

BILL ANALYSIS

C.S.S.B. 9
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Homeland Security & Public Safety
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Concerned parties contend that Texas is facing major threats resulting from a lack of security along the state's border with Mexico. Mexican drug cartels have been waging a war with one another over illegal trade routes and gang turf, and innocent people on both sides of the border are getting caught in the crossfire. While state and local officials have been combating border crime for many years, many believe that the job of securing the national border is the responsibility of the federal government. However, in recent years, the drug war has become more violent and pervasive, and the federal government has failed to provide the necessary resources to protect Texas from the ensuing threat. Therefore, the responsibility to keep citizens safe has shifted to the State of Texas. C.S.S.B. 9 seeks to make changes to current state laws in an effort to provide increased border security and to create more avenues for the state to best evaluate the threat level and combat that threat by maximizing the use of current resources, including technology.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Department of Public Safety in SECTION 5 and SECTION 33 of this bill and to the Texas Workforce Commission in SECTION 17 of this bill.

ANALYSIS

C.S.S.B. 9 amends the Agriculture Code to require the Department of Agriculture, in conjunction with private landowners and other appropriate entities, to assess the impact of illegal activity along the Texas-Mexico border on rural landowners and the agriculture industry and to work in conjunction with other appropriate entities to develop recommendations to enhance border security and address issues identified under this provision.

C.S.S.B. 9 amends the Code of Criminal Procedure to require a law enforcement agency that has custody of a person who has been arrested and transported to a place of detention to verify the immigration status of the person by use of the federal Secure Communities program operated by United States Immigration and Customs Enforcement or a successor program. The bill specifies that a law enforcement agency is not required to conduct an immigration status verification of a person who is transferred to the custody of the agency by another law enforcement agency if the transferring agency conducted such verification before transferring custody of the person.

C.S.S.B. 9, in a provision of law requiring a court to issue to a jury during the penalty phase of a trial of a defendant accused of certain felony offenses a specific charge that provides information regarding good conduct time and parole eligibility, includes among those offenses engaging in organized criminal activity and directing activities of certain criminal street gangs. The bill makes nonsubstantive changes.

C.S.S.B. 9 requires an attorney representing the state, with respect to forfeited property seized in connection with a violation of the Texas Controlled Substances Act by a peace officer employed

by the Department of Public Safety (DPS) and awarded to the state by entry of a default judgment, to enter into a local agreement with DPS that allows the attorney to transfer forfeited property to DPS to maintain, repair, use, and operate for official purposes or to allocate the property or the proceeds from the sale of forfeited property in the following proportions: 40 percent to a special fund in DPS to be used solely for law enforcement purposes; 30 percent to a special fund in the county treasury for the benefit of the office of the attorney representing the state, to be used by the attorney solely for the official purposes of the attorney's office; and 30 percent to the general revenue fund.

C.S.S.B. 9 authorizes an attorney representing the state, with respect to forfeited property seized in connection with a violation of the Texas Controlled Substances Act by DPS concurrently with any other law enforcement agency, in a forfeiture proceeding in which a default judgment is rendered in favor of the state, to allocate property or proceeds in accordance with a memorandum of understanding between the law enforcement agencies and the attorney representing the state.

C.S.S.B. 9 amends the Government Code to add temporary provisions, set to expire September 1, 2013, requiring the DPS to establish a pilot program in which automatic license plate readers may be installed in law enforcement motor vehicles used by DPS for law enforcement. The bill defines "automatic license plate reader" for purposes of the bill's provisions relating to an automatic license plate reader pilot program. The bill requires the program to include a request for proposal process to select a contractor for the installation of automatic license plate readers and requires DPS to adopt rules as necessary to implement the program. The bill limits the use of an automatic license plate reader to recording information necessary to identify a motor vehicle and prohibits use of the reader to record an image of a person in a motor vehicle. The bill authorizes the querying or dissemination of the images and any related data produced from an automatic license plate identification camera system only for a law enforcement purpose and requires all data produced from an automatic license plate reader to be destroyed within one year of collection unless the data is evidence in a criminal investigation or prosecution.

