

1-1 By: Flores, et al. (Senate Sponsor - Shapiro) H.B. No. 9  
1-2 (In the Senate - Received from the House April 2, 2003;  
1-3 April 7, 2003, read first time and referred to Committee on  
1-4 Infrastructure Development and Security; May 12, 2003, reported  
1-5 adversely, with favorable Committee Substitute by the following  
1-6 vote: Yeas 9, Nays 0; May 12, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 9 By: Shapiro

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to homeland security.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Subtitle B, Title 4, Government Code, is amended  
1-13 by adding Chapter 421 to read as follows:

1-14 CHAPTER 421. HOMELAND SECURITY

1-15 SUBCHAPTER A. GENERAL PROVISIONS

1-16 Sec. 421.001. DEFINITIONS. In this chapter:

1-17 (1) "Agency" means any governmental entity.

1-18 (2) "Critical infrastructure" includes all public or  
1-19 private assets, systems, and functions vital to the security,  
1-20 governance, public health and safety, economy, or morale of the  
1-21 state or the nation.

1-22 (3) "Homeland security activity" means any activity  
1-23 related to the prevention or discovery of, response to, or recovery  
1-24 from a terrorist attack, natural or man-made disaster, hostile  
1-25 military or paramilitary action, or extraordinary law enforcement  
1-26 emergency.

1-27 Sec. 421.002. HOMELAND SECURITY STRATEGY. (a) The  
1-28 governor shall direct homeland security in this state and shall  
1-29 develop a statewide homeland security strategy that improves the  
1-30 state's ability to:

1-31 (1) detect and deter threats to homeland security;

1-32 (2) respond to homeland security emergencies; and

1-33 (3) recover from homeland security emergencies.

1-34 (b) The governor's homeland security strategy shall  
1-35 coordinate homeland security activities among and between local,  
1-36 state, and federal agencies and the private sector and must include  
1-37 specific plans for:

1-38 (1) intelligence gathering and analysis;

1-39 (2) information sharing;

1-40 (3) reducing the state's vulnerability to homeland  
1-41 security emergencies;

1-42 (4) protecting critical infrastructure;

1-43 (5) protecting the state's international border,  
1-44 ports, and airports;

1-45 (6) detecting, deterring, and defending against  
1-46 terrorism, including cyber-terrorism and biological, chemical, and  
1-47 nuclear terrorism;

1-48 (7) positioning equipment, technology, and personnel  
1-49 to improve the state's ability to respond to a homeland security  
1-50 emergency;

1-51 (8) directing the Texas Infrastructure Protection  
1-52 Communications Center and giving the center certain forms of  
1-53 authority to implement the governor's homeland security strategy;  
1-54 and

1-55 (9) using technological resources to:

1-56 (A) facilitate the interoperability of  
1-57 government technological resources, including data, networks, and  
1-58 applications;

1-59 (B) coordinate the warning and alert systems of  
1-60 state and local agencies;

1-61 (C) incorporate multidisciplinary approaches to  
1-62 homeland security; and

1-63 (D) improve the security of governmental and

private sector information technology and information resources.

(c) The governor's homeland security strategy must complement and operate in coordination with the federal homeland security strategy.

Sec. 421.003. CRIMINAL INTELLIGENCE INFORMATION. The Department of Public Safety of the State of Texas is:

(1) the repository in this state for the collection of multijurisdictional criminal intelligence information that is about terrorist activities or otherwise related to homeland security activities; and

(2) the state agency that has primary responsibility to analyze and disseminate that information.

