

- SUBJECT:** Homeland security, border security, and the TDEx database
- COMMITTEE:** State Affairs — committee substitute recommended
- VOTE:** 7 ayes — Swinford, Paxton, Christian, B. Cook, Flynn, Parker, Van Arsdale, Veasey
- 1 nay — Farrar
- 1 absent — Flynn
- WITNESSES:** (*On original bill:*)
- For — Sigifredo Gonzalez, Jr., Texas Border Sheriff’s Coalition; Sally Velasquez, Willacy County; Elizabeth Theiss; Leslie Wetzel; (*Registered, but did not testify:* Rebecca Forest, Immigration Reform Coalition of Texas)
- Against — David Carter, City of Austin Police Department, Acting Chief of Police Cathy Ellison; Luis Figueroa, Mexican American Legal Defense and Education Fund, (MALDEF); Andrew Rivas, Texas Catholic Conference; Bennett Sandlin, Texas Municipal League; (*Registered, but did not testify:* Ann Baddour, Texas Appleseed; Nathanael Isaacson, People For the American Way; Steve Lyons, City of Houston; T.J. Patterson, Jr., City of Fort Worth; Patricia Shipton, City of El Paso; Emily Timm, Workers Defense Project)
- On — Rebecca Bernhardt, American Civil Liberties Union of Texas; Tommy Davis, Texas Department of Public Safety; Steve McCraw, Governor’s Office of Homeland Security
- BACKGROUND:** In 2003, the 78th Legislature enacted HB 9 by Flores, et al., which required the governor to direct the state’s homeland security and required him to develop a statewide homeland security strategy. In 2005, the 79th Legislature enacted SB 9 by Staples, which revised the state’s laws governing homeland security.
- Government Code, sec. 421.002 requires the governor to direct homeland security in Texas and to develop a statewide homeland security strategy. The strategy is required to coordinate homeland security activities among local, state, and federal agencies, and the private sector.

Sec. 421.002(b) lists nine things that must be in a the governor's homeland security strategy plan, including directing the Texas Infrastructure Protection Communications Center and "giving the center certain forms of authority to implement the governor's homeland security strategy."

Local Government Code, sec. 370.003 prohibits cities, counties, sheriffs, police departments, city attorneys, county attorneys, district attorneys, and criminal district attorneys from adopting policies under which they will not fully enforce laws relating to drugs, including the Texas Controlled Substance Act and the Dangerous Drug Act, and federal law.

Federal law. The federal Immigration and Nationality Act, under 8 U.S.C., sec. 1252c, allows state and local law enforcement officials, to the extent permitted by state and local laws, to arrest and detain people who are present unlawfully in the United States and previously were deported or left the United States after a felony conviction in this country.

Federal immigration law also creates, under 8 U.S.C. sec. 1324, criminal penalties for several different offenses relating to bringing in and harboring aliens. These offenses include:

- bringing or attempting to bring a known alien into the United States at a place other than a designated port of entry;
- transporting or moving an alien, or attempting these things, while knowingly or recklessly disregarding the fact that the alien had entered or remained in the country illegally;
- concealing, harboring, or shielding an alien from detection, or attempting these things, while knowingly or recklessly disregarding the fact that the alien had entered or remained in the country illegally;
- encouraging or inducing an alien to come, enter, or reside in the country, while knowingly or recklessly disregarding the fact that the action is illegal; and
- conspiring to commit these crimes or aiding or abetting them.

The act, under 8 U.S.C., sec. 1357(g), authorizes the federal government to enter into memoranda of understanding with state and local law enforcement agencies to allow designated officers to perform immigration law enforcement. The law requires, among other things, that local law enforcement officers be educated and trained about federal immigration

law and function under the supervision of U.S. Immigration and Customs Enforcement (ICE) officers.