C.S.S.B. 9 establishes that any agreement or memorandum of understanding concerning data-sharing related to an automatic license plate identification camera system between law enforcement entities collecting, sharing, or gaining access to data is subject to state public information law. The bill requires DPS, not later than December 1, 2012, to file a report with the committee in each house of the legislature having primary jurisdiction over homeland security matters that includes information regarding the use of automatic license plate readers by DPS and any other information that would assist the legislature in evaluating the effectiveness of the use of automatic license plate readers by DPS.

C.S.S.B. 9 authorizes DPS to establish border checkpoints, rather than a program for the purpose of establishing border checkpoints. The bill expands the purpose of such checkpoints to include the prevention of the unlawful possession or unlawful and imminent movement or transfer from Texas to Mexico of firearms, controlled substances, and currency. The bill authorizes DPS to establish border checkpoints in conjunction with, and share staffing costs with, federal and local law enforcement authorities, rather than just local law enforcement authorities. The bill removes a provision prohibiting a peace officer at a checkpoint from directing a driver or a passenger in a motor vehicle to leave the vehicle or move the vehicle off the roadway unless the officer has reasonable suspicion or probable cause to believe that the person committed or is committing an offense and providing an exception. The bill reenacts these provisions, effective September 1, 2015, to read as they existed before being amended by the bill.

C.S.S.B. 9 authorizes the public safety director of DPS to call special rangers and special Texas Rangers into service to preserve the peace and protect life and property, conduct background investigations, monitor sex offenders, serve as part of two-office units on patrol in high threat areas, and provide assistance to DPS during disasters.

C.S.S.B. 9 includes an offense of engaging in organized criminal activity or directing activities of certain criminal street gangs among the offenses for which an inmate serving a sentence is ineligible for release on parole until the inmate's actual calendar time served, without consideration of good conduct time, equals one-half of the sentence or 30 calendar years, whichever is less, but in no event less than two calendar years. The bill prohibits an inmate from being released to mandatory supervision if the inmate is serving a sentence for or has been previously convicted of a first degree felony of engaging in organized criminal activity or directing activities of certain criminal street gangs.

C.S.S.B. 9 reenacts and amends Section 511.0101(a), Government Code, as amended by Chapters 977 (H.B. 3654) and 1215 (S.B. 1009), Acts of the 81st Legislature, Regular Session, 2009, to include in the information to be contained in a report each county is required to submit to the Commission on Jail Standards on or before the fifth day of each month the number of prisoners confined in the county jail on the first day of the month, classified on the basis of, among other categories, prisoners for whom an immigration detainer has been issued by United States Immigration and Customs Enforcement, rather than prisoners who are known to be pregnant; and to add to the information to be contained in the report the total cost to the county during the preceding month of housing prisoners for whom such an immigration detainer has been issued, calculated based on the average daily cost of housing a prisoner in the county jail. The bill requires a county to submit the first report as described above not later than October 5, 2011.

C.S.S.B. 9 establishes legislative findings relating to the guarantees ensured the State of Texas and the people of Texas by the Tenth and Ninth Amendments to the United States Constitution. The bill sets out provisions relating to state sovereignty and the duty of the attorney general to represent the state in an action defending state sovereignty, and granting the governor and a member of the legislature bringing such an action in an official capacity immunity from civil liability.

C.S.S.B. 9 authorizes the governing body of a state agency that performs a law enforcement function to exempt the agency from the purchasing procedures under statutory provisions governing state purchasing and general services or contracts with governmental entities for the purposes of purchasing equipment related to the agency's law enforcement functions if the governing body obtains a written opinion from the comptroller of public accounts or the Legislative Budget Board on whether the procedures should be waived; and if the governing body, after considering the written opinion, determines that following those procedures would negatively impact homeland security or impair the agency's ability to perform the agency's law enforcement functions. The bill prohibits the governing body of a state agency from exempting the agency from certain other purchasing procedures. The bill exempts a project constructed by and for DPS from statutory provisions governing state building construction and acquisition.

