

- SUBJECT:** Establishing a statewide homeland security strategy
- COMMITTEE:** Defense Affairs and State-Federal Relations — committee substitute recommended
- VOTE:** 7 ayes — Corte, Campbell, Berman, Delisi, Mabry, Merritt, Seaman
1 nay — Noriega
1 present, not voting — P. Moreno
- WITNESSES:** For — *(Registered, but did not testify:)* Will Harrell, ACLU of Texas; Shannon McCallum; Kathy Mitchell, Consumers Union; Froy Salinas, Texas State Troopers Association
Against — Steve Collier, Emergency Management Association of Texas; Tesa Duffey, Texas Gulf Coast Emergency Management Association
On — Jack Colley, Department of Public Safety; Jay Kimbrough, Attorney General’s Office; Maj. Gen. Wayne D. Marty, Adjutant General’s Department
- BACKGROUND:** Government Code, sec. 431.051 defines the Texas State Guard as part of the state militia under the U.S. Constitution and federal law and specifies that the state guard exists to provide “militia strength” as a supplement to the Texas National Guard. Sec. 431.052(b) requires that a volunteer for service in the state guard be a state citizen at least 17 years of age.
Under Government Code, sec. 431.085, a member of the state military forces ordered into active service by proper authority is not civilly liable for an act performed in the discharge of duty. Sec. 418.174 immunizes a member of the governor’s Emergency Management Council or a local emergency planning committee from civil damages arising from performance of the person’s duties.
In response to the September 11, 2001, terrorist attacks on the United States, Gov. Rick Perry created the Governor’s Task Force on Homeland Security by executive order to advise the governor on homeland security matters.

DIGEST:

CSHB 9 would add Chapter 421 to the Government Code, requiring the governor to develop a statewide homeland security strategy as a complement to the federal homeland security strategy. The statewide strategy would have to improve the state's ability to detect and deter threats to homeland security and to respond to and recover from emergencies. It would have to coordinate the activities of local, state, and federal agencies and the private sector in specific areas of security. The bill would define "homeland security activity" as any activity related to preventing, discovering, responding to, or recovering from a terrorist attack, natural or manmade disaster, hostile military or paramilitary action, or extraordinary law enforcement emergency.

The bill would create the Critical Infrastructure Protection Council (CIPC) to advise the governor on development and implementation of the homeland security strategy. The CIPC would comprise the governor's chief of staff or designee and representatives of 20 relevant governmental entities, appointed by each entity's head. The CIPC would have to meet at least quarterly and would have to file an annual status report with the governor, including recommendations for further homeland security response. The council would not be subject to requirements of Government Code, chapter 2110, as to the composition and duties of state agency advisory committees. The governor would have to designate the council's presiding officer. Council members could not receive additional compensation for serving on the council but would be entitled to reimbursement of reasonable expenses incurred.

The governor also could appoint one or more special advisory committees whose members would represent state or local agencies or nongovernmental entities not represented on the CIPC. Such advisory committees would have to assist the CIPC in performing its duties.

CSHB 9 would create the Texas Infrastructure Protection Communications Center (TIPCC), to be housed at the Department of Public Safety (DPS). The TIPCC would be the state's primary entity for planning, coordinating, and integrating the communications necessary for homeland security. The bill would designate DPS as the repository, disseminator, and primary analyst for criminal intelligence information related to homeland security.

The Governor's Office would have to allocate available federal and state grants to state and local homeland security responders through a single state

agency designated by the governor. State and local agencies that performed homeland security functions would have to inform the Governor's Office of their grant-seeking initiatives, and those that received homeland security grants would have to submit annual compliance reports to the governor.

CSHB 9 would extend immunity from civil liability under Government Code, sec. 431.085 to an officer or employee of a state or local agency or a volunteer performing a homeland security activity, as long as the agent performed the activity in accordance with the homeland security strategy. However, such an agent would not be immune from civil liability for damages if the agent's performance of the activity was wilfully or wantonly negligent or done with conscious indifference or reckless disregard of the safety of people the bill is intended to protect. A state or local agency that furnished services related to homeland security under an interlocal contract would be immune from civil liability for acts or omissions resulting in death, damage, or injury if the contract so stipulated and if the agency was acting in good faith.

The bill would amend the Government Code to establish the state's authority to use "mission-ready" volunteer military forces to assist in responding to homeland security threats. It would change the statutory requirements for serving in the Texas State Guard to require a volunteer to be a U.S. citizen and to have lived in Texas for at least 180 days.

CSHB 9 would establish Texas First Responders Day, to be observed annually on September 11 in public schools and other places.

The bill would take effect September 1, 2003. The governor would have to develop the statewide homeland security strategy by September 1, 2004, and the head of each entity represented on the CIPC would have to appoint its representative by December 1, 2003.

**SUPPORTERS
SAY:**

CSHB 9 would enact recommendations of Gov. Perry's Task Force on Homeland Security, whose overarching concerns relate to coordination and communication. The bill would create a state homeland security structure that largely would mirror the federal homeland security apparatus, using the same designations and nomenclature to facilitate coordination and communication among federal, state, and local emergency responders. However, CSHB 9 would not create a new agency and would require no new financial resources.

