

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 3324
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Transportation & Homeland Security
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

There is currently no oversight at the state level for fusion centers in Texas. The United States Department of Justice has released guidelines for best practices in response to many concerns and obvious issues at some centers nationally, including one specifically in Texas.

C.S.H.B. 3324 codifies a Texas Fusion Center Policy Council (policy council) recently created by the Department of Public Safety of the State of Texas (DPS). The policy council consists of representatives from the fusion centers and is given responsibility for, among other things, making recommendations to DPS on rules regarding governing the operations of fusion centers in Texas.

The policy council will share best practices as well as develop and share strategies for meeting federal standards. Additionally, the policy council would create a privacy advisory group with at least one privacy advocate.

C.S.H.B. 3324 requires DPS rules to include guidelines for a common concept of operations, monitoring activities by the policy council, and adherence to state and federal laws designed to protect privacy and other legal rights of individuals.

C.S.H.B. 3324 amends current law relating to the operations and monitoring of fusion centers in the state.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Department of Public Safety of the State of Texas in SECTION 6 (Section 421.084, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 421.001, Government Code, by adding Subdivisions (2-a), (4), and (5) to define "fusion center," "intelligence," and "recognized fusion center."

SECTION 2. Amends Section 421.002(b), Government Code, to require the governor's homeland security strategy to coordinate homeland security activities among and between local, state, and federal agencies and the private sector and to include specific plans for certain things, including directing the Texas Fusion Center, rather than the Texas Infrastructure Protection Communications Center, and giving the center certain forms of authority to implement the governor's homeland security strategy.

SECTION 3. Amends Section 421.071, Government Code, to make a conforming change.

SECTION 4. Amends the heading to Subchapter E, Chapter 421, Government Code, to read as follows:

SUBCHAPTER E. TEXAS FUSION CENTER AND OTHER FUSION CENTERS OPERATING IN THIS STATE

SECTION 5. Amends Sections 421.082(a) and (b), Government Code, as follows:

(a) Requires the Texas Fusion Center (center) to serve as the state's primary entity for the planning, coordination, and integration of government communications capabilities to help implement the governor's homeland security strategy and ensure an effective response in the event of a homeland security emergency. Makes a conforming change.

(b) Provides that the center's duties include, among other certain duties, making recommendations to the Department of Public Safety of the State of Texas (DPS) regarding the monitoring of fusion centers operating in this state and regarding the functions of the Texas Fusion Center Policy Council (policy council) created under Section 421.083.

SECTION 6. Amends Subchapter E, Chapter 421, Government Code, by adding Sections 421.083, 421.084, 421.085, and 421.086, as follows:

Sec. 421.083. TEXAS FUSION CENTER POLICY COUNCIL. (a) Requires DPS to create the policy council and the bylaws for the policy council to assist DPS in monitoring fusion center activities in this state.

(b) Provides that the policy council is composed of one executive representative from each recognized fusion center operating in this state.

(c) Requires the policy council to:

(1) develop and disseminate strategies to:

(A) facilitate the implementation of applicable federal standards and programs on a statewide basis by each fusion center operating in this state;

(B) expand and enhance the statewide intelligence capacity to reduce the threat of terrorism and criminal enterprises; and

(C) continuously review critical issues pertaining to homeland security activities;

(2) establish a privacy advisory group, with at least one member who is a privacy advocate, to advise the policy council and to meet at the direction of the policy council; and

(3) recommend best practices for each fusion center operating in this state, including:

(A) best practices to ensure that the center adheres to 28 C.F.R. Part 23 and any other federal or state law designed to protect privacy and the other legal rights of individuals; and

(B) best practices for the smooth exchange of information among all fusion centers operating in this state.

Sec. 421.084. FUSION CENTERS OPERATING IN THIS STATE: RULES AND MONITORING. (a) Requires DPS, after considering the recommendations of the center under Section 421.082(b)(4), and the policy council under Section 421.083(c)(3), to adopt rules to govern the operations of fusion centers in this state, including guidelines to:

(1) for any fusion center operating in this state, establish a common concept of operations to provide clear baseline standards for each aspect of the center's activities;

(2) inform and define the monitoring of those activities by the policy council; and

(3) ensure that any fusion center operating in this state adheres to state and federal laws designed to protect privacy and the other legal rights of individuals, including 28 C.F.R. Part 23 and any other law that provides clear standards for the treatment of intelligence and for the collection and storage of noncriminal information, personally identifiable information, and protected health information.

(b) Authorizes DPS to require that a fusion center audited under applicable DPS rules pay any costs incurred by the policy council in relation to the audit.

(c) Prohibits a member of the policy council from receiving compensation but entitles the member to reimbursement for the member's travel expenses as provided by Chapter 660 (Travel Expenses) and the General Appropriations Act.

(d) Prohibits a fusion center from receiving state grant money if the fusion center adopts a rule, order, ordinance, or policy under which the fusion center fails or refuses to comply with rules adopted by DPS under Subsection (a), beginning with the first state fiscal year occurring after the center adopts the rule, order, ordinance, or policy.

Sec. 421.085. **PRIVACY POLICY REQUIRED.** (a) Requires each fusion center operating in this state to adopt a privacy policy providing at a minimum that, with respect to an individual or organization, the fusion center:

(1) will not seek, collect, or retain information that is based solely on any of the following factors, as applicable to that individual or organization:

(A) religious, political, or social views or activities;

(B) participation in a particular organization or event; or

(C) race, ethnicity, citizenship, place of origin, age, disability, gender, or sexual orientation; and

(2) will take steps to ensure than any agency that submits information to the fusion center does not submit information based solely on a factor described by Subdivision (1).

(b) Prohibits a factor described by Subsection (a)(1), in a criminal investigation, from alone giving rise to reasonable suspicion. Authorizes a factor described by Subsection (a)(1), however, to be used in connection with a specific description of a suspect in the investigation.

Sec. 421.086. **REPORT.** Requires the policy council annually to submit to the governor and to each house of the legislature a report that contains, with respect to the preceding year:

(1) the council's progress in developing and coordinating the statewide fusion effort and intelligence network described by the governor's homeland security strategy;

(2) the progress made by fusion centers operating in this state in meeting the fusion center guidelines developed under the Department of Homeland Security State, Local, and Regional Fusion Center Initiative established under 6 U.S.C. Section 124h; and

(3) a summary of fusion center audits or reviews conducted under applicable rules adopted by DPS.

SECTION 7. Effective date: upon passage or September 1, 2011.