

1-1 By: Staples S.B. No. 9  
1-2 (In the Senate - Filed March 11, 2005; March 21, 2005, read  
1-3 first time and referred to Committee on Transportation and Homeland  
1-4 Security; April 11, 2005, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;  
1-6 April 11, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 9 By: Madla

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

1-10 relating to homeland security; providing a penalty.

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

1-12 SECTION 1. Section 71.0081, Agriculture Code, is amended by  
1-13 adding Subsection (c-1) to read as follows:

1-14 (c-1) The department may execute agreements with  
1-15 corporations or other private concerns to provide goods or services  
1-16 to establish checkpoints or conduct inspections under this section.

1-17 SECTION 2. Section 418.004, Government Code, is amended by  
1-18 adding Subdivision (9) to read as follows:

1-19 (9) "Regional planning commission" means a regional  
1-20 planning commission, council of governments, or other regional  
1-21 planning agency created under Chapter 391, Local Government Code.

1-22 SECTION 3. Subsection (c), Section 418.107, Government  
1-23 Code, is amended to read as follows:

1-24 (c) A political subdivision or regional planning commission  
1-25 may render aid to other political subdivisions or regional planning  
1-26 commissions under mutual aid agreements.

1-27 SECTION 4. Subsection (d), Section 418.109, Government  
1-28 Code, is amended to read as follows:

1-29 (d) A municipality, county, emergency services district,  
1-30 fire protection agency, regional planning commission, organized  
1-31 volunteer group, or other emergency services entity may provide  
1-32 mutual aid assistance on request from another municipality, county,  
1-33 emergency services district, fire protection agency, regional  
1-34 planning commission, organized volunteer group, or other emergency  
1-35 services entity. The chief or highest ranking officer of the entity  
1-36 from which assistance is requested, with the approval and consent  
1-37 of the presiding officer of the governing body of that entity, may  
1-38 provide that assistance while acting in accordance with the  
1-39 policies, ordinances, and procedures established by the governing  
1-40 body of that entity and consistent with any mutual aid plans  
1-41 developed by the emergency management council.

1-42 SECTION 5. The heading to Subchapter B, Chapter 421,  
1-43 Government Code, is amended to read as follows:

1-44 SUBCHAPTER B. HOMELAND SECURITY [~~CRITICAL INFRASTRUCTURE~~  
1-45 ~~PROTECTION~~] COUNCIL

1-46 SECTION 6. Subsection (a), Section 421.021, Government  
1-47 Code, is amended to read as follows:

1-48 (a) The Homeland Security [~~Critical Infrastructure~~  
1-49 ~~Protection~~] Council is composed of the governor or the governor's  
1-50 designee and one representative of each of the following entities,  
1-51 appointed by the single statewide elected or appointed governing  
1-52 officer or administrative head of the entity:

- 1-53 (1) Department of Agriculture;
- 1-54 (2) office of the attorney general;
- 1-55 (3) General Land Office;
- 1-56 (4) Public Utility Commission of Texas;
- 1-57 (5) [~~Texas~~] Department of State Health Services;
- 1-58 (6) Department of Information Resources;
- 1-59 (7) Department of Public Safety of the State of Texas;
- 1-60 (8) division of emergency management of the office of

1-61 the governor;  
1-62 (9) adjutant general's department [~~Texas National~~  
1-63 ~~Guard~~];

- 2-1 (10) Texas Commission on Environmental Quality;
- 2-2 (11) Railroad Commission of Texas;
- 2-3 (12) Texas Strategic Military Planning Commission;
- 2-4 [and]
- 2-5 (13) Texas Department of Transportation;
- 2-6 (14) Commission on State Emergency Communications;
- 2-7 (15) Office of State-Federal Relations;
- 2-8 (16) Secretary of State;
- 2-9 (17) Senate Committee on Transportation and Homeland
- 2-10 Security;
- 2-11 (18) House Committee on Defense Affairs and
- 2-12 State-Federal Relations;
- 2-13 (19) Texas Animal Health Commission;
- 2-14 (20) Texas Association of Regional Councils;
- 2-15 (21) Texas Commission on Law Enforcement Officer
- 2-16 Standards and Education;
- 2-17 (22) Texas Department of Insurance (arson
- 2-18 investigators);
- 2-19 (23) Texas Education Agency;
- 2-20 (24) Texas Commission on Fire Protection;
- 2-21 (25) Parks and Wildlife Department;
- 2-22 (26) Texas Forest Service; and
- 2-23 (27) Texas Water Development Board.

