

BILL ANALYSIS

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S.B. 11
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The ability of the state to detect, deter, and respond to acts of terrorism, natural disasters, and violent criminal activity is essential to the safety and security of all Texans. There are many weaknesses in the state's ability to take the appropriate measures to mitigate these threats.

As proposed, S.B. 11 addresses these weaknesses as follows:

First, under current law, when a disaster overwhelms the local response mechanisms of a local government entity, agencies such as law enforcement and fire departments from an outside local government entity may provide, on request, assistance to the troubled entity under a mutual aid agreement. Recent disasters such as hurricanes Katrina and Rita, flooding along the border, and massive wildfires have revealed a flaw in this approach in that needed assistance may come from an entity far from a requesting entity that has no agreement or understanding with the requesting entity regarding the details of providing such assistance. The state currently lacks a baseline, default plan to determine how agencies will respond to emergencies that overwhelm the capabilities of local units. In response, this bill creates the Texas Statewide Mutual Aid System to provide integrated statewide mutual aid response capability among local government entities without a written mutual aid agreement.

Second, unlike a contract for a cellular telephone service plan with a provider, a prepaid or disposable cellular telephone does not provide any way to link an telephone owner to a telephone number or vice-versa. As such, violent criminal organizations often use such telephones to avoid remote surveillance by law enforcement. In response, this bill places limitations on the sale of prepaid and disposable cellular telephones and requires business that sell such telephones to retain certain information about the purchasers of such telephones.

Third, amateur radio operators are often needed to assist in communications in an emergency, yet there is no mechanism to allow state employees who are amateur radio operators to take paid leave in order to assist in disaster response operations as there is for other needed state employees, such as employees who are Red Cross members. In response, this bill authorizes state employees who are amateur radio operators to, with certain limitations, take leave in order to participate in disaster relief operations with the approval of their supervisor and the governor.

Fourth, current open records laws require school meetings that involve security planning to be open to the public, thereby exposing schools to unnecessary risks. It also unnecessarily limits the participation of the Department of State Health Services (DSHS) in such matters due to an obsolete authorization giving the now-defunct Department of Mental Health and Mental Retardation (MHMR) a seat on the board of directors (board) of the Texas School Safety Center instead of DSHS. In response, this bill authorizes an exception to the open records laws that allows schools to conduct security meetings in private, and changes the reference in law granting MHMR a seat on the board to grant that seat to DSHS.

Fifth, certain vehicles belonging to non-profit disaster relief organizations are only used during disasters, when expeditious travel and conservation of funds are required of these organizations. However, current law subjects such vehicles to paying tolls, which slows their travel and increases disaster response costs. Current law prevents photographs taken by Department of Transportation (TxDOT) toll enforcement cameras from being used in the prosecution of any offense other than a capital offense or the failure to pay a toll. In response, this bill exempts a disaster vehicle identified under current law from the payment of tolls and removes the

prohibition on the use of evidence obtained from TxDOT toll enforcement cameras in the prosecution of any crime.

Sixth, there is no mechanism for the Department of Public Safety to designate vehicles as emergency vehicles during a declared disaster, thereby hindering the expeditious travel of volunteers and agencies providing aid from other parts of the state to a disaster site. In response, this bill creates such a mechanism by prescribing the circumstances under which such vehicles, at the discretion of the state, may be designated and operated as an authorized emergency vehicle.

Finally, offenses of human trafficking, kidnapping, unlawful restraint, and money laundering often fund criminal enterprises, yet current law does not authorize the use of wiretaps to combat these offenses. Current law also limits wiretaps to facilities described in an application for a wiretap order, limiting usage of wiretaps on newer, portable technologies such as the cellular telephone. This bill authorizes the interception of communications related to offenses of human trafficking, kidnapping, unlawful restraint, and money laundering. It also authorizes a judge to determine that an order authorizing a wiretap need not be limited to a particular facility and to extend the order to any communications of a specified person while the person is in the geographic jurisdiction of the court.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Department of Public Safety in SECTION 6.02 (Section 546.006, Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. CERTAIN DISASTER RESPONSE PROCEDURES FOR POLITICAL SUBDIVISIONS

SECTION 1.01. Amends Section 418.004, Government Code, by adding Subdivisions (10) through (14) to define “local government entity,” “mutual aid,” “requesting local government entity,” “responding local government entity,” and “system.”

SECTION 1.02. Amends Subchapter E, Chapter 418, Government Code, by adding Section 418.1015, as follows:

Sec. 418.1015. EMERGENCY MANAGEMENT DIRECTORS. (a) Designates the presiding officer of the governing body of an incorporated city or county or the chief administrative officer of a joint board as the emergency management director (director) for the officer’s political subdivision.