C.S.S.B. 9 amends the Labor Code to add provisions relating to employment of unauthorized foreign nationals and specifies the purpose of those provisions. The bill requires the Texas Workforce Commission to adopt rules for the administration of those provisions. The bill prohibits an employer from knowingly employing, or recruiting or referring for a fee for employment, an unauthorized foreign national. The bill specifies that an employer has not violated the prohibition in regard to a particular employee if the employer, at least four calendar days after the commencement of the employee's employment, requested from the employee and received and documented in the employee's employment record lawful resident verification information consistent with employer requirements under the federal Immigration Reform and Control Act of 1986 and the lawful resident verification information provided by the employee later was determined to be false. The bill specifies that an employer has not violated the prohibition in regard to a particular employee if the employer verified the immigrant status of the person at least four calendar days after the commencement of the employee's employment through the E-Verify program.

C.S.S.B. 9 authorizes a person who has reason to believe that an employer has violated the prohibition to file a complaint with the Texas Workforce Commission. The bill requires a complaint to be in writing on a form prescribed by the commission and to be verified by the person making the complaint. The bill authorizes a person to file a complaint in person at an office of the commission or by mailing the complaint to an address designated by the commission. The bill requires the commission, not later than November 1 of each even-numbered year, to prepare and submit to the governor and the legislature a written report based on nonidentifiable, summary data compiled by the commission from filed complaints filed during the two preceding state fiscal years. The bill requires the report to include any relevant information and analysis the commission determines would assist the legislature in making informed decisions regarding the issue of illegal immigration as it relates to employment in this state and prohibits the report from including any information that could reasonably be expected to reveal the identity of a particular employer or employee or of a person who files a complaint with the commission. The bill defines "commission," "employee," "employer," "E-Verify program," "knowingly," "lawful resident alien," "lawful resident verification information," and "unauthorized foreign national."

C.S.S.B. 9 amends the Penal Code to remove an actor using a vehicle while the actor is in flight who has not been previously convicted of evading arrest or detention from the actions that enhance the penalty for evading arrest or detention from a Class A misdemeanor to a state jail felony. The bill removes the condition that an actor has been previously convicted of evading arrest or detention from the enhancement of evading arrest or detention from a Class A misdemeanor to a felony of the third degree if the actor uses a vehicle while the actor is in flight. The bill enhances the penalty for evading arrest or detention from a Class A misdemeanor to a felony of the third degree if the actor uses a tire deflation device against the officer while the actor is in flight and enhances the penalty to a felony of the second degree if another suffers serious bodily injury as a direct result of the actor's use of a tire deflation device while the actor is in flight. The bill, for purposes of provisions of law relating to evading arrest or detention, provides for the meaning of "tire deflation device," defines "tire deflation device," and provides for the meaning of "vehicle" by reference to the Transportation Code.

C.S.S.B. 9 makes it a state jail felony to intentionally or knowingly possess, manufacture, transport, repair, or sell a tire deflation device and establishes an affirmative defense to prosecution for the offense if the actor's conduct was incidental to dealing with a tire deflation device solely as an antique or curio or was incidental to dealing with a tire deflation device solely for the purpose of making the device available to the armed forces or national guard, a governmental law enforcement agency, or a correctional facility.

C.S.S.B. 9 reenacts and amends Section 71.02(b), Penal Code, as amended by Chapters 761 (H.B. 354) and 900 (S.B. 1067), Acts of the 73rd Legislature, Regular Session, 1993, to specify that a first degree felony offense of engaging in organized criminal activity is punishable by imprisonment in the Texas Department of Criminal Justice (TDCJ) for life or for any term of not more than 99 years or less than 15 years.

C.S.S.B. 9 reenacts Section 71.02(c), Penal Code, as amended by Chapters 761 (H.B. 354) and 900 (S.B. 1067), Acts of the 73rd Legislature, Regular Session, 1993, relating to conspiring to commit an offense of engaging in organized criminal activity.