2-24 SECTION 7. Section 421.071, Government Code, is amended to  
2-25 read as follows:

2-26 Sec. 421.071. COOPERATION AND ASSISTANCE. A state or local  
2-27 agency that performs a homeland security activity or a  
2-28 nongovernmental entity that contracts with a state or local agency  
2-29 to perform a homeland security activity shall cooperate with and  
2-30 assist the office of the governor, the Homeland Security [Critical  
2-31 Infrastructure Protection] Council, the Texas Infrastructure  
2-32 Protection Communications Center, and the National Infrastructure  
2-33 Protection Center in the performance of their duties under this  
2-34 chapter and other state or federal law.

2-35 SECTION 8. Chapter 421, Government Code, is amended by  
2-36 adding Subchapter F to read as follows:

2-37 SUBCHAPTER F. GOVERNOR'S INTEROPERABLE RADIO AND COMPUTER  
2-38 COMMUNICATIONS PROGRAM

2-39 Sec. 421.095. DEFINITIONS. In this subchapter:

2-40 (1) "First responder" means a public safety employee  
2-41 or volunteer whose duties include responding rapidly to an  
2-42 emergency. The term includes:

2-43 (A) a peace officer whose duties include  
2-44 responding rapidly to an emergency;

2-45 (B) fire protection personnel under Section  
2-46 419.021;

2-47 (C) a volunteer firefighter who is:

2-48 (i) certified by the Texas Commission on  
2-49 Fire Protection; or

2-50 (ii) a member of an organized volunteer  
2-51 fire-fighting unit as described by Section 615.003; and

2-52 (D) an individual certified as emergency medical  
2-53 services personnel by the Department of State Health Services.

2-54 (2) "Infrastructure equipment" means the underlying  
2-55 permanent equipment required to establish interoperable  
2-56 communication between radio systems used by local, state, and  
2-57 federal agencies and first responders.

2-58 Sec. 421.096. INTEROPERABILITY OF RADIO AND COMPUTER  
2-59 SYSTEMS. The office of the governor shall:

2-60 (1) develop and administer a strategic plan to design  
2-61 and implement a statewide integrated public safety radio and  
2-62 computer communications system that promotes interoperability  
2-63 within and between local, state, and federal agencies and first  
2-64 responders;

2-65 (2) develop and administer a plan in accordance with  
2-66 Subdivision (1) to purchase infrastructure equipment and computer  
2-67 systems for state and local agencies and first responders;

2-68 (3) advise representatives of entities involved in  
2-69 homeland security activities, as defined by Section 421.001, in

3-1 this state; and

3-2 (4) use appropriated money, including money from  
 3-3 relevant federal homeland security grants, for the purposes of  
 3-4 designing, implementing, and maintaining a statewide integrated  
 3-5 public safety radio and computer communications system.

3-6 Sec. 421.097. ASSISTANCE. The office of the governor may  
 3-7 consult with a representative of an entity described in Section  
 3-8 421.096(3) to obtain assistance or information necessary for the  
 3-9 performance of any duty under this subchapter.

3-10 Sec. 421.098. REPORT. Not later than September 1 of each  
 3-11 year, the office of the governor shall provide to the legislature a  
 3-12 report on the status of its duties under this subchapter.

3-13 SECTION 9. The heading to Section 791.006, Government Code,  
 3-14 is amended to read as follows:

3-15 Sec. 791.006. LIABILITY UNDER CONTRACT OR IN ABSENCE OF  
 3-16 [FIRE PROTECTION] CONTRACT FOR [OR] PROVISION OF FIRE, EMERGENCY,  
 3-17 OR LAW ENFORCEMENT SERVICES.

3-18 SECTION 10. Section 791.006, Government Code, is amended by  
 3-19 amending Subsection (a) and adding Subsections (d) and (e) to read  
 3-20 as follows:

3-21 (a) If governmental units enter into a contract under this  
 3-22 chapter to furnish or obtain fire or emergency [the] services, the  
 3-23 governmental units may determine by contract which party [of a fire  
 3-24 department, the governmental unit that would have been responsible  
 3-25 for furnishing the services in the absence of the contract] is  
 3-26 responsible for any civil liability that arises from the furnishing  
 3-27 of those services. In the absence of a contract addressing  
 3-28 liability, if a municipality, county, rural fire prevention  
 3-29 district, emergency services district, fire protection agency,  
 3-30 organized volunteer group, joint board, or other emergency services  
 3-31 entity furnishes fire or emergency services to another  
 3-32 municipality, county, rural fire prevention district, emergency  
 3-33 services district, fire protection agency, organized volunteer  
 3-34 group, joint board, or other emergency services entity, each  
 3-35 governmental unit is responsible for its own actions for any civil  
 3-36 liability that arises from the furnishing or obtaining of those  
 3-37 services.