(b) Provides that a director serves as the governor’s designated agent in the administration and supervision of duties under this chapter. Authorizes a director to exercise the powers granted to the governor under this chapter on an appropriate local scale.

(c) Authorizes a director to designate a person as emergency management coordinator (coordinator). Requires the coordinator to serve as an assistant to the director for emergency management purposes.

SECTION 1.03. Amends Section 418.107(c), Government Code, to authorize a local government entity, rather than a political subdivision or regional planning commission, to render mutual aid (aid) to other local government entities under aid agreements or the Texas Statewide Mutual Aid System (system). Makes conforming changes.

SECTION 1.04. Amends the heading of Section 418.109, Government Code, to read as follows:

Sec. 418.109. AUTHORITY TO RENDER MUTUAL AID ASSISTANCE.

SECTION 1.05. Amends Section 418.109(d), Government Code, to authorize a local government entity or volunteer group, rather than other local emergency service entities, to render aid to other local entities or volunteer groups on request. Deletes a requirement of the highest ranking officer of the entity from which assistance is requested to provide assistance in accordance with any aid plans developed by the emergency management council (council).

SECTION 1.06. Amends Section 418.110, Government Code, to authorize representatives of statewide fire service personnel associations, in consultation with other entities set forth in this section, to develop a statewide aid program for fire emergencies that provides for a coordinated deployment of response assets and personnel by the associations' members. Provides that such a program does not alter the legal obligations of political subdivisions participating in the system and must be consistent with the state emergency management plan.

SECTION 1.07. Amends Chapter 418, Government Code, by adding Subchapter E-1, as follows:

SUBCHAPTER E-1. TEXAS STATEWIDE MUTUAL AID SYSTEM

Sec. 418.111. CREATION OF TEXAS STATEWIDE MUTUAL AID SYSTEM. (a) Establishes the system to provide integrated statewide aid response capacity between local government entities without a written aid agreement (agreement).

(b) Provides that an aid request is considered to be made under the system unless the requesting and responding entities are parties to an agreement in effect when the request is made.

(c) Provides that this subchapter does not affect an agreement between entities in effect on or before this subchapter's effective date or restrict entities in entering into an agreement as otherwise authorized by statute after this subchapter's effective date. Provides that, if a request is made between entities that are parties to an agreement, the terms of the agreement control the rights and obligations of the parties.

Sec. 418.112. ADMINISTRATION BY DIVISION. Requires the division of emergency management in the office of the governor (division) to administer the system and encourage and assist political subdivisions in planning and implementing comprehensive all-hazards emergency management programs, including assisting in ensuring that the local emergency management plan of each subdivision adequately provides for the rendering and receipt of aid.

Sec. 418.113. DISASTER DISTRICTS. (a) Divides the state into disaster districts (districts) to engage in homeland security preparedness and response activities. Provides that the district boundaries coincide with the boundaries of the Department of Transportation districts as provided by Section 201.105, Transportation Code.

(b) Establishes for each district a district committee composed of local representatives of state agencies, boards, and commissions and organized volunteer groups with representation on the emergency management council.

(c) Requires each district committee to coordinate with political subdivisions located in district to ensure state and federal emergency assets are available as needed for the most efficient and effective response possible.

(d) Requires the public safety director of the Department of Public Safety (DPS) to appoint a commanding officer from the Texas Highway Patrol as chair of each district committee. Sets forth the required duties of the chair.

(e) Requires representatives of the emergency management council assigned to each district to assist and provide guidance, counsel, and administrative support to their respective committee chairs.

Sec. 418.114. PROCEDURES FOR MUTUAL AID. (a) Requires the political subdivisions in each district to agree on procedures specifying how aid will be provided when requested.

(b) Requires a copy of the procedures to be provided to the division and the district committee chair.

Sec. 418.115. REQUESTING AND PROVIDING MUTUAL AID ASSISTANCE. (a) Authorizes a request for aid assistance to be submitted verbally or in writing. Requires the request, if made verbally, to be confirmed in writing not later than the 30th day after the date the request was made.

(b) Authorizes the chief or highest ranking officer of a department or agency of a political subdivision to which a request is made, with the approval and consent of the presiding officer or officer's designee of the governing body of that subdivision, to provide the requested assistance in accordance with methods established by the political subdivision's governing body.

Sec. 418.1151. ASSESSMENT OF ABILITY TO RENDER ASSISTANCE. (a) Requires a local government entity to assess local resources to determine their availability to respond to an aid assistance request.

(b) Authorizes a responding local government entity to provide assistance to the extent it determines resources to be available, based on current or anticipated events in its jurisdiction.

Sec. 418.1152. SUPERVISION AND CONTROL. Sets forth the requirements of the provided assistance and the entities involved.

Sec. 418.1153. DURATION OF AID. Sets forth the conditions under which the assistance ends.