C.S.S.B. 9 revises the conditions under which a person commits the offense of directing activities of criminal street gangs to make it such an offense if the person, as part of the identifiable leadership of a criminal street gang, knowingly finances, directs, or supervises the commission of, or a conspiracy to commit, one or more of the following offenses by members of a criminal street gang: certain felony offenses to which judge-ordered community supervision does not apply; a felony for which it is shown that a deadly weapon was used or exhibited during the commission of the offense or during immediate flight from the commission of the offense; or an offense that is punishable as a first or second degree felony under the Texas Controlled

Substances Act. The bill removes language making it such an offense to knowingly initiate, organize, plan, finance, direct, manage, or supervise a criminal street gang or members of a criminal street gang with the intent to benefit, promote, or further the interests of the gang or to increase the person's standing, position, or status in the gang. The bill specifies that the offense of directing activities of criminal street gangs is punishable by imprisonment in TDCJ for life or for any term of not more than 99 years or less than 25 years. The bill removes the definition of "criminal street gang" for purposes of the offense of directing activities of criminal street gangs.

C.S.S.B. 9 amends the Transportation Code to include the citizenship status of each holder of a driver's license or personal identification certificate in the information contained in the suitable indexes that DPS is required to maintain.

C.S.S.B. 9 requires DPS to require each applicant for an original, renewal, or duplicate personal identification certificate or driver's license to furnish to DPS proof of the applicant's United States citizenship or documentation issued by the appropriate United States agency that authorizes the applicant to be in the United States, unless the information has been previously provided to DPS. The bill establishes the expiration of a personal identification certificate as follows:

- for an applicant who is a citizen, national, or legal permanent resident of the United States or a refugee or asylee lawfully admitted into the United States, the certificate expires on a date specified by DPS if the applicant is younger than 60 years of age or does not expire if the applicant is 60 years of age or older;
- for any other applicant, the certificate expires on the earlier of a date specified by DPS or the expiration date of the applicant's authorized stay in the United States; or the first anniversary of the date of issuance, if there is no definite expiration date for the applicant's authorized stay in the United States.

C.S.S.B. 9 requires an applicant who is not a citizen of the United States to present to DPS documentation issued by the appropriate United States agency that authorizes the applicant to be in the United States, prohibits DPS from issuing a personal identification certificate to an applicant who fails or refuses to comply with the requirement, and makes the requirement apply to a personal identification certificate applied for by a person whose driver's license or personal identification certificate record indicates that the person is required to register as a sex offender. The bill requires an applicant for an original driver's license who is not a citizen of the United States to present to DPS documentation issued by the appropriate United States agency that authorizes the applicant to be in the United States before the applicant may be issued a driver's license. The bill includes information that DPS or state law requires to determine an applicant's residency in the information required to be included in an application for an original driver's license.

C.S.S.B. 9 includes an instruction permit and an occupational driver's license under provisions of law establishing the expiration of an original driver's license and a provisional license, and applies these provisions to the issuance of such license to an applicant who is a citizen, national, or legal permanent resident of the United States or a refugee or asylee lawfully admitted to the United States. The bill makes each original driver's license issued to an applicant who is not a person as previously described expire on the earlier of the first birthday of the license holder occurring after the sixth anniversary of the date of the application or the expiration date of the license holder's lawful presence in the United States as determined by the appropriate United States agency in compliance with federal law; or on the first anniversary of the date of issuance, if there is no definite expiration date for the applicant's authorized stay in the United States.

C.S.S.B. 9 makes each original provisional license or instruction permit issued to an applicant who is not a person as previously described expire on the earliest of the 18th birthday of the license holder, the first birthday of the license holder occurring after the date of the application, or the expiration of the license holder's lawful presence in the United States as determined by the

United States agency responsible for citizenship and immigration in compliance with federal law. The bill makes each original occupational driver's license issued to an applicant who is not a person as previously described expire on the earlier of the first anniversary of the date of issuance or the expiration of the license holder's lawful presence in the United States as determined by the appropriate United States agency in compliance with federal law.

