

By: Staples

S.B. No. 9

Substitute the following for S.B. No. 9:

By: Corte

C.S.S.B. No. 9

A BILL TO BE ENTITLED

AN ACT

relating to homeland security; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 2, Agriculture Code, is amended by adding Section 2.006 to read as follows:

Sec. 2.006. POLICY: PROTECTION OF STATE FROM CERTAIN PESTS AND DISEASES. (a) The agricultural policy of this state must recognize that it is of paramount importance to protect this state and the agriculture industry in this state against the intentional or unintentional introduction or dissemination of damaging plant and animal pests and diseases.

(b) The department, with the assistance of the Texas Animal Health Commission, shall pursue a policy of ensuring that the borders of this state are secure from shipments of potentially dangerous plant and animal pests and diseases.

SECTION 2. Section 71.0081, Agriculture Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) The department may enter into an agreement with a corporation or other private entity to provide goods or services for the establishment and operation of checkpoints or the performance of inspections under this section.

SECTION 3. Subchapter A, Chapter 71, Agriculture Code, is amended by adding Section 71.0082 to read as follows:

Sec. 71.0082. INSPECTIONS FOR CERTAIN PESTS AND DISEASES.

1 (a) In addition to vehicle inspections authorized under Section  
2 71.0081, the department and the Texas Animal Health Commission,  
3 under the direction of the department, shall jointly conduct road  
4 station and interstate shipment inspections as feasible at  
5 strategic points throughout this state and as determined to be  
6 appropriate by the department and the Texas Animal Health  
7 Commission, taking into consideration the significance of plant and  
8 animal inspections in proactively protecting this state's borders.

9 (b) The department may enter into an agreement with a  
10 corporation or other private entity to provide goods or services  
11 for the establishment and operation of checkpoints or the  
12 performance of inspections under this section.

13 SECTION 4. Section 161.048, Agriculture Code, is amended by  
14 adding Subsection (d-1) to read as follows:

15 (d-1) The commission may enter into an agreement with a  
16 corporation or other private entity to provide goods or services  
17 for the establishment and operation of checkpoints or the  
18 performance of inspections under this section.

19 SECTION 5. Section 418.004, Government Code, is amended by  
20 adding Subdivision (9) to read as follows:

21 (9) "Regional planning commission" means a regional  
22 planning commission, council of governments, or other regional  
23 planning agency created under Chapter 391, Local Government Code.

24 SECTION 6. Section 418.107(c), Government Code, is amended  
25 to read as follows:

26 (c) A political subdivision or regional planning commission  
27 may render aid to other political subdivisions or regional planning

1 commissions under mutual aid agreements.

2 SECTION 7. Section 418.109(d), Government Code, is amended  
3 to read as follows:

4 (d) A municipality, county, emergency services district,  
5 fire protection agency, regional planning commission, organized  
6 volunteer group, or other emergency services entity may provide  
7 mutual aid assistance on request from another municipality, county,  
8 emergency services district, fire protection agency, regional  
9 planning commission, organized volunteer group, or other emergency  
10 services entity. The chief or highest ranking officer of the entity  
11 from which assistance is requested, with the approval and consent  
12 of the presiding officer of the governing body of that entity, may  
13 provide that assistance while acting in accordance with the  
14 policies, ordinances, and procedures established by the governing  
15 body of that entity and consistent with any mutual aid plans  
16 developed by the emergency management council.

17 SECTION 8. The heading to Subchapter B, Chapter 421,  
18 Government Code, is amended to read as follows:

19 SUBCHAPTER B. HOMELAND SECURITY [~~CRITICAL INFRASTRUCTURE~~  
20 ~~PROTECTION~~] COUNCIL

21 SECTION 9. Sections 421.021(a) and (b), Government Code,  
22 are amended to read as follows:

23 (a) The Homeland Security [~~Critical Infrastructure~~  
24 ~~Protection~~] Council is composed of the governor or the governor's  
25 designee and one representative of each of the following entities,  
26 appointed by the single statewide elected or appointed governing  
27 officer, [or] administrative head, or chair, as appropriate, of the

1 entity:

- 2 (1) Department of Agriculture;
- 3 (2) office of the attorney general;
- 4 (3) General Land Office;
- 5 (4) Public Utility Commission of Texas;
- 6 (5) ~~[Texas]~~ Department of State Health Services;
- 7 (6) Department of Information Resources;
- 8 (7) Department of Public Safety of the State of Texas;
- 9 (8) division of emergency management of the office of
- 10 the governor;
- 11 (9) adjutant general's department [~~Texas National~~
- 12 ~~Guard~~];
- 13 (10) Texas Commission on Environmental Quality;
- 14 (11) Railroad Commission of Texas;
- 15 (12) Texas Strategic Military Planning Commission;
- 16 [~~and~~]
- 17 (13) Texas Department of Transportation;
- 18 (14) Commission on State Emergency Communications;
- 19 (15) Office of State-Federal Relations;
- 20 (16) secretary of state;
- 21 (17) Senate Committee on Transportation and Homeland
- 22 Security;
- 23 (18) House Committee on Defense Affairs and
- 24 State-Federal Relations;
- 25 (19) Texas Animal Health Commission;
- 26 (20) Texas Association of Regional Councils;
- 27 (21) Texas Commission on Law Enforcement Officer

1 Standards and Education;

2 (22) state fire marshal's office;

3 (23) Texas Education Agency;

4 (24) Texas Commission on Fire Protection;

5 (25) Parks and Wildlife Department;

6 (26) Texas Forest Service; and

7 (27) Texas Water Development Board.

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

13 SECTION 10. Section 421.071, Government Code, is amended to  
14 read as follows:

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

24 SECTION 11. Chapter 421, Government Code, is amended by  
25 adding Subchapter F to read as follows:

1 SUBCHAPTER F. GOVERNOR'S INTEROPERABLE RADIO COMMUNICATIONS

2 PROGRAM

3 Sec. 421.095. DEFINITIONS. In this subchapter:

4 (1) "First responder" means a public safety employee  
5 or volunteer whose duties include responding rapidly to an  
6 emergency. The term includes:

7 (A) a peace officer whose duties include  
8 responding rapidly to an emergency;

9 (B) fire protection personnel under Section  
10 419.021;

11 (C) a volunteer firefighter who is:  
12 (i) certified by the Texas Commission on  
13 Fire Protection; or

14 (ii) a member of an organized volunteer  
15 fire-fighting unit as described by Section 615.003; and

16 (D) an individual certified as emergency medical  
17 services personnel by the Department of State Health Services.

18 (2) "Infrastructure equipment" means the underlying  
19 permanent equipment required to establish interoperable  
20 communication between radio systems used by local, state, and  
21 federal agencies and first responders.

22 Sec. 421.096. INTEROPERABILITY OF RADIO SYSTEMS. The  
23 office of the governor shall:

24 (1) develop and administer a strategic plan to design  
25 and implement a statewide integrated public safety radio  
26 communications system that promotes interoperability within and  
27 between local, state, and federal agencies and first responders;

1           (2) develop and administer a plan in accordance with  
2 Subdivision (1) to purchase infrastructure equipment for state and  
3 local agencies and first responders;

4           (3) advise representatives of entities in this state  
5 that are involved in homeland security activities with respect to  
6 interoperability; and

7           (4) use appropriated money, including money from  
8 relevant federal homeland security grants, for the purposes of  
9 designing, implementing, and maintaining a statewide integrated  
10 public safety radio communications system.

11           Sec. 421.097. ASSISTANCE. The office of the governor may  
12 consult with a representative of an entity described by Section  
13 421.096(3) to obtain assistance or information necessary for the  
14 performance of any duty under this subchapter.

15           Sec. 421.098. REPORT. Not later than September 1 of each  
16 year, the office of the governor shall provide to the legislature a  
17 report on the status of its duties under this subchapter.

18           SECTION 12. Chapter 421, Government Code, is amended by  
19 adding Subchapter Z to read as follows:

20                           SUBCHAPTER Z. MISCELLANEOUS

21           Sec. 421.901. INTEROPERABILITY OF CRITICAL INFORMATION  
22 SYSTEMS. The office of the governor shall develop a plan for  
23 appropriate entities to use information systems that:

24           (1) employ underlying computer equipment and software  
25 required to establish interoperable communication between computer  
26 systems used by local, state, and federal agencies and first  
27 responders; and

1           (2) provide a single point of entry to disseminate  
2 information, applications, processes, and communications.