Sec. 418.116. RIGHTS AND PRIVILEGES. (a) Entitles a person assigned, designated, or ordered to perform services by the governing body of a local government entity employing the person in response to a request under the system to the same compensation and benefits as though the services were rendered for that entity.

(b) Provides that the local government entity employing the person is responsible for the payment of compensation and benefits associated with the performance of services under the system.

Sec. 418.117. LICENSE PORTABILITY. Provides that a person, whose assistance is requested because the person holds a document evidencing qualification in a needed skill, is considered licensed, certified, permitted, or otherwise documented as such in the political subdivision in which the service is provided for as long as necessary, subject to limitations imposed by the chief executive officer or governing body of the requesting local government entity.

Sec. 418.118. REIMBURSEMENT OF COSTS: STATE REQUEST OR FEDERAL DISASTER DECLARATION. (a) Requires the division to administer all requests for reimbursement for costs associated with providing assistance requested by the division in response to a disaster declaration by the president of the United States. Requires such a request to be made in accordance with division procedures.

(b) Authorizes the division to directly request the provision of aid assistance from any local government entity in the system. Requires the state, from available state money, to reimburse the costs of providing assistance requested by the division, including costs for personnel, operation, maintenance, damaged equipment, medical expenses, food, lodging, and transportation incurred by the responding local government entity. Requires the division to make reimbursements from the disaster contingency fund to the extent that available state money is inadequate, if

the governor finds that the demands due to a particular disaster on state and local agency funds are unreasonably great and has made money available from the disaster contingency fund.

(c) Requires the division, if federal money is available to fund the costs of aid assistance requested by the division, to claim the eligible costs of the responding local government entity on the division's grant application and disburse the federal share of the money to the responding local government entity, with sufficient state funds to cover the assistance costs incurred by the entity.

Sec. 418.1181. REIMBURSEMENT OF COSTS: REQUEST BY LOCAL GOVERNMENT ENTITY. (a) Requires a requesting local government entity to reimburse the costs of providing assistance of the responding entity, including costs for personnel, operation, maintenance, damaged equipment, medical expenses, food, lodging, and transportation incurred by the responding entity in response to a request for reimbursement.

(b) Requires the requesting local government entity to pay the reimbursement from available funds and, if federal money is available to fund the costs of aid assistance requested by the entity, to claim the eligible costs of the responding local government entity on the requesting entity's subgrant application and disburse the federal share of the money to the responding local government entity, with sufficient state funds to cover the assistance costs incurred by the entity.

SECTION 1.08. Repealer: Sections 418.004(9) (definition of "regional planning commission") and 418.109(a), (b), and (c) (Mutual Aid), Government Code.

ARTICLE 2. PREPAID MOBILE TELEPHONES

SECTION 2.01. Amends Title 4, Business & Commerce Code, by adding Chapter 51, as follows:

CHAPTER 51. SALE OF MOBILE TELEPHONES

Sec. 51.01. DEFINITIONS. Defines "mobile telephone" and "prepaid mobile telephone."

Sec. 51.02. RESTRICTION OF ACCESS TO PREPAID MOBILE TELEPHONE. Requires a business that sells prepaid mobile telephones to display the telephones in a manner in which they are accessible only with the assistance of an employee of the business.

Sec. 51.03. PREREQUISITES TO SALE OF MOBILE TELEPHONE. Sets forth the required actions of a business before it is authorized to complete the sale of a mobile telephone, including a prepaid mobile telephone, including a detailed record of the sale.

Sec. 51.04. MINIMUM AGE FOR PURCHASE. Prohibits a business from selling a prepaid mobile telephone to a person under 18 years of age.

Sec. 51.05. MAINTENANCE OF RECORDS. Requires a business that sells mobile telephones to maintain the records made under Section 51.03(2) in a secure centralized location and for at least a year after the date the record is made.

Sec. 51.06. CIVIL PENALTY. Provides that a business that violates this chapter is subject to a civil penalty of \$1,000 for a violation, for which the attorney general is authorized to bring suit to collect.

ARTICLE 3. AMATEUR RADIO OPERATIONS

SECTION 3.01. Amends Subchapter Z, Chapter 661, Government Code, by adding Section 661.919, as follows:

Sec. 661.919. AMATEUR RADIO OPERATORS. (a) Authorizes a state employee holding an amateur radio station license (operator) issued by the Federal Communications Commission to be granted leave to participate in specialized disaster relief services with conditions set forth in this subsection.

(b) Prohibits the number of operators eligible for leave under this section from exceeding 350 state employees at any one time during a state fiscal year. Requires the division to coordinate the establishment and maintenance of the eligible employee list.