C.S.S.B. 9 makes the provision of law establishing the expiration of a driver's license that is renewed apply to an applicant who is a citizen, national, or legal permanent resident of the United States or a refugee or asylee lawfully admitted into the United States and establishes that a renewed driver's license for an applicant who is not a person so described expires on the earlier of the sixth anniversary of the expiration date before renewal, or the expiration date of the applicant's authorized stay in the United States; or the first anniversary of the date of issuance, if there is no definite expiration for the applicant's authorized stay in the United States.

C.S.S.B. 9 makes an original or renewal driver's license issued to an applicant who is 85 years of age or older and not a citizen, national, or legal permanent resident of the United States or a refugee or asylee lawfully admitted into the United States expire on the earlier of the second anniversary of the expiration date before renewal, or the expiration date of the applicant's authorized stay in the United States; or the first anniversary of the date of issuance if there is no definite expiration date for the applicant's authorized stay in the United States.

C.S.S.B. 9 makes the provision of law establishing the expiration of a driver's license issued to certain sex offenders, including a renewal, duplicate, or corrected license, apply to a license holder who is a citizen, national, or legal permanent resident of the United States or a refugee or asylee lawfully admitted into the United States and makes such a license issued to an applicant who is not a person so described expire on the earlier of the expiration date of the applicant's authorized stay in the United States, or the first birthday of the license holder occurring after the date of application, except that the initial license issued expires on the second birthday of the license holder occurring after the date of application.

C.S.S.B. 9 sets at \$24 the fee for a driver's license or personal identification certificate that is issued to a person who is not a citizen, national, or legal permanent resident of the United States or a refugee or asylee lawfully admitted into the United States and that is valid for not more than one year, with certain exceptions.

C.S.S.B. 9 authorizes DPS to adopt rules necessary to maintain compliance with certain federal regulations.

C.S.S.B. 9 establishes that to the extent of any conflict or inconsistency between a statutory provision governing the content of a commercial driver's license and statutory provisions governing a nonresident commercial driver's license and the expiration of a commercial driver's license or permit, the latter provisions control.

C.S.S.B. 9 makes the provision of law establishing the expiration of a commercial driver's license or commercial driver learner's permit, including a renewal, duplicate, or corrected license, issued to certain sex offenders apply to a license or permit holder who is a citizen, national, or legal resident of the United States or a refugee or asylee lawfully admitted into the United States and makes such a license or permit issued to such a sex offender who is not as previously described expire on the earlier of the expiration date of the applicant's authorized stay in the United States, or the first birthday of the license holder occurring after the date of application, except that the initial license issued expires on the second birthday of the license holder occurring after the date of application.

C.S.S.B. 9 requires DPS to require each applicant for a renewal or duplicate commercial driver's license to furnish to DPS proof of the applicant's United States citizenship or documentation issued by the appropriate United States agency that authorizes the applicant to be in the United

States, unless the information has been previously provided to DPS.

C.S.S.B. 9 makes conforming and nonsubstantive changes.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 9 contains a provision not included in the original requiring the Department of Agriculture, in conjunction with private landowners and other appropriate entities, to assess the impact of illegal activity along the Texas-Mexico border on rural landowners and the agriculture industry and to work in conjunction with other appropriate entities to develop recommendations to enhance border security and address issues identified under this provision.

C.S.S.B. 9 differs from the original by requiring a law enforcement agency that has custody of a person who has been arrested and transported to a place of detention to verify the immigration status of the person, whereas the original does not impose the condition that the person has been arrested and transported to a place of detention. The substitute omits a provision included in the original requiring a law enforcement agency to notify United States Immigration and Customs Enforcement if the agency is unable to verify a person's immigration status.