3-38 (d) Nothing in this section affects the employer-employee  
 3-39 relationship or the terms or conditions of employment between a  
 3-40 governmental unit and its employees, such as the payment of wages or  
 3-41 provision of benefits, including workers' compensation.

3-42 (e) Nothing in this section affects a school district.

3-43 SECTION 11. Subchapter B, Chapter 12, Health and Safety  
 3-44 Code, is amended by adding Section 12.0128 to read as follows:

3-45 Sec. 12.0128. HEALTH ALERT NETWORK. The department shall  
 3-46 include the Texas Association of Local Health Officials, the Texas  
 3-47 Association of Community Health Centers, and the Texas Organization  
 3-48 of Rural and Community Hospitals in the department's Texas Health  
 3-49 Alert Network to the extent federal funds for bioterrorism  
 3-50 preparedness are available for that purpose.

3-51 SECTION 12. Section 341.033, Health and Safety Code, is  
 3-52 amended by adding Subsection (i) to read as follows:

3-53 (i) An owner, agent, manager, operator, or other person in  
 3-54 charge of a public water supply system that furnishes water for  
 3-55 public or private use shall maintain internal procedures to notify  
 3-56 the commission immediately of the following events, if the event  
 3-57 may negatively impact the production or delivery of safe and  
 3-58 adequate drinking water:

3-59 (1) an unusual or unexplained unauthorized entry at  
 3-60 property of the public water supply system;

3-61 (2) an act of terrorism against the public water  
 3-62 supply system;

3-63 (3) an unauthorized attempt to probe for or gain  
 3-64 access to proprietary information that supports the key activities  
 3-65 of the public water supply system;

3-66 (4) a theft of property that supports the key  
 3-67 activities of the public water supply system; or

3-68 (5) a natural disaster, accident, or act that results  
 3-69 in damage to the public water supply system.

SECTION 13. Subsection (b), Section 30.05, Penal Code, is amended by adding Subdivision (7) to read as follows:

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

- (A) a chemical manufacturing facility;
- (B) a refinery;
- (C) an electrical power generating facility, substation, switching station, electrical control center, or electrical transmission or distribution facility;
- (D) a water intake structure or water treatment facility;
- (E) a natural gas transmission compressor station;
- (F) a liquid natural gas terminal or storage facility;
- (G) a telecommunications central switching office; or
- (H) a port, railroad switching yard, trucking terminal, or other freight transportation facility.

SECTION 14. Section 30.05, Penal Code, is amended by amending Subsection (d) and by adding Subsections (g) and (h) to read as follows:

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

- (1) the offense is committed:
  - (A) in a habitation or a shelter center; ~~[or]~~
  - (B) on a Superfund site; or
  - (C) on or in a critical infrastructure facility;

or

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

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

(h) At the punishment stage of a trial in which the attorney representing the state seeks the increase in punishment provided by Subsection (d)(1)(C), the defendant may raise the issue as to whether the defendant entered or remained on or in a critical infrastructure facility as part of a peaceful or lawful assembly, including an attempt to exercise rights guaranteed by state or federal labor laws. If the defendant proves the issue in the affirmative by a preponderance of the evidence, the increase in punishment provided by Subsection (d)(1)(C) does not apply.

SECTION 15. Section 411.0105, Government Code, is repealed.

SECTION 16. On the effective date of this Act:

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

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

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

(4) all funds appropriated by the legislature to the Department of Public Safety for the purpose of providing administrative support to the Public Safety Radio Communications Council are transferred to the office of the governor.

SECTION 17. The change in law made by this Act to Section

5-1 30.05, Penal Code, applies only to an offense committed on or after  
5-2 September 1, 2005. An offense committed before September 1, 2005,  
5-3 is covered by the law in effect when the offense was committed, and  
5-4 the former law is continued in effect for that purpose. For  
5-5 purposes of this section, an offense was committed before September  
5-6 1, 2005, if any element of the offense was committed before that  
5-7 date.

5-8 SECTION 18. (a) The change in law made by this Act to  
5-9 Section 791.006, Government Code, does not affect any civil  
5-10 liability for services furnished under an interlocal cooperation  
5-11 contract to furnish or obtain the services of a fire department  
5-12 entered into before the effective date of this Act.

5-13 (b) The former law is continued in effect for the purpose of  
5-14 determining liability, if any, for services furnished under an  
5-15 interlocal cooperation contract to furnish or obtain the services  
5-16 of a fire department entered into before the effective date of this  
5-17 Act.

5-18 SECTION 19. This Act takes effect immediately if it  
5-19 receives a vote of two-thirds of all the members elected to each  
5-20 house, as provided by Section 39, Article III, Texas Constitution.  
5-21 If this Act does not receive the vote necessary for immediate  
5-22 effect, this Act takes effect September 1, 2005.

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