DIGEST:

CSHB 13 would:

- require the Department of Public Safety (DPS) to oversee the Texas Data Exchange;
- establish the Office of Homeland Security in the Governor's Office;
- create the Border Security Council;
- prohibit the state and cities from adopting policies under which they would not enforce or would violate certain immigration and drug laws;
- require peace officers and their agencies to report the commission of federal crimes;
- authorize local agreements with federal immigration authorities; and
- create a legislative oversight committee on homeland and border security issues.

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, 2007.

Texas Data Exchange (TDEx). CSHB 13 would require DPS to oversee TDEx and all related information. The governor's division of emergency management would be required to provide DPS the necessary project management resources for TDEx, including operational support and personnel.

The bill would allow the state emergency plan prepared by the governor's division of emergency management to include the provision of necessary project management resources to support TDEx.

State Office of Homeland Security. CSHB 13 would establish the State Office of Homeland Security in the Governor's Office, which would perform the tasks of coordinating homeland security activities among local, state, and federal agencies, and the private sector. The governor would continue to direct the state's homeland security efforts through the office.

The bill would expand the requirements for the governor's homeland security plan to include creating and operating a multi-agency

coordination system as outlined in the March 2004 federal Department of Homeland Security publication “National Incident Management System.”

The Office of Homeland Security would continue the current funding activities done by the Governor’s Office, but would do them with the advice of the newly created Border Security Council. These include allocating federal and state homeland security grants to state and local agencies. The bill would give the office specific authority when reviewing grants to examine compliance with CSHB 13.

The governor would receive new authorization to allocate funds to assist state and local law enforcement agencies in acquiring personnel, equipment, and other operational support to enable the agencies to better perform homeland security activities, including those for border security or law enforcement emergencies.

If the Attorney General’s Office determined that a state or local agency that received a grant from the governor or the Office of Homeland Security had violated CSHB 13 by adopting certain types of policies or by not reporting certain types of information, the agency would have to forfeit and repay the grant or funds.

A state or local agency could appeal a decision of the Attorney General’s Office about repayment of funds within 21 days of the determination. Appeals would be considered contested cases under the Administrative Procedures Act, and administrative law judges would conduct the contested case hearings.

The bill would change the name of the Texas Infrastructure Protection Commission Center to the Texas Fusion Center and would require the governor’s homeland security strategy to include plans to establish the center.

Border Security Council. CSHB 13 would create the Border Security Council to advise the Office of Homeland Security about the allocation of funds for border security. The council also would develop and recommend performance standards, reporting requirements, audit methods, and other procedures to ensure that money allocated by the Office of Homeland

Security for security efforts along the Mexico border was used properly and that recipients were accountable for its use.

The governor would appoint the members of the council and designate its chair. Its meetings would be subject to the state's open meetings laws to the same extent as meetings of the Public Safety Commission. The plans and recommendations of the council would be subject to the state's public information laws to the same extent as similar plans and recommendations of DPS. State laws applying to state agency advisory committees would not apply to the council.

Prohibitions on certain policies. State government entities and political subdivisions would be prohibited in the Government Code sections dealing with homeland security from adopting rules, policies, or ordinances under which they would:

- refuse to take an action authorized under U.S.C., sec. 1252c, which gives state and local law enforcement officials authority, as permitted by state and local laws, to arrest and detain persons who were present unlawfully in the United States and previously had been deported or left the country following a felony conviction;
- violate federal laws under 8 U.S.C., sec. 1324, which creates criminal penalties for several offenses related to bringing certain aliens into the country or harboring them; or
- not fully enforce state or federal laws relating to drugs, including the Texas Controlled Substance Act and Dangerous Drugs Act.

These same prohibitions would be placed in Local Government Code and applied to cities, county commissioners courts, sheriffs, city police departments, city attorneys, county attorneys, district attorneys, and criminal district attorneys.

If the Attorney General's Office determined that a state governmental entity or a political subdivision had violated these prohibitions, the entity would forfeit and have to repay funds they received for homeland or border security purposes.