C.S.S.B. 9 contains a provision not included in the original requiring an attorney representing the state, with respect to forfeited property seized in connection with a violation of the Texas Controlled Substances Act by a peace officer employed by the Department of Public Safety (DPS) and awarded to the state by default judgment, to enter into a local agreement with DPS that allows the attorney to transfer the property to DPS for official purposes or to allocate the property or the proceeds from the sale of forfeited property in specified proportions. The substitute contains a provision not included in the original authorizing such an attorney, with respect to such forfeited property seized by DPS concurrently with any other law enforcement agency, in a forfeiture proceeding in which a default judgment is rendered in favor of the state, to allocate property or proceeds in accordance with a memorandum of understanding between the law enforcement agencies and the attorney.

C.S.S.B. 9 contains provisions not included in the original authorizing DPS to establish border checkpoints, rather than a program for the purpose of establishing border checkpoints, expanding the purpose of such checkpoints, and authorizing DPS to establish border checkpoints in conjunction with, and share costs with, federal as well as local law enforcement authorities. The substitute removes statutory language not removed in the original prohibiting a peace officer at a checkpoint from directing a driver or a passenger in a motor vehicle to leave the vehicle or move the vehicle off the roadway and language providing an exception to that prohibition. The substitute contains a provision not included in the original reenacting these provisions relating to border checkpoints, effective September 1, 2015, as they existed before being amended by the bill's provisions.

C.S.S.B. 9 contains provisions not included in the original establishing legislative findings and setting out provisions relating to state sovereignty and the duty of the attorney general to represent the state in an action defending state sovereignty, and granting the governor and a member of the legislature bringing such an action in an official capacity immunity from civil liability.

C.S.S.B. 9 contains provisions not included in the original authorizing the governing body of a state agency that performs a law enforcement function to exempt the agency from the purchasing procedures under provisions of law governing state purchasing and general services or contracts with governmental entities for particular purposes under certain conditions. The substitute

contains a provision not included in the original prohibiting the governing body of a state agency from exempting the agency from certain other purchasing procedures.

C.S.S.B. 9 contains a provision not included in the original exempting a project constructed by and for DPS from statutory provisions governing state building construction and acquisition.

C.S.S.B. 9 contains provisions not included in the original establishing a prohibition against knowingly employing an unauthorized foreign national, establishing procedures for filing complaints of a suspected violation of the prohibition, and requiring a biennial report to the legislature from the Texas Workforce Commission based on such complaints.

C.S.S.B. 9 contains provisions not included in the original making changes to provisions of law regarding the enhancement of certain penalties for offenses relating to evading arrest or detention.

C.S.S.B. 9 omits provisions included in the original requiring DPS to designate certain driver's license offices as temporary visitor stations.

C.S.S.B. 9 omits a provision included in the original authorizing DPS to use its image verification system to ensure that an applicant for a personal identification certificate, driver's license, or commercial driver's license or permit is not a fugitive from justice.

C.S.S.B. 9 omits provisions included in the original relating to driver's license system improvement and maintenance and an associated account and fees.

C.S.S.B. 9 omits provisions included in the original requiring an application for a commercial driver's license or commercial driver learner's permit, in addition to other requirements, to meet requirements under provisions of law governing an application for an original license and information required to be furnished to DPS.

C.S.S.B. 9 omits provisions included in the original making the fee for a resident or nonresident commercial driver's license applicable to a resident of Texas who is not a citizen, national, or legal permanent resident of the United States or a refugee or asylee lawfully admitted into the United States and redesignating a section of the Transportation Code.

C.S.S.B. 9 contains a provision not included in the original authorizing DPS to adopt rules necessary to maintain compliance with certain federal regulations.

C.S.S.B. 9 omits provisions included in the original increasing the fee required to be annually paid by an insurer writing motor vehicle insurance in Texas to the Automobile Burglary and Theft Prevention Authority and requiring 50 percent of this fee to be appropriated only to the authority for the purposes of the authority.

C.S.S.B. 9 omits a provision included in the original requiring DPS to submit a report to the legislature evaluating the effectiveness of the temporary visitor stations.

C.S.S.B. 9 differs from the original in nonsubstantive ways reflective of certain bill drafting conventions and in conforming changes.