BILL ANALYSIS

Senate Research Center

H.B. 9
By: Flores (Shapiro)
Infrastructure Development and Security
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Enrolled

DIGEST AND PURPOSE

Shortly after September 11, 2001, Governor Perry announced the creation of the Texas Task Force on Homeland Security. The task force was composed of several individuals appointed by the Governor to study and advise him on matters relating to homeland security, including emergency preparedness and response, facilitating coordination among agencies, and other related matters. The taskforce identified several issues to be addressed by State and local entities; however, the predominate theme of proposals revolved around communication and coordination.

H.B. 9 seeks to provide a more centralized communication and coordination effort out of the governor's office. It requires the governor to develop a statewide homeland security strategy. H.B. 9 creates the Critical Infrastructure Protection Council (council) to serve as the operational advisory group for homeland security at the state level and as the center of coordinated and efficient flow of information, response, and recovery throughout the Governor's office and the various state agencies.

H.B. 9 also creates the Texas Infrastructure Protection Communications Center to serve as the primary point of planning, coordination and integration of government communications capabilities to ensure effective response in the event of a homeland security emergency.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the governor in SECTION 1 (Section 421.023, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 4, Government Code, by adding Chapter 421, as follows:

CHAPTER 421. HOMELAND SECURITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 421.001. DEFINITIONS. Defines "agency," "critical infrastructure," and "homeland security activity."

Sec. 421.002. HOMELAND SECURITY STRATEGY. (a) Requires the governor to develop a statewide homeland security strategy that improves the state's ability to detect and deter threats to homeland security, respond to homeland security emergencies and recover from homeland security emergencies.

(b) Requires 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 activities.

(c) Requires the governor's homeland security strategy to complement and operate in coordination with the federal homeland security strategy.

Sec. 421.003. CRIMINAL INTELLIGENCE INFORMATION. Provides that the Department of Public Safety of the State of Texas is the repository in this state for the collection of multi-jurisdictional criminal intelligence information that is about terrorist activities or otherwise related to homeland security activities and the state agency that has primary responsibility to analyze and disseminate that information.

Sec. 421.004. PROVISIONS GOVERNING MOBILE TRACKING DEVICES. Provides that in the event of a conflict between Section 14, Article 18.21, Code of Criminal Procedure, and this chapter or a rule adopted under this chapter, Section 14, Article 18.21, Code of Criminal Procedure, controls.

[Reserves Sections 421.005-421.020 for expansion.]

SUBCHAPTER B. CRITICAL INFRASTRUCTURE PROTECTION COUNCIL

Sec. 421.021. MEMBERSHIP. (a) Provides that the Critical Infrastructure Protection Council (council) is composed of the governor or the governor's designee and one representative of each of certain entities, appointed by the single statewide elected or appointed governing officer or administrative head of the entity.

(b) Requires a person to be directly involved in the policies, programs, or funding activities of the appointing agency, office, or division that are relevant to homeland security or infrastructure protection, to be eligible for appointment as a member of the council.

(c) Provides that a member of the council serves at the will of the governor. Requires an appointing authority under this section to appoint a different member,

at the request of the governor.

(d) Requires an officer or employee of a state or local agency who serves as a member of the council or a special advisory committee under this subchapter to perform the duties required by the council or special advisory committee as an additional duty of the member's office or employment.

Sec. 421.022. REIMBURSEMENT OF EXPENSES. Prohibits a member of the council from receiving additional compensation for service on the council but entitles the member to reimbursement of reasonable expenses incurred in direct performance of official duties, including travel expenses incurred by the member while conducting the business of the council, subject to any applicable limitation on reimbursement provided by general law or the General Appropriations Act.

Sec. 421.023. ADMINISTRATION. (a) Provides that the council is an advisory entity administered by the office of the governor.

(b) Authorizes the governor to adopt rules as necessary for the operation of the council.

(c) Requires the governor to designate the presiding officer of the council.

(d) Requires the council to meet at the call of the governor and to meet at least once each quarter in a calendar year.

(e) Provides that the council is not subject to Chapter 2110.

Sec. 421.024. DUTIES. Requires the council to advise the governor on certain matters.

Sec. 421.025. SPECIAL ADVISORY COMMITTEES. (a) Authorizes the governor to appoint one or more special advisory committees composed of representatives from state or local agencies or nongovernmental entities not represented on the council.

(b) Requires the governor to determine the number of members and qualifications for membership on a special advisory committee under this section.

(c) Requires a special advisory committee under this section to assist the council in performing its duties.

(d) Provides that a special advisory committee under this section is subject to Chapter 2110, except that Section 2110.002 does not apply.

Sec. 421.026. REPORT. Requires the council to annually submit to the governor a

report stating certain information.

[Reserves Sections 421.027-421.060 for expansion.]

SUBCHAPTER C. CIVIL LIABILITY FOR ACTS OR OMISSIONS

Sec. 421.061. CIVIL LIABILITY. (a) Provides that an officer or employee of a state or local agency performing a homeland security activity or a volunteer performing a homeland security activity at the request or under the direction of an officer or employee of a state or local agency is considered for purposes of Section 431.085 to be a member of the state military forces ordered into active service of the state by proper authority and is considered to be discharging a duty in that capacity under certain circumstances.