State governmental entities and political subdivisions would be able to appeal a determination that they had violated this prohibition. The appeal would have to be made within 21 days of receiving notice from the attorney general. Appeals would be considered contested cases under the Administrative Procedures Act, and an administrative law judge would conduct such hearings.

State governmental entities and cities would be prohibited from adopting rules, policies, or ordinances — and from following or establishing commonly accepted practices — that require peace officers to violate state or federal criminal law. Peace officers would be required to disregard any rule or policy that required them to violate a state or federal criminal law.

It would be the duty of peace officers to report to their agencies the commission of federal crimes and conspiracies to commit federal crimes if the officer had knowledge of the offense. It would be the duty of the officer's law enforcement agency that received such a report to pass it on to the State Office of Homeland Security.

Performance of immigration officer functions. CSHB 13 would authorize political subdivisions of the state to enter into agreements under the federal Immigration and Nationality Act to perform functions of immigration officers.

The House Corrections Committee could conduct a study to determine if it would add efficiency to the state's criminal justice system, in terms of money and time, for the state or its political subdivisions to seek agreements under federal law that allowed designated state and local law enforcement officials to perform immigration law enforcement functions.

Legislative oversight committee. CSHB 13 would create the legislative oversight committee on homeland security to monitor homeland security and border security issues, including the implementation of laws related to those issues.

The committee would comprise the chairs of the House committees on Border and International Affairs, Defense Affairs and State-Federal Relations, and State Affairs and the chairs of the Senate committees on International Relations and Trade, State Affairs, and Transportation and Homeland Security. The speaker of the House and the lieutenant governor each would appoint two additional members and designate a co-chair for the committee.

The committee would have to report to the Legislature by December 1 of even-numbered years.

SUPPORTERS
SAY:

CSHB 13 would strengthen the state's homeland and border security efforts. The bill would not encroach into the federal responsibilities relating to immigration law and is not an attempt to require local governments to enforce immigration law. The bill would focus some efforts on border security because border security plays a large role in homeland security.

Texas Data Exchange. CSHB 13 would place TDEx under DPS' authority since it is the state's premier law enforcement entity and has experience managing and protecting databases. By placing the database under the control of DPS, the bill would allow the agency to decide where in the agency it would fit best and what resources should be dedicated to it. For example, the DPS crime records bureau, which manages the Texas Crime Information Center, might be the best entity to manage the database.

The TDEX database was developed with authority given to the Governor's Office in 2005 in SB 9 by Staples and should be continued and properly supported. SB 9 required the Governor's Office to develop a plan for appropriate entities to use information systems that that employ computer equipment and software to establish interoperable communications between local, state, and federal agencies and first responders and to provide a single point of entry to disseminate information. This charge resulted in TDEx, which is helping the state prevent and protect Texans from terrorism and crime by allowing law enforcement agencies to share information. The TDEx database contains only law enforcement information and is accessible only by law enforcement authorities.

It is necessary to give the Governor's Division of Emergency Management authority to support TDEx to meet federal requirements that federal funds used to support it go through a homeland security agency. Concerns that it would be inappropriate for the Governor's Division of Emergency Management to provide support to the database are unfounded. The Division of Emergency Management is functionally a division of DPS, and its staff are DPS employees. CSHB 13 would clearly give DPS, not the Governor's Office, authority over the database and limit the division to project management. It makes sense to take advantage of the expertise of the Division of Emergency Management by requiring that it provide project management, which is one of its core competency areas. In addition, the database itself has several security and audit features to ensure that access to it and the information it contains are not abused.

State Office of Homeland Security. CSHB 13 would formalize the State Office of Homeland Security by giving it an official name and establishing it within the Governor's Office. In 2003 and 2005, the Legislature gave the governor authority to direct the state's homeland security efforts, and CSHB 13 would continue this policy decision by keeping the office under the governor.