[Sections 421.004-421.020 reserved for expansion]

SUBCHAPTER B. CRITICAL INFRASTRUCTURE PROTECTION COUNCIL

Sec. 421.021. MEMBERSHIP. (a) The Critical Infrastructure Protection Council is composed of the governor or the governor's designee and one representative of each of the following entities, appointed by the single statewide elected or appointed governing officer or administrative head of the entity:

- (1) Department of Agriculture;
- (2) office of the attorney general;
- (3) General Land Office;
- (4) Public Utility Commission of Texas;
- (5) Texas Department of Health;
- (6) Department of Information Resources;
- (7) Department of Public Safety of the State of Texas;
- (8) division of emergency management of the office of the governor;
- (9) Texas National Guard;
- (10) Texas Commission on Environmental Quality;
- (11) Railroad Commission of Texas;
- (12) Texas Strategic Military Planning Commission;

and

- (13) Texas Department of Transportation.

(b) To be eligible for appointment as a member of the council, a person must be directly involved in the policies, programs, or funding activities of the appointing agency, office, or division that are relevant to homeland security or infrastructure protection.

(c) A member of the council serves at the will of the governor. At the request of the governor, an appointing authority under this section shall appoint a different member.

(d) An officer or employee of a state or local agency who serves as a member of the council or a special advisory committee under this subchapter shall perform the duties required by the council or special advisory committee as an additional duty of the member's office or employment.

Sec. 421.022. REIMBURSEMENT OF EXPENSES. A member of the council may not receive additional compensation for service on the council but is entitled to reimbursement of reasonable expenses incurred in direct performance of official duties, including travel expenses incurred by the member while conducting the business of the council, subject to any applicable limitation on reimbursement provided by general law or the General Appropriations Act.

Sec. 421.023. ADMINISTRATION. (a) The council is an advisory entity administered by the office of the governor.

(b) The governor may adopt rules as necessary for the operation of the council.

(c) The governor shall designate the presiding officer of the council.

(d) The council shall meet at the call of the governor and shall meet at least once each quarter in a calendar year.

(e) The council is not subject to Chapter 2110.

Sec. 421.024. DUTIES. The council shall advise the governor on:

- (1) the development and coordination of a statewide critical infrastructure protection strategy;
- (2) the implementation of the governor's homeland security strategy by state and local agencies and provide specific

3-1 suggestions for helping those agencies implement the strategy; and  
 3-2 (3) other matters related to the planning,  
 3-3 development, coordination, and implementation of initiatives to  
 3-4 promote the governor's homeland security strategy.

3-5 Sec. 421.025. SPECIAL ADVISORY COMMITTEES. (a) The  
 3-6 governor may appoint one or more special advisory committees  
 3-7 composed of representatives from state or local agencies or  
 3-8 nongovernmental entities not represented on the council.

3-9 (b) The governor shall determine the number of members and  
 3-10 qualifications for membership on a special advisory committee under  
 3-11 this section.

3-12 (c) A special advisory committee under this section shall  
 3-13 assist the council in performing its duties.

3-14 (d) A special advisory committee under this section is  
 3-15 subject to Chapter 2110, except that Section 2110.002 does not  
 3-16 apply.

3-17 Sec. 421.026. REPORT. The council shall annually submit to  
 3-18 the governor a report stating:

3-19 (1) the council's progress in developing and  
 3-20 coordinating a statewide critical infrastructure protection  
 3-21 strategy;

3-22 (2) the status and funding of state programs designed  
 3-23 to detect and deter homeland security emergencies, including the  
 3-24 status and funding of counterterrorism efforts;

3-25 (3) recommendations on actions to reduce threats to  
 3-26 homeland security, including threats related to terrorism; and

3-27 (4) recommendations for improving the alert,  
 3-28 response, and recovery capabilities of state and local agencies.

3-29 [Sections 421.027-421.060 reserved for expansion]

#### 3-30 SUBCHAPTER C. CIVIL LIABILITY FOR ACTS OR OMISSIONS

3-31 Sec. 421.061. CIVIL LIABILITY. (a) An officer or employee  
 3-32 of a state or local agency performing a homeland security activity  
 3-33 or a volunteer performing a homeland security activity at the  
 3-34 request or under the direction of an officer or employee of a state  
 3-35 or local agency is considered for purposes of Section 431.085 to be  
 3-36 a member of the state military forces ordered into active service of  
 3-37 the state by proper authority and is considered to be discharging a  
 3-38 duty in that capacity if:

3-39 (1) the officer, employee, or volunteer is performing  
 3-40 the homeland security activity under procedures prescribed or  
 3-41 circumstances described for the purpose of this section in the  
 3-42 governor's homeland security strategy;

3-43 (2) in the case of a volunteer, the volunteer is acting  
 3-44 within the course and scope of the request or direction of the  
 3-45 officer or employee of the state or local agency; and

3-46 (3) in the case of an officer or employee of a state or  
 3-47 local agency, the officer or employee is acting within the course  
 3-48 and scope of the person's authority.

3-49 (b) A person described by Subsection (a) is not immune from  
 3-50 civil liability under Section 431.085 for damages resulting from  
 3-51 the performance of a homeland security activity if, under the  
 3-52 circumstances, the person's performance of the homeland security  
 3-53 activity was wilfully or wantonly negligent or done with conscious  
 3-54 indifference or reckless disregard for the safety of persons this  
 3-55 chapter is intended to protect.

3-56 (c) This section does not make a person a member of the state  
 3-57 military forces for any other purpose, including for purposes of  
 3-58 the application of the Uniform Code of Military Justice.

3-59 (d) This section does not affect the application of Section  
 3-60 431.085 on its own terms to a person who is a member of the state  
 3-61 military forces ordered into active service of the state by proper  
 3-62 authority under other law.

3-63 Sec. 421.062. LIABILITY UNDER INTERLOCAL CONTRACT. (a) In  
 3-64 this section, "interlocal contract" has the meaning assigned by  
 3-65 Section 791.003.

3-66 (b) A state or local agency that furnishes a service related  
 3-67 to a homeland security activity under an interlocal contract is  
 3-68 immune from civil liability for any act or omission resulting in  
 3-69 death, damage, or injury while acting under the interlocal contract

4-1 if:

4-2 (1) the interlocal contract expressly states that the  
4-3 furnishing state or local agency is not responsible for any civil  
4-4 liability that arises from the furnishing of a service under the  
4-5 contract; and

4-6 (2) the state or local agency committed the act or  
4-7 omission while acting in good faith and in the course and scope of  
4-8 its functions to provide a service related to a homeland security  
4-9 activity.

4-10 [Sections 421.063-421.070 reserved for expansion]

4-11 SUBCHAPTER D. COOPERATION AND ASSISTANCE; FUNDING

4-12 Sec. 421.071. COOPERATION AND ASSISTANCE. A state or local  
4-13 agency that performs a homeland security activity or a  
4-14 nongovernmental entity that contracts with a state or local agency  
4-15 to perform a homeland security activity shall cooperate with and  
4-16 assist the office of the governor, the Critical Infrastructure  
4-17 Protection Council, the Texas Infrastructure Protection  
4-18 Communications Center, and the National Infrastructure Protection  
4-19 Center in the performance of their duties under this chapter and  
4-20 other state or federal law.

4-21 Sec. 421.072. FUNDING. (a) The office of the governor  
4-22 shall:

4-23 (1) allocate available federal and state grants and  
4-24 other funding related to homeland security to state and local  
4-25 agencies that perform homeland security activities;

4-26 (2) periodically review the grants and other funding  
4-27 for appropriateness and compliance; and

4-28 (3) designate state administering agencies to  
4-29 administer all grants and other funding to the state related to  
4-30 homeland security.

4-31 (b) State and local agencies that perform homeland security  
4-32 activities shall inform the office of the governor about any  
4-33 actions taken relating to requests for revenue, grants, or other  
4-34 funding for homeland security activities or initiatives.

4-35 (c) A state or local agency that receives a grant or other  
4-36 funding related to homeland security must provide an annual report  
4-37 to the office of the governor detailing the agency's compliance  
4-38 with the state homeland security strategy.

