

## **BILL ANALYSIS**

C.S.H.B. 13  
Swinford  
State Affairs  
May 3, 2007  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Given the events of September 11, 2001, and the geographic location of the State of Texas, homeland security and border security have come to the forefront of public interest and policymakers' concerns thereby warranting immediate legislative action.

C.S.H.B. 13 is designed to prohibit state governmental agencies or political subdivisions from adopting rules, policies, or ordinances that discourage or prohibit the enforcement and/or reporting of violations related to homeland security or border security. Any state governmental agency or political subdivision that continues to adopt such practices will be required to repay any funds that it has received for homeland security or border security matters.

Additionally, C.S.H.B. 13 formalizes the State Office of Homeland Security in the Office of the Governor.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

SECTION 1. Amends the list of permissive inclusions in the comprehensive state emergency management plan prepared by the Division of Emergency Management in the Office of the Governor (Division) to include provision of necessary project management resources to support the Texas Data Exchange.

SECTION 2. Requires the Division to provide the Department of Public Safety (DPS) the necessary project management resources, including operational support and personnel to support the Texas Data Exchange.

SECTION 3. Makes conforming changes and amends appropriate law creating the State Office of Homeland Security (Office) in the Office of the Governor and requires the Governor to direct homeland security through this office. The bill adds to the Governor's Homeland Security Strategy that it must include specific plans for establishing and directing the Texas Fusion Center (formerly 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.

SECTION 4. Creates the Border Security Council (Council) consisting of members appointed by the governor and 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 the state's international border are used properly and that the recipients of the funds are accountable for the proper use of the funds. The Council is required to advise the Office on the allocation of funds by the Office for purposes related to security at or near this state's international border; and those recommendations must be made by a majority of members of the Council. The Governor is required to designate one member of the Council as the chair; and the chair is required to arrange the meetings at times determined by the members of the Council. The meetings of the Council

are subject to the requirements of Chapter 551, Government Code, to the same extent as similar meetings of the Public Safety Commission; and plans and recommendations are subject to the requirements of Chapter 552, Government Code, to the same extent as similar plans and recommendations of DPS. Service by a state or local officer or employee on the Council becomes an additional duty of that member's office or employment. Chapter 2110, Government Code, does not apply to the Council.

SECTION 5. Requires DPS to oversee the Texas Data Exchange and all related information.

SECTION 6. Creates and organizes the legislative oversight committee on homeland security and border security. Provides that the oversight committee consists of the chair of the House Committee on Border and International Affairs; the chair of the House Committee on Defense Affairs and State-Federal Relations; the chair of the House Committee on State Affairs; the chair of the Senate Committee on International Relations and Trade; the chair of the Senate Committee on State Affairs; the chair of the Senate Committee on Transportation and Homeland Security; two additional members of the House of Representatives to be appointed by the Speaker of the House of Representatives; and two additional members of the Senate appointed by the Lieutenant Governor. Members appointed by the Speaker and Lieutenant Governor serve at the will of the appointing officer. The Speaker and Lieutenant Governor shall each designate a co-chair from among the committee members. The committee shall meet initially at the joint call of the co-chairs, and subsequently at the call of the co-chairs. The committee shall monitor homeland security and border security issues in the state, including the implementation of laws relating to homeland security and border security. A committee report issued to the legislature is required.

SECTION 7. Prohibits a state governmental entity or political subdivision from adopting a rule, policy, or ordinance under which the state governmental entity or political subdivision will not fully enforce state or federal criminal law relating to drugs, including Chapters 481 and 483, Health and Safety Code; refuse to take an action that is authorized under 8 U.S.C. Section 1252c and permitted under state law; or violate 8 U.S.C. Section 1324. If determined by the staff of the office of the attorney general that the state governmental entity or political subdivision has violated the restriction on rules, policies or ordinances, it will result in the prompt forfeiture and repayment to the appropriate entity of all funds granted to a state governmental entity or political subdivision for purposes related to homeland security, including border security. The attorney general may stay the duty to repay pending the outcome of an appeal. Establishes a procedure and deadline for appeal. An appeal is considered a contested case under Chapter 2001, Government Code. Requires an administrative law judge employed by the State Office of Administrative Hearings to conduct the contested case hearing.

SECTION 8. Provides that the Office, with the advice of the Council shall review grants and other funding for appropriateness and compliance with specified law in addition to the existing duties of the Office of the Governor in Sec. 421.072(a), Government Code. The Governor may allocate funds as necessary to assist state and local law enforcement agencies to acquire additional personnel, equipment, and other operational support that will enable state and local law enforcement agencies to better perform homeland security activities, including activities related to border security or law enforcement emergencies. If the staff of the office of the attorney general determines that a state or local agency receiving a grant or allocation under this section has violated applicable law, the state or local agency is required to promptly forfeit and repay to the appropriate entity the grant or allocated funds. The attorney general is authorized to stay the duty to repay pending the outcome of an appeal. Establishes a procedure and deadline for appeal. Appeals are contested cases under Chapter 2001, Government Code. An administrative law judge employed by the State Office of Administrative Hearings shall conduct the contested case hearing.