(b) Provides that a person described by Subsection (a) is not immune from civil liability under Section 431.085 for damages resulting from the performance of a homeland security activity if, under the circumstances, the person's performance of the homeland security activity was wilfully or wantonly negligent or done with conscious indifference or reckless disregard for the safety of persons this chapter is intended to protect.

(c) Provides that this section does not make a person a member of the state military forces for any other purpose, including for purposes of the application of the Uniform Code of Military Justice.

(d) Provides that this section does not affect the application of Section 431.085 on its own terms to a person who is a member of the state military forces ordered into active service of the state by proper authority under other law.

Sec. 421.062. LIABILITY UNDER INTERLOCAL CONTRACT. (a) Defines "interlocal contract."

(b) Provides that a state or local agency that furnishes a service related to a homeland security activity under an interlocal contract is immune from civil liability for any act or omission resulting in death, damage, or injury while acting under the interlocal contract under certain circumstances.

(c) Prohibits this section from being interpreted as a waiver of any immunity that might exist in the absence of an interlocal contract or a provision in an interlocal contract as set forth in Subsection (b).

[Reserves Sections 421.063-421.070 for expansion.]

SUBCHAPTER D. COOPERATION AND ASSISTANCE; FUNDING

Sec. 421.071. COOPERATION AND ASSISTANCE. Requires a state or local agency that performs a homeland security activity or a nongovernmental entity that contracts with a state or local agency to perform a homeland security activity to cooperate with and assist the office of the governor, the Critical Infrastructure Protection Council, the Texas Infrastructure Protection Communications Center, and the National Infrastructure Protection Center in the performance of their duties under this chapter and other state or federal law.

Sec. 421.072. FUNDING. (a) Requires the office of the governor to allocate available federal and state grants and other funding related to homeland security to state and local agencies that perform homeland security activities, periodically review the grants and other funding for appropriateness and compliance and designate a single state agency to administer all grants and other funding to the state related to homeland security.

(b) Requires state and local agencies that perform homeland security activities to inform the office of the governor about any actions taken relating to requests for revenue, grants, or other funding for homeland security activities or initiatives.

(c) Requires a state or local agency that receives a grant or other funding related to homeland security to provide an annual report to the office of the governor detailing the agency's compliance with the state homeland security strategy.

[Reserves Sections 421.073-421.080 for expansion.]

SUBCHAPTER E. TEXAS INFRASTRUCTURE PROTECTION COMMUNICATIONS CENTER

Sec. 421.081. FACILITIES AND ADMINISTRATIVE SUPPORT. Requires the Department of Public Safety of the State of Texas to provide facilities and administrative support for the Texas Infrastructure Protection Communications Center (center).

Sec. 421.082. POWERS AND DUTIES. (a) Requires the 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.

(b) Provides that the center's duties include promotion of emergency preparedness, receipt and analysis of information, assessment of threats, and issuance of public warnings related to homeland security emergencies and authorization and facilitation of cooperative efforts related to emergency response and recovery efforts in the event of a homeland security emergency.

(c) Requires the center to aim for certain goals in performing its duties under this section.

(d) Requires the center to perform its duties under circumstances prescribed by and as directed by the governor's homeland security strategy.

SECTION 2. Amends Section 418.175(a), Government Code, to provide that information that relates to physically or mentally disabled individuals or other individuals with special needs and that is maintained for purposes of emergency management or disaster planning is confidential. Deletes the phrase "and excepted from required disclosure under Chapter 552."

SECTION 3. Amends Subchapter H, Chapter 418, Government Code, by adding Sections 418.176-418.183, as follows:

Sec. 418.176. CONFIDENTIALITY OF CERTAIN INFORMATION RELATING TO EMERGENCY RESPONSE PROVIDERS. (a) Provides that information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and relates to the staffing requirements of certain emergency response providers; relates to a tactical plan of the provider; or consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

(b) Defines "governmental entity."

Sec. 418.177. CONFIDENTIALITY OF CERTAIN INFORMATION RELATING TO RISK OR VULNERABILITY ASSESSMENT. Specifies when information is confidential.

Sec. 418.178. CONFIDENTIALITY OF CERTAIN INFORMATION RELATING TO CONSTRUCTION OR ASSEMBLY OF WEAPONS. (a) Defines "explosive weapon."

(b) Specifies when information is confidential.

Sec. 418.179. CONFIDENTIALITY OF CERTAIN ENCRYPTION CODES AND SECURITY KEYS FOR COMMUNICATIONS SYSTEM. (a) Provides circumstances under which information is considered to be confidential.

(b) Provides that this section does not prohibit a governmental entity from making available, at cost, to bona fide local news media for the purpose of monitoring emergency communications of public interest the communications terminals used in the entity's trunked communications system that have encryption codes installed.

Sec. 418.180. CONFIDENTIALITY OF CERTAIN INFORMATION PREPARED FOR UNITED STATES. Specifies when information is confidential.