4-39 [Sections 421.073-421.080 reserved for expansion]

4-40 SUBCHAPTER E. TEXAS INFRASTRUCTURE PROTECTION

4-41 COMMUNICATIONS CENTER

4-42 Sec. 421.081. FACILITIES AND ADMINISTRATIVE SUPPORT. The  
4-43 Department of Public Safety of the State of Texas shall provide  
4-44 facilities and administrative support for the Texas Infrastructure  
4-45 Protection Communications Center.

4-46 Sec. 421.082. POWERS AND DUTIES. (a) The center shall  
4-47 serve as the state's primary entity for the planning, coordination,  
4-48 and integration of government communications capabilities to help  
4-49 implement the governor's homeland security strategy and ensure an  
4-50 effective response in the event of a homeland security emergency.

4-51 (b) The center's duties include:

4-52 (1) promotion of emergency preparedness;

4-53 (2) receipt and analysis of information, assessment of  
4-54 threats, and issuance of public warnings related to homeland  
4-55 security emergencies; and

4-56 (3) authorization and facilitation of cooperative  
4-57 efforts related to emergency response and recovery efforts in the  
4-58 event of a homeland security emergency.

4-59 (c) In performing its duties under this section, the center  
4-60 shall aim to:

4-61 (1) reduce the vulnerability of at-risk or targeted  
4-62 entities to homeland security emergencies; and

4-63 (2) prevent or minimize damage, injury, loss of life,  
4-64 and loss of property in the event of a homeland security emergency.

4-65 (d) The center shall perform its duties under circumstances  
4-66 prescribed by and as directed by the governor's homeland security  
4-67 strategy.

4-68 SECTION 2. Section 418.175(a), Government Code, is amended  
4-69 to read as follows:

5-1 (a) Information that relates to physically or mentally  
 5-2 disabled individuals or other [~~medically fragile~~] individuals with  
 5-3 special needs and that is maintained for purposes of emergency  
 5-4 management or disaster planning is confidential [~~and excepted from~~  
 5-5 ~~required disclosure under Chapter 552~~].

5-6 SECTION 3. Subchapter H, Chapter 418, Government Code, is  
 5-7 amended by adding Sections 418.176-418.183 to read as follows:

5-8 Sec. 418.176. CONFIDENTIALITY OF CERTAIN INFORMATION  
 5-9 RELATING TO EMERGENCY RESPONSE PROVIDERS. (a) Information is  
 5-10 confidential if the information is collected, assembled, or  
 5-11 maintained by or for a governmental entity for the purpose of  
 5-12 preventing, detecting, responding to, or investigating an act of  
 5-13 terrorism or related criminal activity and:

5-14 (1) relates to the staffing requirements of an  
 5-15 emergency response provider, including a law enforcement agency, a  
 5-16 fire-fighting agency, or an emergency services agency;

5-17 (2) relates to a tactical plan of the provider; or

5-18 (3) consists of a list or compilation of pager or  
 5-19 telephone numbers, including mobile and cellular telephone  
 5-20 numbers, of the provider.

5-21 (b) In this section and Sections 418.177-418.183,  
 5-22 "governmental entity" includes the governing body of a nonprofit  
 5-23 corporation organized under Chapter 67, Water Code, that provides a  
 5-24 water supply or wastewater service, or both, and is exempt from ad  
 5-25 valorem taxation under Section 11.30, Tax Code.

5-26 Sec. 418.177. CONFIDENTIALITY OF CERTAIN INFORMATION  
 5-27 RELATING TO RISK OR VULNERABILITY ASSESSMENT. Information is  
 5-28 confidential if the information:

5-29 (1) is collected, assembled, or maintained by or for a  
 5-30 governmental entity for the purpose of preventing, detecting, or  
 5-31 investigating an act of terrorism or related criminal activity; and

5-32 (2) relates to an assessment by or for a governmental  
 5-33 entity, or an assessment that is maintained by a governmental  
 5-34 entity, of the risk or vulnerability of persons or property,  
 5-35 including critical infrastructure, to an act of terrorism or  
 5-36 related criminal activity.