CSHB 9 would codify what is already in place in Texas. Since September 11, 2001, emergency responders have revised their strategies and have done an excellent job responding to subsequent disasters, including the Space Shuttle Columbia breakup over northeast Texas. The bill would institutionalize the changes that first responders already have put in place in the field.

The Emergency Management Council (EMC), established under Government Code, chapter 418, advises the governor on disaster mitigation, preparedness, response, and recovery. However, the EMC does so on a reactive, rather than a proactive, basis. The nature of security threats has changed fundamentally since September 11, 2001, and the statewide security strategy must shift to accommodate this change. CSHB 9 would institutionalize a culture of proactive coordination and communication through the CIPC and TIPCC to prevent terrorism, reduce the state's vulnerability to disaster, and minimize damages from attacks and natural disasters. DPS is the most qualified of all state entities to serve as the central hub for this initiative.

The CIPC would be multidisciplinary. Diversity of thought on the council would enable it to consider the state's preparedness from all angles. CSHB 9 would not create a second chain of command in establishing the CIPC, nor would it change the existing control of operations. It would change policy at the state level primarily by coordinating these decisions under the governor.

As the constitutionally designated commander-in-chief, the governor should be in charge of ensuring that all aspects of the state's homeland security strategy work to protect Texans well. Risk management involves constantly assessing new threats and how to deal with them successfully, and CSHB 9 would equip state leaders to do this better.

The bill uses broad language to include all disasters, whether natural or human-caused, so that no disaster would fall outside of its purview. The governor's homeland security strategy would apply equally to a hurricane, an anthrax attack, or a nuclear attack.

CSHB 9 would extend immunity from civil liability to officers, employees, and volunteers assisting with homeland security duties. First responders need this protection beyond the immunity established under Government Code, sec. 418.174. The bill would protect the public by providing that cases of gross

negligence in administering the homeland security strategy would not be exempt from civil liability.

The bill's reporting requirements would impose some costs on local first responders, but those costs would be minimal. A large, urban county that received a grant from the Governor's Office would incur a cost of about \$5,000 to prepare an annual report, and smaller entities would incur smaller costs. Clearly, these minimal costs would be worth the resulting gains in security. The reporting requirements would have a value for localities as well, in that keeping lines of communication open could allow cities and counties to find out about grant opportunities more quickly.

The interests of local first responders would be represented on the CIPC through agencies such as the state fire marshal's office, DPS, and the governor's division of emergency management. Special advisory committees authorized by the bill would be additional vehicles for local input.

**OPPONENTS
SAY:**

CSHB 9 would create an emergency management system that duplicates the effective framework already established under Government Code, chapter 418. The CIPC proposed by this bill would have very similar duties to the EMC, but the bill would not abolish the EMC. Since the EMC has many of the same members that the CIPC would have, the governor simply could amend the EMC's membership and duties by executive order.

CSHB 9 would result in two state-level disaster response coordinating bodies, taking up scarce resources and confusing the chain of command. The resulting confusion could make emergency response less effective, at least in the short run. The existing emergency response framework works well, and there is no need to change it.

CSHB 9 would mislead Texans into a false sense of security regarding their protection against disaster. It would add no resources to the state's homeland security effort but would shift existing responsibilities into new hands.

The bill would impose unfunded mandates on local governmental entities. The requirement that entities notify the Governor's Office upon applying for homeland security grants could be burdensome in terms of time and money. Local emergency responders already are burdened with federal emergency

planning requirements and terrorism response plans, and they cannot spare the resources for an additional report to the governor on their compliance with grant conditions. Also, training first responders in the new structure created by CSHB 9 would require more hours of training, which would cost more money. If the Legislature creates new work for local governments, it also should provide funds or personnel to carry it out.

Local responders need direct assistance from DPS in the form of training, technical assistance, and completion of emergency management plans. DPS provides this assistance now but is understaffed in doing so. CSHB 9 would do nothing to enhance this assistance. Nor would local first responders have much representation on the CIPC, whose members would be appointed from state agencies. Local entities should have a voice on any statewide council making decisions that directly affect them.

Creation of the CIPC would place too much authority in the Governor's Office. The bill would allow a council headed by a political person — the governor's chief of staff or other designee — to make tactical decisions in an emergency, thus politicizing decisions more properly made by emergency management professionals. Cities and counties should retain the discretion about how to address the public safety of their constituents, rather than having to structure the activities of their emergency response entities in accordance with a state homeland security strategy.

The bill would not define "terrorist attack" or "paramilitary action." The vagueness of its language could lead to unintended consequences. Also, there is no apparent difference between what now is called "emergency management" and what this bill calls "homeland security."

NOTES:

The committee substitute differs from the bill as filed in that it designates DPS as the repository, analyst, and disseminator of criminal intelligence information. The substitute also altered the composition of the CIPC, removed a provision that would have made the CIPC's annual report exempt from public disclosure, and amended the section on civil liability by adding an exception for gross negligence.