

- SUBJECT:** Expansion and modification of homeland security efforts
- COMMITTEE:** Defense Affairs and State-Federal Relations — committee substitute recommended
- VOTE:** 7 ayes — Corte, Campbell, Berman, Herrero, Leibowitz, P. Moreno, Noriega
- 0 nays
- 2 absent — Hodge, Merritt
- SENATE VOTE:** On final passage, April 19 — 29-0.
- WITNESSES:** For — Roy Harmon, Texas Fire Chiefs Association; Sheila Jennings, Emergency Management Association of Texas; Brian McKinney, DFW Airport; David Reagan, Texas Municipal League Intergovernmental Risk Pool; (*Registered, but did not testify*: David Arterburn, United Transportation Union; Helen Johnson, State Firemen's and Fire Marshals' Association; Lee Lane, Texas Association of Local Health Officials; Elvia Lopez, City of Edinburg; Katie Parker, Texas Association of Community Health Centers; Shannon Ratliff, Corporation for Texas Regionalism).
- Against — Keith Stretcher, City of Midland.
- On — E. Buck Henderson, Texas Commission on Environmental Quality; Steve McCraw, Office of the Governor; (*Registered, but did not testify*: Alex Hathaway, (Department of State Health Services - Assistant Commissioner, Prevention and Preparedness; David Kostroun, Texas Department of Agriculture; Debbie Hastings, Texas Commission on Environmental Quality; Jim Ray, Texas Association of Regional Councils (Councils of Governments)).
- BACKGROUND:** Since the September 11, 2001, terrorist attacks, state, federal and local jurisdictions all over the nation, as well as private sector businesses, have focused time, money and other resources toward the prevention of another attack on U.S. soil.

HB 9 by Flores, enacted in 2003 by the 78th Legislature as Government Code, ch. 421, requires the governor to develop and direct a statewide homeland security strategy as a complement to the federal homeland security strategy. HB 9 was an omnibus homeland security bill enacted to coordinate homeland security activities among federal, state and local agencies, and the private sector. The bill created the Critical Infrastructure Protection Council (CIPC) with representatives from 14 different state agencies. The CIPC is the primary advisory council directing the governor on development and implementation of the homeland security strategy.

DIGEST:

Homeland Security Council. CSSB 9 would change the name of the Critical Infrastructure Protection Council to the Homeland Security Council (Council). A chair of a government entity could appoint a representative of the entity to serve on the council. Fourteen new government entities would be newly represented on the council, including, among others, the Commission on State Emergency Communications, Texas Animal Health Commission, Office of State-Federal Relations, State Fire Marshal's Office, Parks and Wildlife Department, and the Texas Water Development Board. The bill would replace the current inclusion of the Texas National Guard with the Adjutant General's Department. Eligibility requirements for council members would be modified to require a representative to be directly involved in policies, programs, or funding activities relevant to homeland security or infrastructure protection. Representatives from the new government entities added to the council would be appointed by December 1, 2005.

Interoperable radio communications program and critical information systems. The bill would require the Governor's Office to develop and administer a strategic plan to design and implement a statewide integrated public safety radio communications system to promote interoperability within and between local, state, and federal agencies and first responders. The Governor's Office would have to purchase infrastructure equipment for state and local agencies and first responders, advise representatives of entities in the state involved in homeland security with respect to interoperability, and use funding, including federal homeland security grants, to design, implement, and maintain the statewide communications system.

The Governor' Office could consult state entities involved in homeland security to obtain assistance or information necessary to perform its required duties. A report on the status of its duties would have to be

submitted to the Legislature by the Governor's Office not later than September 1 of each year.

This bill would abolish the Public Safety Radio Communications Council (PSRCC) and replace it with the Governor's Office as the entity responsible for the interoperability of radio communications. The Governor's Office would take ownership and custody of all property, including records, of PSRCC by December 1, 2005. All funds appropriated to PSRCC for administrative support would be transferred to the Governor's Office.

The Governor's Office would be responsible for developing a plan to help appropriate entities establish interoperable communication among computer systems used by local, state, and federal agencies and first responders. This would include providing a single point of entry to distribute information, applications, processes, and communications.

Water systems security. The bill would require the owner, agent, manager, operator, or other person in charge of a public water supply system or wastewater system that provided services for public or private use to notify the Texas Commission on Environmental Quality (TCEQ) of certain events that could negatively impact the production or delivery of safe and adequate drinking water, such as unauthorized entry on property, an act of terrorism, theft of property, or a natural disaster, accident, or act that resulted in damage to the water supply or system.

Protections against agro-terrorism. CSSB 9 would require the Texas Department of Agriculture (DOA) and Texas Animal Health Commission (TAHC) to pursue a policy of ensuring that the borders of the state were secure from shipments of potentially dangerous pests and diseases carried by plants and animals. DOA could enter into an agreement with private entities to provide goods or services for the establishment and operation of checkpoints or for the performance of inspections of vehicles moving within the state to determine if a vehicle contained a plant, plant product, or other substance capable of introducing or disseminating an insect pest or plant disease dangerous to the interests of horticulture or agriculture in the state. The ability to contract with private entities also would apply to stops and inspections of animals or animal products.