5-37 Sec. 418.178. CONFIDENTIALITY OF CERTAIN INFORMATION  
 5-38 RELATING TO CONSTRUCTION OR ASSEMBLY OF WEAPONS. (a) In this  
 5-39 section, "explosive weapon" has the meaning assigned by Section  
 5-40 46.01, Penal Code.

5-41 (b) Information is confidential if it is information  
 5-42 collected, assembled, or maintained by or for a governmental entity  
 5-43 and:

5-44 (1) is more than likely to assist in the construction  
 5-45 or assembly of an explosive weapon or a chemical, biological,  
 5-46 radiological, or nuclear weapon of mass destruction; or

5-47 (2) indicates the specific location of:

5-48 (A) a chemical, biological agent, toxin, or  
 5-49 radioactive material that is more than likely to be used in the  
 5-50 construction or assembly of such a weapon; or

5-51 (B) unpublished information relating to a  
 5-52 potential vaccine or to a device that detects biological agents or  
 5-53 toxins.

5-54 Sec. 418.179. CONFIDENTIALITY OF CERTAIN ENCRYPTION CODES  
 5-55 AND SECURITY KEYS FOR COMMUNICATIONS SYSTEM. (a) Information is  
 5-56 confidential if the information:

5-57 (1) is collected, assembled, or maintained by or for a  
 5-58 governmental entity for the purpose of preventing, detecting, or  
 5-59 investigating an act of terrorism or related criminal activity; and

5-60 (2) relates to the details of the encryption codes or  
 5-61 security keys for a public communications system.

5-62 (b) This section does not prohibit a governmental entity  
 5-63 from making available, at cost, to bona fide local news media, for  
 5-64 the purpose of monitoring emergency communications of public  
 5-65 interest, the communications terminals used in the entity's trunked  
 5-66 communications system that have encryption codes installed.

5-67 Sec. 418.180. CONFIDENTIALITY OF CERTAIN INFORMATION  
 5-68 PREPARED FOR UNITED STATES. Information, other than financial  
 5-69 information, in the possession of a governmental entity that was

6-1 prepared as part of a required report to an agency of the United  
6-2 States and that relates to an act of terrorism or related criminal  
6-3 activity is confidential.

6-4 Sec. 418.181. CONFIDENTIALITY OF CERTAIN INFORMATION  
6-5 RELATING TO CRITICAL INFRASTRUCTURE. Those documents or portions  
6-6 of documents in the possession of a governmental entity are  
6-7 confidential if they identify the technical details of particular  
6-8 vulnerabilities of critical infrastructure to an act of terrorism.

6-9 Sec. 418.182. CONFIDENTIALITY OF CERTAIN INFORMATION  
6-10 RELATING TO SECURITY SYSTEMS. (a) Except as provided by  
6-11 Subsections (b) and (c), information, including an access code to  
6-12 property, in the possession of a governmental entity that relates  
6-13 to the specifications, operating procedures, or location of a  
6-14 security system used to protect public or private property from an  
6-15 act of terrorism or related criminal activity is confidential.

6-16 (b) Financial information related to the expenditure of  
6-17 funds by a governmental entity for a security system is public  
6-18 information that is not excepted from required disclosure under  
6-19 Chapter 552.

6-20 (c) Subject to Section 552.108, information relating to the  
6-21 location of a security camera in a public or unrestricted area of  
6-22 the premises of a governmental entity is public information that is  
6-23 not excepted from required disclosure under Chapter 552.

6-24 Sec. 418.183. DISCLOSURE OF CERTAIN CONFIDENTIAL  
6-25 INFORMATION. (a) This section applies only to information that is  
6-26 confidential under Sections 418.175-418.182.

6-27 (b) At any time during a state of disaster, the executive or  
6-28 administrative head of the governmental entity may voluntarily  
6-29 disclose or otherwise make available all or part of the  
6-30 confidential information to another person or another entity if the  
6-31 executive or administrative head believes that the other person or  
6-32 entity has a legitimate need for the information.