Sec. 418.181. CONFIDENTIALITY OF CERTAIN INFORMATION RELATING TO CRITICAL INFRASTRUCTURE. Specifies when information is confidential.

Sec. 418.182. CONFIDENTIALITY OF CERTAIN INFORMATION RELATING TO SECURITY SYSTEMS. (a) Specifies when information is confidential.

(b) Provides that financial information in the possession of a governmental entity that relates to the expenditure of funds by a governmental entity for a security system is public information that is not excepted from required disclosure under Chapter 552.

(c) Provides that information in the possession of a governmental entity relating to the location of a security camera in a private office at a state agency, including an institution of higher education, as defined by Section 61.003, Education Code, is public information and is not excepted from required disclosure under Chapter 552 unless the security camera:

(1) is located in an individual personal residence for which the state provides security; or
(2) is in use for surveillance in an active criminal investigation.

Sec. 418.183. DISCLOSURE OF CERTAIN CONFIDENTIAL INFORMATION. (a) Provides that this section applies only to information that is confidential under Sections 418.175-418.182.

(b) Authorizes the executive or administrative head of the governmental entity to voluntarily disclose or otherwise make available all or part of the confidential information to another person or other entity if the executive or administrative head believes that the other person or entity has a legitimate need for the information, at any time during a state of disaster.

(c) Authorizes the executive or administrative head of a port, port authority, or navigation district created or operating under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, to make available all or part of certain confidential information to another person.

(d) Provides that the disclosure or making available of confidential information by a hospital district to a national accreditation body does not waive or affect the confidentiality of the information.

(e) Provides that the disclosure or making available of confidential information under Subsection (b) or (c) does not waive or affect the confidentiality of the information.

(f) Provides that a governmental body subject to Chapter 551 is not required to conduct an open meeting to deliberate information to which this section applies. Requires the governmental body to make a tape recording of the proceedings of a closed meeting to deliberate the information.

SECTION 4. Amends Section 431.051, Government Code, as follows:

Sec. 431.051. New heading: SUPPLEMENTAL VOLUNTEER MILITARY FORCES. Provides that for purposes of providing mission-ready volunteer military forces for use by the state in homeland security and community service activities as a supplement to the Texas National Guard, the Texas State Guard exists as part of the state militia under the Second Amendment to the United States Constitution and a defense force under 32 U.S.C. Section 109.

SECTION 5. Amends Section 431.052(b)(1), Government Code, to require a person to be a citizen of the United States and a resident of this state for at least 180 days to volunteer for service in the Texas State Guard.

SECTION 6. Amends Subchapter C, Chapter 662, Government Code, by adding Section 662.050, as follows:

Sec. 662.050. TEXAS FIRST RESPONDERS DAY. (a) Provides that September 11 is Texas First Responders Day in honor of the bravery, courage, and determination of Texas men and women who assist others in emergencies.

(b) Requires Texas First Responders Day to be regularly observed by appropriate ceremonies in the public schools and other places to honor Texas first responders.

SECTION 7. Amends Section 81.042(e), Health and Safety Code, to require certain persons to report to the local health authority or TDH a suspected case of a reportable disease and all information known concerning the person who has or is suspected of having the disease if a report is not made as required by Subsections (a)-(d).

SECTION 8. Amends Subchapter B, Chapter 562, Occupations Code, by adding Section 562.055, as follows:

Sec. 562.055. REPORT TO TEXAS DEPARTMENT OF HEALTH. Requires a pharmacist to report to TDH any unusual or increased prescription rates, unusual types of

prescriptions, or unusual trends in pharmacy visits that may be caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents or biological toxins that might pose a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability. Lists prescription-related events that require a report.

SECTION 9. Amends Sections 161.101(a), (b), and (c), Agriculture Code, as follows:

(a) Requires a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal to report the existence of certain diseases among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the Texas Animal Health Commission (TAHC) within 24 hours after diagnosis of the disease.
(b) Authorizes TAHC to adopt rules that require a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal to report the existence of a disease other than bluetongue in an animal to TAHC within 24 hours after diagnosis under certain circumstances.

(c) Authorizes TAHC to adopt rules that require a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal to report a disease not covered by Subsection (a) or (b) if TAHC determines that action to be necessary for the protection of animal health in this state.

SECTION 10. (a) Requires the governor to develop a statewide homeland security strategy as required by Section 421.002, Government Code, as added by this Act, not later than September 1, 2004.

(b) Requires the head of each entity listed in Section 421.021, Government Code, as added by this Act, to appoint a representative to the Critical Infrastructure Protection Council, as required by that section, not later than December 1, 2003.

SECTION 11. (a) Provides that it is the intent of the legislature that no provision in this Act should be construed to affect current state or federal law concerning military support to civilian law enforcement personnel in this state and any such support is required to be carried out in strict compliance with the constitution, statutes, rules and regulations of the United states.

(b) Provides that Subsection (a) does not affect the civil liability provisions of Subchapter C, Chapter 421, Government Code, as added by this Act.

SECTION 12. Effective date: upon passage or September 1, 2003.