article 61.06(c), Code of Criminal Procedure, to provide that, in determining whether information is required to be removed from an intelligence database under Subsection (b) (requiring such information to be removed after three years if certain conditions are met), the three-year period does not include any period during which the individual who is the subject of the information is confined in a correctional facility operated by or under contract with the Texas Department of Criminal Justice, committed to a secure correctional facility operated by or under contract with the Texas Youth Commission, as defined by Section 51.02, Family Code, or confined in a county jail or a facility operated by a juvenile board in lieu of being confined in the above facilities. Makes conforming changes.

SECTION 23. Amends Chapter 61, Code of Criminal Procedure, by adding Article 61.075, as follows:

Art. 61.075. RIGHT TO REQUEST EXISTENCE OF CRIMINAL INFORMATION.

(a) Authorizes a person or the parent or guardian of a child to request a law enforcement agency to determine whether the agency has collected or is maintaining under this chapter criminal information relating solely to the person or child. Requires the agency to respond to the request not later than the 10th business day after the date it receives the request.

(b) Authorizes a law enforcement agency, before responding to a request under Subsection (a), to require reasonable written verification of the identity of the person making the request and the relationship between the parent or guardian and the child, if applicable, including written verification of an address, date of birth, driver's license number, state identification card number, or Social Security number.

SECTION 24. Amends Section 201.613, Transportation Code, as follows:

Sec. 201.613. New heading: ONE-STOP BORDER INSPECTION FACILITIES. (a) Requires the Department of Transportation (TxDOT) to erect and maintain, rather than choose the locations for, border inspection facilities along a major highway at or near a border crossing from Mexico in the Pharr, Laredo, and El Paso, but not Brownsville, districts for the inspection of motor vehicles for compliance with federal and state commercial motor vehicle regulations. Deletes existing text providing that such facilities be established so that all federal, state, and municipal agencies that regulate the passage of persons or vehicles across the border at a border crossing may be located in one place.

(b) Authorizes a municipality, if a facility that serves a bridge that had more than 900,000 commercial border crossings during the state fiscal year ending August 31, 2002, is to be located in the municipality or its extraterritorial jurisdiction, to choose the location of the facility within such jurisdiction. Requires the municipality to choose a location before the later of the 180th day after the date TxDOT makes a request for a location or the effective date of the Act enacting this provision.

(c) Authorizes only one inspection facility to be constructed in a municipality described by this subsection.

(d) Requires the municipality, in determining the location for a border inspection facility under Subsection (b), to take certain actions set forth in this subsection.

(e) Requires TxDOT, to the extent it considers appropriate to expedite commerce, to provide for implementation by the appropriate agencies of the use of Intelligent Transportation Systems for Commercial Vehicle Operations (ITS/CVO) in any new commercial motor vehicle inspection facility constructed and any existing facility to which this section applies.

(f) Requires the implementation of systems under Subsection (e) to be based on the Texas ITS/CVO business plan prepared by TxDOT, DPS, and the comptroller of public accounts. Requires TxDOT to coordinate with other state and federal transportation officials to develop interoperability standards for the systems.

(g) Requires TxDOT, in implementing systems under Subsection (e) in the construction of a facility and to the greatest extent possible, to take certain actions set forth in this subsection. Deletes existing Subsection (b), which requires TxDOT to establish and maintain an inspection station at the locations chosen in Subsection (a) only if certain conditions are met. Deletes existing Subsection (c), which authorizes TxDOT to enter into agreements with federal, state, and municipal agencies to accomplish the purpose of this section.

SECTION 25. Authorizes the House Committee on Corrections to conduct a study to determine whether it would add efficiency to the state's criminal justice system, in terms of time and money, for this state or for certain political subdivisions of this state to seek one or more agreements under Section 287(g), Immigration and Nationality Act (8 U.S.C. Section 1357(g)).

SECTION 26. Requires the governor to appoint the director of the State Office of Homeland Security as soon as practicable after this Act's effective date to a term expiring February 1, 2009.

SECTION 27. Requires the attorney general to establish the unit under Section 402.031, Government Code, as added by this Act, not later than December 1, 2007.

SECTION 28. Requires TxDOT to spend the money appropriated during the 76th Legislature for Section 201.613, Transportation Code, as added by Chapter 1527, Acts of the 76th Legislature, Regular Session, 1999, or money received from the federal government, to establish the border inspection facilities under Section 201.613, Transportation Code, as amended by this Act.

SECTION 29. Requires the council, in consultation with any relevant agency, to prepare, issue, and distribute to the governor and each member of the legislature certain reports containing certain information set forth in this section on certain dates.

SECTION 30. Effective date: upon passage or September 1, 2007.