

BILL ANALYSIS

C.S.S.B. 11
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Defense Affairs & State-Federal Relations
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The ability of the state to detect, deter, and respond to acts of terrorism, natural disasters, and violent criminal activity is essential to the safety and security of Texans. There are lapses in the state's ability to take the appropriate measures to mitigate these threats and respond to disaster situations.

As proposed, CSSB 11, among other things, establishes a statewide mutual aid system to provide integrated statewide aid response capacity between local government entities; allows state employees who hold an amateur radio station license to be granted leave to assist during a disaster; designates and allows additional emergency vehicles to be used during a disaster; allows for roving communication interception orders and expands the list of offenses for which interceptions may be authorized to include kidnapping and unlawful restraint, human trafficking and money laundering; provides for emergency alert system training of local officials; creates a system by which auto dealers are required to enter vehicle specific information that would be given a unique number that can be traced by law enforcement for temporary car tags; and provides that the exercise of eminent domain by a common carrier is not invalid solely because the common carrier does not operate as a corporation.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Department of Public Safety in SECTION 5.02 of this bill.

It is the committee's opinion that rulemaking authority is expressly granted to the Department of Transportation in SECTION 8.04, SECTION 8.06, and SECTION 8.11 of this bill.

ANALYSIS

CSSB 11 amends the Government Code to define "Local government entity", "Mutual aid", "Requesting local government entity", "Responding local government entity", and "System". The bill amends the Government Code to state who is designated as the emergency management director for a political subdivision. The bill provides that the emergency management director serves as the governor's designated agent in the administration and supervision of duties under this chapter and that that person may exercise the powers granted to the governor under this chapter on an appropriate local scale and may designate a person to serve as emergency management coordinator to serve as an assistant to the emergency management director for emergency management purposes. It makes conforming changes to authorize a local government entity (entity) to render mutual aid to other local government entities under mutual aid agreements or the system or on request from another entity. It authorizes the division of emergency management, in consultation with state fire protection agencies and the Texas Commission on Fire Protection, to develop a statewide mutual aid program for fire emergencies that is consistent with the state emergency management plan and does not alter the legal obligations of a political subdivision participating in the system.

CSSB 11 establishes a statewide mutual aid system to provide integrated statewide mutual aid response capability between local government entities without a written mutual aid agreement. It clarifies that a request for mutual aid assistance between local government entities is considered to be made under the system, unless the requesting and responding entities are parties to a written mutual aid agreement in effect when the request is made. This bill does not affect a written mutual aid agreement between local government entities in effect on or before the effective date of this bill or restrict the ability of local government entities to enter into a written mutual aid agreement as otherwise authorized by statute after the effective date of this subchapter. If a request is made between local government entities that are parties to a written

mutual aid agreement, the terms of that agreement control the rights and obligations of the parties.

CSSB 11 requires the division of emergency management in the office of the governor (division) to administer the system and encourage and assist political subdivisions in planning and implementing comprehensive all-hazards emergency management programs, including assisting political subdivisions to ensure that the local emergency management plan of each subdivision adequately provides for the rendering and receipt of mutual aid. The bill divides the state into disaster districts (districts) to engage in homeland security preparedness and response activities. The district boundaries coincide with the geographic boundaries of the state planning regions established under Chapter 391, Local Government Code. It establishes a disaster district committee for each district, composed of local representatives of state agencies, boards, and commissions and organized volunteer groups with representation on the emergency management council and requires each district committee to coordinate with political subdivisions located in the disaster district to ensure that state and federal emergency assets are made available as needed for the most efficient and effective response possible. It requires the public safety director of the Department of Public Safety (DPS) to appoint a commanding officer from the Texas Highway Patrol to serve as chair of each disaster district committee and sets forth the required duties of the chair. The bill further requires representatives of the emergency management council assigned to each district to assist the chair of their disaster district committee and provide guidance, counsel and administrative support. It requires the political subdivisions in each state planning region to agree on procedures that specify the manner in which mutual aid will be provided in response to a request from a political subdivision in the region, a political subdivision in another region, or from this state.