The state's efforts in 2003 and 2005 were a deliberate decision to centralize the coordination of numerous state agencies and efforts in the Governor's Office, and this should be continued. One of the purposes of this approach was to place responsibility for homeland security in one office and have the state speak with one voice on this issue. Because homeland security efforts are spread across several state agencies and the vast majority of law enforcement resources exist at the local level, it would make sense to have the state's executive coordinate efforts. This arrangement facilitates better planning, coordination, and sharing of information but still allows the command and control of law enforcement resources to remain with the individual agencies. This model is working well in numerous other states.

It is necessary to keep the Office of Homeland Security outside of an agency like DPS and to name the office as the entity to allocate state and federal homeland security grants to ensure that the state met federal requirements that grant funds go through a homeland security agency. Giving this responsibility to another state entity could jeopardize these federal funds, which may be as much as \$100 million.

CSHB 13 would codify the current role of the governor in allocating funds to local law enforcement agencies for homeland security efforts, including border security and law enforcement emergencies. This arrangement has worked well to fund successful operations that have reduced crime and helped protect the state. The House-passed version of HB 1 by Chisum, the appropriations act for fiscal 2008-09, includes about \$102 million to fund a proposal by the governor to expand border security operations. The bill would require the Governor's Division of Emergency Management to provide grants to local law enforcement agencies for salaries, training, operating costs, and equipment. CSHB 13 would facilitate this requirement, and would be an effective way of preventing terrorism, drug crime, and other violence on the border.

CSHB 13 would not prohibit city police departments on the border or any other law enforcement entity from receiving grants. All entities that wished to receive these funds would have the same opportunities to apply for the grants, and some could go to areas outside the border. It would be best to allow the grant process within the Governor's Office decide where these funds should go. Enacting statutory restrictions on the use of funds could reduce the state's ability to target the funds where they were needed. However, it could be that some funds — perhaps the anticipated federal ones — might flow directly to the border where homeland and border security efforts are concentrated. This would have benefits reaching far into the state's urban and rural areas to make everyone safer.

CSHB 13 would change the name of the Texas Infrastructure Protection Commission Center, which was created in 2003, to the Texas Fusion Center to simplify it and to better reflect its role in exchanging, consolidating, and analyzing information from different sources to fight crime and terrorism. The bill would not change the duties of the center, which is located within DPS and analyzes information from various sources to spot criminal and terrorism patterns. The term "fusion" is the latest term of art being used to reflect this type of work.

Border Security Council. By establishing the Border Security Council, CSHB 13 would create a structure to allow formal input into the allocation of border security funds and the evaluation of how they are spent. The bill would give the governor flexibility to appoint the members of the council and would not limit the number of members so that the council could include people possessing the necessary range of expertise. It can be difficult for governors to make appointments if they are restricted in the statutes. The Legislature has given the governor the responsibility for homeland security, so it makes sense that he should receive the authority to appoint the council in the same way other state advisory boards are appointed. The council is charged only with providing advice, not making any decisions, and its meetings and plans would be subject to the state's public meetings and information laws so that there would be checks and balances on their activities.

Requiring the council to develop performance standards and audit methods to track border security funds would help ensure the proper use of the money. The state has seen tangible, positive results from the money that already has been directed to the area, and CSHB 13 would provide a way to monitor the success of future funds spent in this manner.

Prohibitions on certain policies. CSHB 13 would ensure that state and local governmental entities were not actively working against immigration and drug laws, but would not force any entity to take over the federal responsibility of immigration law enforcement. The bill simply would express the Legislature's desire that state and local entities not adopt policies in violation of certain state and federal criminal laws. Federal law takes precedence over state laws and local policies, and state and local entities should not be able to pick and choose which laws they follow. CSHB 13 would not infringe on the rights of any state or local entity to adopt any legal policy. The bill deals with criminal laws, not civil laws, and would not be the appropriate place to address concerns about civil violations that may affect immigrants such as municipal housing ordinances.