In addition to vehicle inspections, DOA and TAHC would have to jointly conduct road station and interstate shipment inspections, as feasible and

appropriate, at strategic locations throughout the state. DOA could also enter into an agreement with private entities to implement this requirement.

Critical infrastructure facility protection. CSSB 9 would include a comprehensive definition of a critical infrastructure facility. It would increase the penalty from a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) to a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) for trespass on or in refineries, chemical and power plants, and the other critical infrastructure facilities on or after the effective date of the bill. The increase would not apply if a defendant could prove by a preponderance of the evidence that the defendant entered or remained on or in a critical infrastructure facility as part of a peaceful or lawful assembly.

Health Alert Network. The bill would require the Department of State Health Services to include the Texas Association of Local Health Officials, the Texas Association of Community Health Centers, and the Texas Organization of Rural and Community Hospitals in the Health Alert Network, which is the entity responsible for reporting on incidences of communicable diseases.

Mutual aid. The bill would allow regional planning commissions, such as a council of governments, to render aid to other political subdivisions or regional planning commissions under mutual aid agreements.

Civil liability agreements. CSSB 9 would authorize government entities to agree in writing to assign responsibility for civil liability arising under a contract to furnish or obtain the services of a fire department, such as training, fire suppression, or ambulance services. It would apply only to contracts entered into on or after the effective date of the bill.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

SUPPORTERS
SAY:

The ability of the homeland security strategy to detect, deter and respond to homeland security threats and emergencies is crucial for the safety and security of the state and its citizens. Much has been accomplished, but the state needs consistently to strengthen its capacity to enhance domestic security and combat terrorist activities. Protecting the 22 million men,

women, and children who live in Texas should be a number one priority. CSSB 9 would expand upon the current homeland security program by providing for improvements in areas not currently covered for homeland security purposes, including efforts to protect public health, agricultural crops and livestock, drinking water, and critical infrastructure.

The bill would improve anti-terrorism planning, coordination, and communication between state and local agencies, which would prove important in deterring a threat or responding to an emergency. It also would encourage more inspections of livestock, produce, and pesticides entering the state.

Adding the 15 new state agencies to the Homeland Security Council would provide a more balanced and complete representation of the necessary entities crucial to homeland security within the state. Furthermore, the addition of the named government health entities to the Health Alert Network would increase the effectiveness of the Network to spot and report on diseases that posed serious threats to the Texas population.

The issue of interoperable radio communications is not new to the field of first responders. A new vigor was brought to finding a solution in each state after several failures of communications between New York first responders in response to the September 11 tragedy. In Texas, several differing radio systems are used by federal, state, and local emergency responders and law enforcement officials. These overlapping systems fail to communicate for several reasons, including frequency variations, age, incompatible vendor equipment, or simple lack of coordination among interested parties. CSSB 9 would require the Governor's Office to link various existing radio systems regionally and throughout the state with radio systems that would be purchased in the future by using some of the Homeland Security Grant Program money.

SB 9 would allow mutual aid agreements to be formed more easily by allowing regions to enter agreements with regions and not having each city or county throughout the state enter agreements with each other.

The tougher penalty provided by CSSB 9 for trespassers on or in critical infrastructure facilities would make it more difficult for terrorists to scout and investigate targeted facilities and complete their attack plans. The extra time that a terror suspect was in custody could make it more likely

that law enforcement agents would obtain information on plans and accomplices, as well as deter others from committing similar acts.

**OPPONENTS
SAY:**

CSSB 9 would increase the penalty for trespassing at refineries, ports, and other prime infrastructure facilities from a class B to a class A misdemeanor, which would equate to two slaps on the wrist rather than one. Instead of risking six months in the county jail, the maximum penalty under current law for a class B misdemeanor, a trespasser scouting a refinery as a potential target could find himself or herself in jail for a whole year, the maximum penalty for a class A misdemeanor. Such a penalty is unlikely to make a terrorist, such as a suicide bomber, think twice about committing a terrorist act. The additional inconvenience would likely mean nothing to someone dedicated to committing a terrorist act or dedicated to losing his or her life for a cause of creating destruction. The penalty provided in the bill could help deter future terrorists, but not very much. CSSB 9 should provide for harsher penalties for those trespassing on or in critical infrastructure facilities.

NOTES:

The committee substitute removed provisions from the Senate-passed version concerning civil liability for fire, emergency, or law enforcement services and would allow entities to contract to assign civil liability. It added a provision for developing a plan for establishing interoperable communication of critical information systems. It also would require heads of wastewater systems to maintain internal procedures to notify TCEQ of certain production or safety issues, add certain facilities to the definition of critical infrastructure facility for penal purposes, and modify the composition of the Homeland Security Council.