ARTICLE 4. CERTAIN OPEN MEETINGS PROVISIONS RELATED TO SCHOOLS AND GOVERNMENTAL BODIES

SECTION 4.01. Amends Section 12.1051(b), Education Code, to apply, as previously provided for in this subsection, any laws that concern open meetings or the availability of information to open-enrollment charter schools.

SECTION 4.02. Amends Section 37.108(c), Education Code, to require a school district to report the results of the security audit of the district's facilities conducted under Subsection (b) to the Texas School Safety Center, in addition to the district's board of trustees.

SECTION 4.03. Amends Section 37.203(a), Education Code, to change to reference authorizing the now-defunct Department of Mental Health and Mental Retardation to a seat on the board of directors of the Texas School Safety Center to authorize that seat to the Department of State Health Services

SECTION 4.04. Amends Section 551.076, Government Code, as follows:

Sec. 551.076. New heading: DELIBERATION REGARDING SECURITY DEVICES, SECURITY AUDITS, OR EMERGENCY OPERATIONS PLANS; CLOSED MEETING. Provides that this chapter (Open Meetings) does not require a governmental body to conduct an open meeting to deliberate a security audit or an emergency operations plan, in addition to other exceptions provided for in this subsection.

ARTICLE 5. PROVISIONS RELATED TO TOLL ROADS

SECTION 5.01. Amends Subtitle G, Title 6, Transportation Code, by adding Chapter 371, as follows:

CHAPTER 371. PROVISIONS APPLICABLE TO MORE THAN ONE TYPE OF TOLL PROJECT

Sec. 371.001. VEHICLES USED BY NONPROFIT DISASTER RELIEF ORGANIZATIONS. (a) Defines "toll project" and "toll project entity."

(b) Prohibits a toll project entity from requiring a vehicle registered under Section 502.203 (Vehicles Used by Nonprofit Disaster Relief Organizations) to pay a toll for the use of a toll project.

SECTION 5.02. Repealer: Section 228.058(d) (which prohibits automated enforcement technology from being used to prosecute an offense except in certain cases), Transportation Code.

ARTICLE 6. OPERATION OF DESIGNATED EMERGENCY VEHICLES

SECTION 6.01. Amends Section 418.013, Government Code, by adding Subsection (c), to require the council to make recommendations to DPS as to which private emergency organizations, such as the American National Red Cross, the Salvation Army, Radio Amateur Civil Emergency Services, and other similar organizations capable of supplementing the state's

resources in a disaster, should be authorized to operate certain vehicles as designated emergency vehicles in the case of a disaster.

SECTION 6.02. Amends Subchapter A, Chapter 546, Transportation Code, by adding Section 546.006, as follows:

Sec. 546.006. DESIGNATED EMERGENCY VEHICLE DURING DECLARED DISASTERS. (a) Requires DPS to designate which organizations and vehicles are authorized to be operated as emergency vehicles during a declared disaster based on the recommendations made under Section 418.013(c), Government Code.

(b) Authorizes a vehicle designated under Subsection (a) to be operated as an authorized emergency vehicle under this subtitle (Rules of the Road) if it meets certain conditions set forth in this subsection.

(c) Requires DPS to adopt rules as necessary to implement this section.

ARTICLE 7. INTERCEPTION OF WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS

SECTION 7.01. Amends Article 18.20, Code of Criminal Procedure, by amending Section 4 and adding Section 9A, as follows:

Sec. 4. OFFENSES FOR WHICH INTERCEPTIONS MAY BE AUTHORIZED. Authorizes a judge to issue an order authorizing the interception of wire, oral, or electronic communications (wiretap) only if the prosecutor shows probable cause to believe that the interception will provide evidence of the commission of a felony offense under Chapter 20 (Kidnapping and Unlawful Restraint), 20A (Trafficking of Persons), or 34 (Money Laundering), Penal code, in addition to certain other offenses.

Sec. 9A. INTERCEPTION ORDER FOR COMMUNICATION BY SPECIFIED PERSON. (a) Provides that, notwithstanding Section 8(a)(2)(B) (requiring a description of the facility or facilities to be wiretapped on an application for an order authorizing a wiretap), an application for a wiretap order is not required to contain a description of the nature and location of the facilities where a communication is to be intercepted if a judge determines exigent circumstances exist requiring the order to apply to any communication by the person who is to be wiretapped and not be limited to a specific facility or place.

(b) Provides that a judge making a determination under Subsection (a) is not required to include a description of the nature or location of the facility for which the authority to wiretap is granted, as required by Section 9(b)(2), in the wiretap order. Authorizes the judge to authorize the interception of the communications of a specified person while the person is present in the geographic jurisdiction of the court.

SECTION 7.02. Makes application of this Article prospective.

ARTICLE 8. EFFECTIVE DATE

SECTION 8.01. Effective date of Article 1 of this Act: upon passage or September 1, 2007. Effective date of Articles 2-7 of this Act: September 1, 2007.