

- SUBJECT:** Authorizing peace officer powers for nuclear power plant security personnel
- COMMITTEE:** Defense Affairs and State-Federal Relations — committee substitute recommended
- VOTE:** 8 ayes — Corte, Campbell, Berman, Delisi, Mabry, Merritt, Noriega, Seaman
- 0 nays
- 1 absent — P. Moreno
- WITNESSES:** For — Paul Serra, STP Nuclear Operating Company; (*Registered, but did not testify:*) Donald R. Alps, TXU; Walt Baum, Association of Electric Companies of Texas; Stephen W. Cockerham, Hunton and Williams LLP; Jim Grace, CenterPoint Energy Inc.; Roger D. Hill, Somervell County Sheriff's Office
- Against — None
- On — Wayne D. Marty, Adjutant General's Department of Texas
- BACKGROUND:** Penal Code, sec. 9.51 provides that, under certain conditions, a peace officer, or a person acting in an officer's presence and at an officer's direction, is justified in using force or deadly force when and to the degree he or she believes it is reasonably necessary to make an arrest or prevent escape after an arrest.
- DIGEST:** HB 2601 would grant a person guarding a commercial nuclear power plant the power of arrest, search, and seizure while providing security on the premises or in the surrounding area through an agreement with local law enforcement. The person would have the right to use force or deadly force under Penal Code, sec. 9.51. In addition, the person would have to be trained and qualified under a security plan approved by the U.S. Nuclear Regulatory Commission (NRC). The bill would specify that the person was not a peace officer, except for the specific powers granted by the bill.

A person providing security services at a commercial nuclear power plant would be exempted from regulation by the Texas Commission on Private Security.

A commercial nuclear power plant or a contractor to the plant could obtain information on a potential security employee's criminal history record from the Department of Public Safety (DPS). The information could not be disclosed, except as needed to protect the security of the nuclear power plant or as authorized by the NRC, a court order, or federal or state law. DPS would have to prioritize a request for information and respond within two days of receiving a request.

In a civil action for damages for personal injury or death brought against a nuclear power plant security guard, the guard's employer, or the plant's owner, the defendant would have an affirmative defense that at the time the cause of action occurred, the defendant was justified in using force under Penal Code, ch. 9.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSHB 2601 would improve security at Texas' two nuclear power plants in response to heightened security requirements imposed by the NRC. Since the terrorist attacks on September 11, 2001, the NRC has strengthened security requirements at U.S. nuclear facilities. The exact details of the new security measures have not been disclosed publicly. Generally, however, they require defenses to be extended farther out from the plant, preparation for increased adversary capabilities, the use of force or deadly force if necessary, and force-to-force training drills. The purpose of the new measures is to improve the capability of the nation's nuclear plants to respond to a potential attack.

The bill would provide limited peace officer powers for nuclear power plant personnel while they were guarding the plant. Security personnel would have the powers of arrest, search, and seizure, as well as the authority to use force. Despite nationwide efforts to improve homeland security, current Texas law provides nuclear security personnel with only the same power to make arrests or use force as private citizens. Because of the importance of keeping Texas

nuclear power plants secure, however, nuclear plant personnel need greater authority to arrest or search trespassers, and to use force if necessary.

The NRC imposes stringent training requirements on nuclear security personnel. Each security member must be qualified in accordance with the facility's NRC-approved training and qualifications plan. The plan includes 100 areas of security-related knowledge, skills, or abilities in which a security member must qualify. Moreover, the NRC requires that security personnel be requalified at least once per year.

**OPPONENTS
SAY:**

Security guards are not accountable to the public and should not be given peace officer powers. Security personnel work for the commercial nuclear plant or are contracted as a security service. The power to arrest a citizen, search a person, or seize belongings should be reserved for peace officers answerable to an elected representative. It would be better to put uniformed officers on-site to provide security. This surely would meet the NRC's directive to improve nuclear plant security, as well as provide a trained security force that was answerable to the public through the local city council or county. The state should not invest the right to use deadly force in people working for private companies.

Moreover, peace officers are trained professionals that are qualified to make arrests, conduct searches or seizures, or use force. Peace officers undergo lengthy training and must meet continuing education requirements. Security guards are not held to the same standards as peace officers.

NOTES:

The bill as introduced differs from the committee substitute in that it would have included security personnel guarding a nuclear power plant under the definition of peace officer.

The companion bill, SB 1517 by Armbrister, was considered in a public hearing on April 28 by the Senate Infrastructure and Development Committee.