3           SECTION 13. Section 791.006, Government Code, is amended by  
4 amending Subsection (a) and adding Subsections (a-1) and (d) to  
5 read as follows:

6           (a) If governmental units contract under this chapter to  
7 furnish or obtain [~~the~~] services of a fire department, such as  
8 training, fire suppression, or ambulance services, the  
9 governmental unit that would have been responsible for furnishing  
10 the services in the absence of the contract is responsible for any  
11 civil liability that arises from the furnishing of those services.

12           (a-1) Notwithstanding Subsection (a), if a municipality,  
13 county, rural fire prevention district, emergency services  
14 district, fire protection agency, regional planning commission, or  
15 joint board enters into a contract with a governmental unit under  
16 this chapter to furnish or obtain the services of a fire department,  
17 the parties to the contract may agree to assign responsibility for  
18 civil liability that arises from the furnishing or obtaining of  
19 services under the contract in any manner agreed to by the parties.  
20 To assign responsibility for civil liability under this subsection,  
21 the parties to the contract must assign responsibility in a written  
22 provision of the contract that specifically references this  
23 subsection and states that the assignment of liability is intended  
24 to be different than liability otherwise assigned under Subsection  
25 (a).

26           (d) Notwithstanding any other provision of this chapter, a  
27 contract under this chapter is not a joint enterprise for the



1 purpose of assigning or determining liability.

2 SECTION 14. Subchapter B, Chapter 12, Health and Safety  
3 Code, is amended by adding Section 12.0128 to read as follows:

4 Sec. 12.0128. HEALTH ALERT NETWORK. The department shall  
5 include the Texas Association of Local Health Officials, the Texas  
6 Association of Community Health Centers, and the Texas Organization  
7 of Rural and Community Hospitals in the department's Texas Health  
8 Alert Network to the extent federal funds for bioterrorism  
9 preparedness are available for that purpose.

10 SECTION 15. Section 341.033, Health and Safety Code, is  
11 amended by adding Subsection (i) to read as follows:

12 (i) An owner, agent, manager, operator, or other person in  
13 charge of a public water supply system that furnishes water for  
14 public or private use or a wastewater system that provides  
15 wastewater services for public or private use shall maintain  
16 internal procedures to notify the commission immediately of the  
17 following events, if the event may negatively impact the production  
18 or delivery of safe and adequate drinking water:

19 (1) an unusual or unexplained unauthorized entry at  
20 property of the public water supply or wastewater system;

21 (2) an act of terrorism against the public water  
22 supply or wastewater system;

23 (3) an unauthorized attempt to probe for or gain  
24 access to proprietary information that supports the key activities  
25 of the public water supply or wastewater system;

26 (4) a theft of property that supports the key  
27 activities of the public water supply or wastewater system; or

1           (5) a natural disaster, accident, or act that results  
2 in damage to the public water supply or wastewater system.

3           SECTION 16. Section 30.05(b), Penal Code, is amended by  
4 adding Subdivision (7) to read as follows:

5           (7) "Critical infrastructure facility" means one of  
6 the following, if completely enclosed by a fence or other physical  
7 barrier that is obviously designed to exclude intruders:

8                   (A) a chemical manufacturing facility;

9                   (B) a refinery;

10                   (C) an electrical power generating facility,  
11 substation, switching station, electrical control center, or  
12 electrical transmission or distribution facility;

13                   (D) a water intake structure, water treatment  
14 facility, wastewater treatment plant, or pump station;

15                   (E) a natural gas transmission compressor  
16 station;

17                   (F) a liquid natural gas terminal or storage  
18 facility;

19                   (G) a telecommunications central switching  
20 office;

21                   (H) a port, railroad switching yard, trucking  
22 terminal, or other freight transportation facility;

23                   (I) a gas processing plant, including a plant  
24 used in the processing, treatment, or fractionation of natural gas;  
25 or

26                   (J) a transmission facility used by a federally  
27 licensed radio or television station.