CSSB 11 sets out procedures for requesting and providing mutual aid assistance. Requires an entity, when contacted with a request for mutual aid assistance, to assess local resources to determine availability of personnel, equipment, and other assistance to respond to the request. An entity is not required to provide assistance unless the entity determines it has sufficient resources to provide assistance, based on current or anticipated events in its jurisdiction. The response effort must be organized and function in accordance with the National Incident Management System guidelines. The supervision and control of various aspects of mutual aid assistance under the system and the duration of aid are set out in the bill. Persons assigned, designated, or ordered to perform duties in response to a request under the system are entitled to receive the same wages, salary, pension, and other compensation and benefits, as if they were working for their own entity. The entity employing the person is responsible for wages, salary, pension, and other compensation and benefits associated with the performance of duties under the system. Professional, mechanical or other skill licenses, certificates, and permits are portable under the system, subject to any limitations imposed by the chief executive officer or the governing body of the requesting entity. The division is required to administer all requests for reimbursement for costs associated with providing mutual aid assistance in response to a request made by the division for an incident resulting in the issuance of a disaster declaration by the President of the United States. A request for reimbursement made to the division must be made in accordance with procedures developed by the division. If the division directly requests mutual aid assistance from a participating entity and that entity responds, the state is required to reimburse the actual costs of providing assistance incurred by the responding entity from available state money. If funds are made available from the disaster contingency fund, the division shall make reimbursement from the disaster contingency fund for eligible expenses to the extent that available state money is inadequate. If federal money is available to pay costs associated with the provision of mutual aid assistance in response to a request made by the division, the division shall make a claim for the eligible costs of the responding entity on the division's grant application and shall disburse the federal share of the money to the responding entity, with sufficient state funds to cover the actual costs incurred by the responding entity in providing assistance. A local entity may also request assistance from another local entity. A requesting entity shall reimburse actual costs of providing mutual aid assistance to the responding entity from available funds. If federal money is available to pay costs associated with the provision of mutual aid assistance, the requesting entity shall make the claim for the eligible costs of the responding entity on the requesting entity's subgrant application and shall disburse the federal share of the money to the responding entity.

CSSB 11 amends the Government Code to allow up to 350 amateur radio operators at a time, who are state employees, to be granted leave to assist during a disaster without a deduction in salary, with authorization of their employer and approval of the governor. The division shall coordinate the establishment and maintenance of the list of eligible employees. Amends the Education Code to provide that "paging device" does not include an amateur radio under the control of an operator who holds an amateur radio station license issued by the Federal Communications Commission.

CSSB 11 further amends the Education Code to apply, as previously provided for in this subsection, any laws that concern open meetings or the availability of information to open-enrollment charter schools. Requires school districts to report results of security audits to the Texas School Safety Center in the manner required by the center. The Commissioner of Higher Education or the commissioner's designee is added to the Board of Directors of the Texas School Safety Center. The center may provide on-site technical assistance and safety training and charge a fee for it to an institution of higher education. An institution of higher education may use any appropriate model plan developed by the center. Makes non-substantive update to school safety law.

CSSB 11 amends Section 551.045, Government Code, to provide that, for purposes of Subsection (b)(2), the sudden relocation of a large number of residents from the area of a declared disaster to a governmental body's jurisdiction is considered a reasonably unforeseeable situation for a reasonable period immediately following the relocation. Requires notice of an emergency meeting or supplemental notice of an emergency item added to the agenda of a meeting to address a situation described by this subsection to be given to members of the news media as provided by Section 551.047 not later than one hour before the meeting. Further, governmental bodies are not required to conduct open meetings to deliberate a security audit or an emergency operations plan.

Vehicles used by nonprofit disaster relief organizations may not be required to pay a toll for the use of a toll project.

CSSB 11 amends the Government Code to require the emergency management council to recommend to DPS which private emergency organizations should be authorized to operate certain vehicles as designated emergency vehicles in the case of a disaster. The Transportation Code is amended to require DPS to use those recommendations to designate which vehicles may be operated by which designated organizations as emergency vehicles during declared disasters. Those designated vehicles may be operated as if the vehicle were an authorized emergency vehicle under certain conditions. DPS shall adopt rules as necessary to implement this section.