CSHB 13 would require only that entities not adopt policies requiring peace officers to violate state or federal criminal laws. Peace officers would not be required to act as immigration agents, to investigate anyone's immigration status, or to detain or deport illegal immigrants. Following the requirements in CSHB 13 simply would mean that when an officer knew that a person had committed a federal crime, the officer would report it. For example, if a police officer stopped someone for speeding and in the course of the stop found out that the person was here illegally, the officer would be obligated only to report the federal crime to his or her agency, which would report it to the Office of Homeland Security. To take another example, agencies concentrating on burglaries would not be under any obligation to stop those efforts to seek out illegal immigrants.

These provisions would help address the problem of so-called "sanctuary cities." Some of these cities have official policies under which law enforcement officers are not required to ask or report on the immigration status of people they encounter. CSHB 13 would extend this prohibition to "commonly accepted practices" to ensure that local governments did not establish policies that violate federal criminal laws with a "wink and a nod."

CSHB 13 would establish a reasonable penalty for violating these requirements. Requiring entities to forfeit and repay homeland security and border security funds would be appropriate for entities that officially did not support the law. CSHB 13 would establish a fair method for state

and local entities to appeal to a third party, the attorney general, a determination that they had violated the bill.

Performance of immigration officer functions. CSHB 13 would establish the necessary authority for local law enforcement entities to enter into agreements with the federal government to take on some immigration functions, if they desire. The performance of immigration officer duties must be done under a formal memorandum of understanding and with required training and education. While only a handful of entities nationwide have received this designation, it should be available to Texas entities. The bill would not require any entity to take this action, but would give them the authority if they so desired.

Legislative oversight committee. The oversight committee created by CSHB 13 would give the Legislature the necessary information to make decisions about the state's homeland and border security.

OPPONENTS
SAY:

Texas Data Exchange. While CSHB 13 would place TDEx under the control of DPS, it also would charge the Governor's Division of Emergency Management with supporting the database. Giving the Division of Emergency Management authority to provide operational support and personnel to the database means that the Governor's Office would continue to have some control over the administration of TDEx, and this would be inappropriate given the civilian, political nature of the Governor's Office. Claims that those working in the division are essentially DPS employees fail to account for the fact that the head of the office reports to the Governor's Office.

State Office of Homeland Security. A formalized Office of Homeland Security should be placed within a law enforcement agency such as DPS, not within the Governor's Office, as CSHB 13 would do. Many of the duties of the Office of Homeland Security — especially ones related to intelligence gathering — traditionally have been handled by law enforcement agencies, not civilian, political offices. Just because the Legislature chose to give the governor some oversight on homeland security issues does not mean that the responsibility should not be moved now that the duties have evolved.

Authority given to the governor in CSHB 13 to allocate funds to assist law enforcement agencies in homeland security efforts, including border security and law enforcement emergencies, would be too broad and would

not provide enough accountability. Grants of this nature should be made through a fiscally accountable state agency, include objective requirements that account for things such as population and crime rates, and stipulate how the money should be used and how success would be measured. Questions have been raised about the success of current border operations, and CSHB 13 would continue the process that has produced these questionable results. To have a significant impact on crime, CSHB 13 should make these funds available to agencies statewide.

Renaming the Texas Infrastructure Protection Communications Center the Texas Fusion Center could be seen as an expansion of the intelligence gathering efforts of the Office of Homeland Security, something more appropriately handled by a law enforcement agency.

Border Security Council. CSHB 13 is not specific enough about the composition of the Border Security Council to ensure that it would have balanced, fair representation. The bill would give the Governor's Office the sole authority to name the council without placing any requirements on the members. The bill should specify geographic and law enforcement agency diversity so the Office of Homeland Security would receive balanced advice. Advisory boards often have statutory guidelines for their members.