6-33 (c) The executive or administrative head of a port, port  
6-34 authority, or navigation district created or operating under  
6-35 Section 52, Article III, or Section 59, Article XVI, Texas  
6-36 Constitution, may voluntarily disclose or otherwise make available  
6-37 all or part of the confidential information to another person if the  
6-38 information:

6-39 (1) is shared in connection with a security network or  
6-40 committee, including a federal or state security committee or task  
6-41 force;

6-42 (2) consists of data, video, or other information on  
6-43 an information-sharing device that is shared with a security  
6-44 network; or

6-45 (3) is shared with an emergency operations center.

6-46 (d) The disclosure or making available of confidential  
6-47 information by a hospital district to a national accreditation body  
6-48 does not waive or affect the confidentiality of the information.

6-49 (e) The disclosure or making available of confidential  
6-50 information under Subsection (b) or (c) does not waive or affect the  
6-51 confidentiality of the information.

6-52 (f) A governmental body subject to Chapter 551 is not  
6-53 required to conduct an open meeting to deliberate information to  
6-54 which this section applies. Notwithstanding Section 551.103(a),  
6-55 the governmental body must make a tape recording of the proceedings  
6-56 of a closed meeting to deliberate the information.

6-57 SECTION 4. Section 431.051, Government Code, is amended to  
6-58 read as follows:

6-59 Sec. 431.051. SUPPLEMENTAL VOLUNTEER MILITARY FORCES  
6-60 [MILITIA]. To provide mission-ready volunteer military forces  
6-61 [militia strength] for use by the state in homeland security and  
6-62 community service activities as a supplement to the Texas National  
6-63 Guard, the Texas State Guard exists as part of the state militia  
6-64 under the Second Amendment to the United States Constitution and a  
6-65 defense force under 32 U.S.C. Section 109.

6-66 SECTION 5. Section 431.052(b), Government Code, is amended  
6-67 to read as follows:

6-68 (b) To volunteer for service in the Texas State Guard a  
6-69 person must:

7-1 (1) be a [~~state~~] citizen of the United States and a  
7-2 resident of this state for at least 180 days;

7-3 (2) be at least 17 years of age;

7-4 (3) meet qualifications that the governor prescribes;  
7-5 and

7-6 (4) be acceptable to and approved by the governor or  
7-7 adjutant general under the governor's direction.

7-8 SECTION 6. Subchapter C, Chapter 662, Government Code, is  
7-9 amended by adding Section 662.050 to read as follows:

7-10 Sec. 662.050. TEXAS FIRST RESPONDERS DAY. (a) September 11  
7-11 is Texas First Responders Day in honor of the bravery, courage, and  
7-12 determination of Texas men and women who assist others in  
7-13 emergencies.

7-14 (b) Texas First Responders Day shall be regularly observed  
7-15 by appropriate ceremonies in the public schools and other places to  
7-16 honor Texas first responders.

7-17 SECTION 7. (a) The governor shall develop a statewide  
7-18 homeland security strategy as required by Section 421.002,  
7-19 Government Code, as added by this Act, not later than September 1,  
7-20 2004.

7-21 (b) The head of each entity listed in Section 421.021,  
7-22 Government Code, as added by this Act, shall appoint a  
7-23 representative to the Critical Infrastructure Protection Council,  
7-24 as required by that section, not later than December 1, 2003.

7-25 SECTION 8. (a) It is the intent of the legislature that no  
7-26 provision in this Act should be construed to affect current state or  
7-27 federal law concerning military support to civilian law enforcement  
7-28 personnel in this state and that any military support to civilian  
7-29 law enforcement personnel in this state must be carried out in  
7-30 strict compliance with the constitution, statutes, rules, and  
7-31 regulations of the United States.

7-32 (b) Subsection (a) does not affect the civil liability  
7-33 provisions of Subchapter C, Chapter 421, Government Code, as added  
7-34 by this Act.

7-35 SECTION 9. This Act takes effect September 1, 2003.

7-36 \* \* \* \* \*