CSSB 11 amends the Code of Criminal Procedure to strike "The term includes the electronic storage of a wire communication." as part of the definition of "Wire communication". It further amends Article 18.20, Code of Criminal Procedure, by amending Section 4 to allow a judge to issue an order authorizing the interception of wire, oral, or electronic communications (wiretap) only if the prosecutor shows probable cause to believe that the interception will provide evidence of the commission of a felony offense under Chapter 20 (Kidnapping and Unlawful Restraint), 20A (Trafficking of Persons), or 34 (Money Laundering), Penal code, in addition to certain other offenses. It adds Section 9A to provide that, notwithstanding Section 8(a)(2)(B) (requiring a description of the facility or facilities to be wiretapped on an application for an order authorizing a wiretap), an application for a wiretap order is not required to contain a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted if a judge of competent jurisdiction determines the person whose communications are to be intercepted is likely to circumvent the order by changing communication devices repeatedly or there are exigent circumstances requiring the order to apply to any communication by that person and not be limited to a specific facility or place. Further, it provides that a judge making a determination under this Section is not required to include a description of the nature or location of the facility from which or the place where authority to wiretap is granted, as required by Section 9(b)(2), in the wiretap order. Alternatively, the judge may authorize the interception of any communications made by a specified person while the person is present in the geographic jurisdiction of the court. This section does not place any additional legal obligation on a wire or electronic communications provider to identify or locate a person whose communications are to

be intercepted. CSSB 11 amends Article 18.21, Code of Criminal Procedure, to amend the definition of "mobile tracking device".

CSSB 11 amends the Government Code to provide that the comprehensive state emergency management plan may include provisions for the education and training of local officials on activation of the Emergency Alert System.

CSSB 11 amends Section 503.005, Transportation Code, by adding Subsections (c) and (d), to provide that a dealer who submits information to the database under Section 503.0631 satisfies the requirement for a dealer to notify the Texas Department of Transportation (TxDOT) of the sale or transfer of a motor vehicle, trailer, or semitrailer under this section (Notice of Sale or Transfer) and to provide that the notice required under this section is in addition to the application for vehicle registration and certificate of title a dealer is required to submit under Section 501.0234

CSSB 11 amends the Transportation Code to require TxDOT to prescribe procedures for a dealer and a converter to generate a vehicle-specific number (number) using the database developed under this bill and assign the number to each temporary cardboard buyer's tag (tag) and procedures to clearly display such a number, in addition to other items set forth in this subsection. Makes conforming changes.

CSSB 11 amends the Transportation Code to require TxDOT to develop and maintain a secure, real-time database of information on vehicles to which dealers and converters have affixed temporary cardboard tags, to be managed by the vehicle titles and registration division of TxDOT. Requires the database to allow law enforcement agencies to use the number assigned to and displayed on the tag to obtain information about the dealer or converter that owns the vehicle. Requires the dealer or converter to enter into the database, through the Internet, information on the vehicle and information about the dealer or converter as prescribed by TxDOT before a tag is authorized to be displayed on the vehicle. Prohibits TxDOT from denying access to the database to any dealer who holds a general distinguishing number issued under chapter 503, Transportation Code, (Dealer's and Manufacturer's Vehicle License Plates) or a dealer or converter licensed under Chapter 2301 (Sale or Lease of Motor Vehicles), Occupations Code. Requires TxDOT to adopt rules and prescribe procedures necessary to implement this section.

Amends Section 503.063, Transportation Code, to require a dealer to issue to a person who buys a vehicle one tag for the vehicle. Requires TxDOT to prescribe procedures for a dealer to take certain actions set forth in this subsection related to the generation and display of a number on the tag. Requires TxDOT to ensure that a dealer may generate in advance a sufficient amount of numbers under Subsection (e)(2)(B) (numbers generated for use when the Internet is inaccessible) in order to continue selling vehicles for a period of up to one week in which the dealer is unable to access the Internet due to an emergency. Requires TxDOT to establish an expedited procedure to allow affected dealers to apply for additional numbers so they may remain in business during an emergency. Authorizes a dealer to issue an additional tag to a person, using the same number generated under Subsection (e)(2)(A) (a number generated using the database), after the expiration of 20 working days after the tags' initial issuance and the person to operate the vehicle with the tag if the dealer is unable to obtain the necessary documents for permanent metal license plates because the documents are in the possession of a lienholder not in compliance with certain law. Makes a conforming change. Requires a dealer to charge the buyer a registration fee of not more than \$5 for each tag other than an additional tag under Subsection (g), as prescribed by TxDOT to be sent to the comptroller for deposit to the credit of the state highway fund