1 SECTION 17. Section 30.05, Penal Code, is amended by  
2 amending Subsection (d) and adding Subsections (g) and (h) to read  
3 as follows:

4 (d) An offense under Subsection (e) is a Class C misdemeanor  
5 unless it is committed in a habitation or unless the actor carries a  
6 deadly weapon on or about the actor's person during the commission  
7 of the offense, in which event it is a Class A misdemeanor. An  
8 offense under Subsection (a) is a Class B misdemeanor, except that  
9 the offense is a Class A misdemeanor if:

10 (1) the offense is committed:

11 (A) in a habitation or a shelter center; ~~[or]~~

12 (B) on a Superfund site; or

13 (C) on or in a critical infrastructure facility;

14 or

15 (2) the actor carries a deadly weapon on or about his  
16 person during the commission of the offense.

17 (g) It is a defense to prosecution under this section that  
18 the actor entered a railroad switching yard or any part of a  
19 railroad switching yard and was at that time an employee or a  
20 representative of employees exercising a right under the Railway  
21 Labor Act (45 U.S.C. Section 151 et seq.).

22 (h) At the punishment stage of a trial in which the attorney  
23 representing the state seeks the increase in punishment provided by  
24 Subsection (d)(1)(C), the defendant may raise the issue as to  
25 whether the defendant entered or remained on or in a critical  
26 infrastructure facility as part of a peaceful or lawful assembly,  
27 including an attempt to exercise rights guaranteed by state or

1 federal labor laws. If the defendant proves the issue in the  
2 affirmative by a preponderance of the evidence, the increase in  
3 punishment provided by Subsection (d)(1)(C) does not apply.

4 SECTION 18. Section 411.0105, Government Code, is repealed.

5 SECTION 19. On the effective date of this Act:

6 (1) the Public Safety Radio Communications Council is  
7 abolished;

8 (2) the office of the governor replaces the Public  
9 Safety Radio Communications Council as the entity responsible for  
10 oversight of the development of a program related to the  
11 interoperability of radio communications;

12 (3) all property, including records, in the custody of  
13 the Department of Public Safety of the State of Texas that relates  
14 to the Public Safety Radio Communications Council or a program to  
15 promote the interoperability of radio communications becomes the  
16 property of the office of the governor and shall be made available  
17 to the office of the governor no later than December 1, 2005; and

18 (4) all funds appropriated by the legislature to the  
19 Department of Public Safety of the State of Texas for the purpose of  
20 providing administrative support to the Public Safety Radio  
21 Communications Council are transferred to the office of the  
22 governor.

23 SECTION 20. The head of each entity listed in Subdivision  
24 (9) and Subdivisions (14) through (27), Section 421.021(a),  
25 Government Code, as amended by this Act, shall appoint a  
26 representative to the Homeland Security Council, as required by  
27 that section, not later than December 1, 2005.

1           SECTION 21. (a) The change in law made by this Act to  
2 Section 791.006, Government Code, does not affect any civil  
3 liability for services furnished under an interlocal cooperation  
4 contract entered into before the effective date of this Act to  
5 furnish or obtain the services of a fire department.

6           (b) The former law is continued in effect for the purpose of  
7 determining liability, if any, for services furnished under an  
8 interlocal cooperation contract entered into before the effective  
9 date of this Act to furnish or obtain the services of a fire  
10 department.

11          SECTION 22. The change in law made by this Act to Section  
12 30.05, Penal Code, applies only to an offense committed on or after  
13 September 1, 2005. An offense committed before September 1, 2005,  
14 is covered by the law in effect when the offense was committed, and  
15 the former law is continued in effect for that purpose. For  
16 purposes of this section, an offense was committed before September  
17 1, 2005, if any element of the offense was committed before that  
18 date.

19          SECTION 23. This Act takes effect immediately if it  
20 receives a vote of two-thirds of all the members elected to each  
21 house, as provided by Section 39, Article III, Texas Constitution.  
22 If this Act does not receive the vote necessary for immediate  
23 effect, this Act takes effect September 1, 2005.