SECTION 9. Makes a conforming change.

SECTION 10. Requires DPS to provide facilities and administrative support for the Texas Fusion Center at the request of the governor.

SECTION 11. Changes the heading of Sec. 370.003, Local Government Code, to Municipal Or County Policy Regarding Drug Laws Or Certain Laws Relating To Immigration. Prohibits the C.S.H.B. 13 80(R)

governing body of a municipality, the commissioners court of a county, or a sheriff, municipal police department, municipal attorney, county attorney, district attorney, or criminal district attorney from adopting a policy under which the entity will not fully enforce criminal laws relating to drugs, including Chapters 481 and 483, Health and Safety Code, and federal law; refuse to take an action that is authorized under 8 U.S.C. Section 1252c and permitted under state law; or violate 8 U.S.C. Section 1324.

SECTION 12. Authorizes political subdivisions of this state to enter into agreements under applicable provisions of the Immigration and Nationality Act to perform functions of an immigration officer.

SECTION 13. Changes the heading of Chapter 370, Local Government Code, to Miscellaneous Provisions Relating to Health and Public Safety Affecting More Than One Type of Local Government.

SECTION 14. Prohibits state governmental entities and municipalities from adopting a rule, policy, or ordinance, or following or establishing a commonly accepted practice, that requires a peace officer to violate a state or federal criminal law. Prohibits peace officers from taking an action that would require the officer to violate a state or federal criminal law. It is the duty of each peace officer to report the commission of a federal crime or a conspiracy to commit the same (if the officer has knowledge of such crime or conspiracy) to the law enforcement agency that appoints or employs the peace officer. Upon the report by a peace officer of commission of a crime under applicable law it is the duty of the law enforcement agency to report that information to the Office.

SECTION 15. Authorizes the House Committee on Corrections to conduct a study on the benefits for the state or a political subdivision to seek one or more agreements under applicable provisions of the Immigration and Nationality Act.

SECTION 16. Effective date.

#### **EFFECTIVE DATE**

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

SECTION 3 of the substitute is similar to the original SECTION 1 except that the substitute provides that the Governor's homeland security strategy must include specific plans for establishing and directing the Texas Fusion Center, which replaces the Texas Infrastructure Protection Communications Center, and for 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.

SECTION 7 of the substitute is similar to the original SECTION 2 except that the substitute strikes the Texas Infrastructure Protection Communications Center and adds the Texas Fusion Center. The original bill prohibited a state governmental entity or municipality from adopting a rule, policy, or ordinance that entails a violation of state or federal law relating to homeland security or immigration. The substitute specifies the particular code citations in state and federal law and provides that the Office of the Attorney General makes the determination whether a state governmental entity or political subdivision is in violation. The substitute adds provisions which establish procedures and a deadline for appeal. The substitute changes the term from "municipality" to "political subdivision." The substitute removes the three-year time period on the ineligibility to receive funding.

SECTION 8 of the substitute is similar to the original SECTION 3 except that the substitute strikes the Office of the Governor and replaces it with the State Office of Homeland Security, with the advice of the Border Security Council. The substitute specifies the particular laws with which the review of the grants and other funding are to be in compliance. The substitute

provides that the Office of the Attorney General makes a determination if a state or local agency receiving a grant or allocation has violated applicable law. The substitute adds provisions which establish procedures and a deadline for appeal. The substitute also removes the three-year time period on the ineligibility to receive funding.

SECTION 11 of the substitute is similar to the original SECTION 4 except that the substitute now specifies the particular codes and statutes regarding a violation.

SECTIONS 1-2, 4-6, 9, 10, and 12-15 of the substitute are added. SECTION 1 provides that the state emergency management plan prepared by the Division of Emergency Management in the Office of the Governor may include the provision of the necessary project management resources to support the Texas Data Exchange. SECTION 2 adds to the powers and duties of the Division of Emergency Management. SECTION 4 creates the Border Security Council and describes various functions and duties. SECTION 5 requires the Department of Public Safety to oversee the Texas Data Exchange and all related information. SECTION 6 creates and organizes the legislative oversight committee and describes the various duties of the committee. SECTION 9 makes a conforming change. SECTION 10 requires the Department of Public Safety to provide facilities and administrative support for the Texas Fusion Center at the request of the governor. SECTION 12 relates to the performance of immigration officer functions. SECTION 13 changes a chapter heading. SECTION 14 adds provisions prohibiting state governmental entities and municipalities from requiring a peace officer to violate state or federal criminal law and sets forth the duty of a peace officer in such situations. SECTION 15 authorizes the House Committee on Corrections to conduct a study.

Original SECTIONS 5-7 are eliminated from the substitute and the substitute makes other conforming and non-substantive changes to reflect the changes in SECTION numbers.