CSSB 11 further amends the Transportation Code to require TxDOT to develop and maintain a secure, real-time database of information on persons to whom temporary buyer's tags are issued that may be used by a law enforcement agency in the same manner that the agency uses vehicle registration information. Requires the database to be managed by the vehicles titles and registration division of TxDOT. Sets out requirements for the database. Prohibits TxDOT from denying access to the database to any dealer who holds a general distinguishing number issued under this chapter or who is licensed under Chapter 2301, Occupations Code. Requires a dealer to obtain 24-hour Internet access at its place of business and sets out procedures prescribed by

TxDOT if the dealer is unable to access the Internet. Requires TxDOT to adopt rules and prescribe procedures necessary to implement this section.

CSSB 11 amends the Transportation Code to require each dealer to provide a one-page written notice to a buyer explaining certain items set forth in this section and requires the dealer to require the buyer to sign a statement indicating the buyer received notice under this section. Requires TxDOT to adopt rules regarding the notice as set forth in this section and to establish a procedure to determine dealer compliance with this section.

Amends the Transportation Code to prohibit a person from producing or reproducing a tag or an item represented to be a tag for the purpose of distributing the tag to someone other than a dealer or converter; to prohibit a person other than a dealer or converter from purchasing a tag and prohibits a person from selling or distributing a tag or an item represented to be a tag unless the person is authorized under this section. Amends the Transportation Code to set forth certain penalties for offenses under certain sections.

Amends the Occupations Code to allow for the denial of an application for a license, revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder if the applicant or license holder violates the requirements of Section 503.0631, Transportation Code.

Requires TxDOT to adopt rules implementing Sections 503.0626 and 503.0631, Transportation Code, as added by this bill, as soon as practicable after the effective date of this Act. Prohibits TxDOT from enforcing those sections until the rules adopted for them take effect and the databases are operational and available to dealers with a general distinguishing number or a converter's license issued under Chapter 2301, Occupations Code.

CSSB 11 amends Section 2206.001, Government Code, by amending Subsection (c) (7) (A) by striking "subject to Chapter 111, Natural Resources Code, and Section B(3)(b), Article 2.01, Texas Business Corporation Act" and adding Subsection (f) that an exercise of eminent domain authority by a common carrier under (c)(7) is not invalid solely because the common carrier does not operate as a corporation under the laws of Texas.

Subdivision (9), Section 418.004, and Subsections (a), (b), and (c), Section 418.109, Government Code, are repealed. Further, Subsection (d), Section 228.058, Transportation Code, is repealed.

EFFECTIVE DATE

Articles 1 and 9 take effect upon passage, or, if the Act does not receive the necessary vote, these Articles takes effect September 1, 2007.

Except for Article 1 and 9, this Act takes effect September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

CSSB 11 deletes the entire Article 2 - PREPAID MOBILE TELEPHONES- from the engrossed version of the bill, and renumbers subsequent articles.

The substitute amends Section 551.045, Government Code, to provide that, for purposes of Subsection (b)(2), the sudden relocation of a large number of residents from the area of a declared disaster to a governmental body's jurisdiction is considered a reasonably unforeseeable situation for a reasonable period immediately following the relocation. Requires notice of an emergency meeting or supplemental notice of an emergency item added to the agenda of a meeting to address a situation described by this subsection to be given to members of the news media as provided by Section 551.047 not later than one hour before the meeting.

CSSB 11 adds Article 9 - EMINENT DOMAIN AUTHORITY OF COMMON CARRIERS - to amend Section 2206.001, Government Code, by amending Subsection (c) (7) (A) by striking "subject to Chapter 111, Natural Resources Code, and Section B(3)(b), Article 2.01, Texas Business Corporation Act" and adding Subsection (f) that an exercise of eminent domain authority by a common carrier under (c)(7) is not invalid solely because the common carrier does not operate as a corporation under the laws of Texas.