Without this diversity on the Border Security Council, it could continue sending homeland and border security funds to a small number of law enforcement entities. Numerous entities, such as municipal police departments, should be included in the decision making and receipt of funds.

Prohibitions on certain policies. CSHB 13 would take discretion away from local entities to set their own policies governing immigrants and public safety. Decisions about how communities enforce immigration laws and respond to illegal immigrants are best made locally.

CSHB 13 would go too far in requiring local law enforcement officers to enforce complex federal immigration laws and participate in immigration efforts, something they do not have the training or manpower to do. The role of local law enforcement officers is to solve and prevent local crimes, not to enforce federal immigration laws. Even requiring officers to inquire or report about someone's immigration status would harm the trust and good relationships necessary for an officer to operate successfully in the

community. Crime victims and witnesses could be less likely to cooperate with police if they feared actions could be taken against them or their family for immigration violations.

The reporting functions required by CSHB 13 would add to the burden of local law enforcement entities, which already are spread thin. In some cases, such as drug crimes that are both state and federal offenses, the federal government might not want to know that an officer had knowledge of a federal crime because the crime was being handled at the state level. Police often investigate actions that may violate federal law but have no homeland security implications.

CSHB 13 would go too far in penalizing local entities for any rule, policy, or ordinance they enact. Decisions about policies can be made by numerous people in a department who might have no intention of affecting immigration actions. For example, a violation of CSHB 13 could be alleged if officers ignored the legal status of persons they encountered because a department decided to focus for a limited time on solving a string of burglaries in a neighborhood. Requiring entities to forfeit and repay grant funds for this type of violation would be too harsh.

OTHER
OPPONENTS
SAY:

CSHB 13 unfairly would exclude policies that violate non-criminal laws from falling under the sanction of having a homeland security grant forfeited. For example, if a municipal ordinance dealing with housing violated a federal housing law it might be considered civil and not a criminal law, so no penalty under CSHB 13 would be imposed.

NOTES:

HB 13 was considered by the House on May 3 and was recommitted to the committee on an point of order. When the bill was considered on May 3, three amendments were adopted.

Amendment number one, by Rep. Swinford, would change the name of the legislative oversight committee to the Interim Committee on Border Security. Instead of monitoring border security issues, the committee would be required to conduct an interim study of border security issues and issue a report to the Legislature by December 1, 2008.

Amendment number two, by Rep. Raymond, would make the DPS the only state agency or governmental entity authorized to develop, maintain, operate, and control access to the TDEX or a similar database. The Governor's Office would be required to cooperate with DPS to transfer

control of TDEx to DPS, transfer any federal funds received by the governor for TDEx, and ensure that DPS received any federal fund received by Texas for TDEx or a similar database. The role of Governor's Division of Emergency Management with TDEx would be limited to providing funding.

Amendment number three, by Rep. Noriega, would require the governor to appoint the director of the Office of Homeland Security, with advise and consent of the Senate, for two-year terms. The director, instead of the governor, would direct Texas' homeland security. The State Office of Homeland Security would be administratively attached to the Governor's Office.

HB 13 has been reported from committee three times after being recommitted twice. The third committee substitute for HB 13, the one being considered on May 7, is the same as the version considered on May 3.

The version considered on May 3 changed numerous provisions from the first committee substitute of the bill. The second committee substitute moved TDEx from the command and control of the Texas Rangers to oversight by DPS, changed the composition of the Border Security Council so that the governor could appoint all the members, changed references to certain federal laws, and created the legislative oversight committee. The version considered on May 3 was reported by 6 ayes, 1 present, not voting (Veasey), and 2 absent (Farrar, Van Arsdale).

HB 13 originally was reported by State Affairs Committee on April 19. The vote was 6 ayes, 1 absent, and 2 nays (Farrar, Veasey). It was placed on the Major State Calendar for April 30 before being recommitted to committee.