

AN ACT

relating to homeland security; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 2, Agriculture Code, is amended by adding Section 2.006 to read as follows:

Sec. 2.006. POLICY: PROTECTION OF STATE FROM CERTAIN PESTS AND DISEASES. (a) The agricultural policy of this state must recognize that it is of paramount importance to protect this state and the agriculture industry in this state against the intentional or unintentional introduction or dissemination of damaging plant and animal pests and diseases.

(b) The department, with the assistance of the Texas Animal Health Commission, shall pursue a policy of ensuring that the borders of this state are secure from shipments of potentially dangerous plant and animal pests and diseases.

SECTION 2. Section 71.0081, Agriculture Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) The department may enter into an agreement with a corporation or other private entity to provide goods or services for the establishment and operation of checkpoints or the performance of inspections under this section.

SECTION 3. Subchapter A, Chapter 71, Agriculture Code, is amended by adding Section 71.0082 to read as follows:

Sec. 71.0082. INSPECTIONS FOR CERTAIN PESTS AND DISEASES.

1 (a) In addition to vehicle inspections authorized under Section
2 71.0081, the department and the Texas Animal Health Commission,
3 under the direction of the department, shall jointly conduct road
4 station and interstate shipment inspections as feasible at
5 strategic points throughout this state and as determined to be
6 appropriate by the department and the Texas Animal Health
7 Commission, taking into consideration the significance of plant and
8 animal inspections in proactively protecting this state's borders.

9 (b) The department may enter into an agreement with a
10 corporation or other private entity to provide goods or services
11 for the establishment and operation of checkpoints or the
12 performance of inspections under this section.

13 SECTION 4. Section 161.048, Agriculture Code, is amended by
14 adding Subsection (d-1) to read as follows:

15 (d-1) The commission may enter into an agreement with a
16 corporation or other private entity to provide goods or services
17 for the establishment and operation of checkpoints or the
18 performance of inspections under this section.

19 SECTION 5. Article 2.122, Code of Criminal Procedure, is
20 amended by adding Subsection (g) to read as follows:

21 (g) In addition to the powers of arrest, search, and seizure
22 under Subsection (a), a Special Agent of the Secret Service
23 protecting a person described by 18 U.S.C. Section 3056(a) or
24 investigating a threat against a person described by 18 U.S.C.
25 Section 3056(a) has the powers of arrest, search, and seizure as to:

26 (1) misdemeanor offenses under the laws of this state;
27 and

1 (2) any criminal offense under federal law.

2 SECTION 6. Section 418.004, Government Code, is amended by
3 adding Subdivision (9) to read as follows:

4 (9) "Regional planning commission" means a regional
5 planning commission, council of governments, or other regional
6 planning agency created under Chapter 391, Local Government Code.

7 SECTION 7. Subsection (c), Section 418.107, Government
8 Code, is amended to read as follows:

9 (c) A political subdivision or regional planning commission
10 may render aid to other political subdivisions or regional planning
11 commissions under mutual aid agreements.

12 SECTION 8. Subsection (d), Section 418.109, Government
13 Code, is amended to read as follows:

14 (d) A municipality, county, emergency services district,
15 fire protection agency, regional planning commission, organized
16 volunteer group, or other emergency services entity may provide
17 mutual aid assistance on request from another municipality, county,
18 emergency services district, fire protection agency, regional
19 planning commission, organized volunteer group, or other emergency
20 services entity. The chief or highest ranking officer of the entity
21 from which assistance is requested, with the approval and consent
22 of the presiding officer of the governing body of that entity, may
23 provide that assistance while acting in accordance with the
24 policies, ordinances, and procedures established by the governing
25 body of that entity and consistent with any mutual aid plans
26 developed by the emergency management council.

27 SECTION 9. The heading to Subchapter B, Chapter 421,

1 Government Code, is amended to read as follows:

2 SUBCHAPTER B. HOMELAND SECURITY [~~CRITICAL INFRASTRUCTURE~~
3 ~~PROTECTION~~] COUNCIL

4 SECTION 10. Subsections (a) and (b), Section 421.021,
5 Government Code, are amended to read as follows:

6 (a) The Homeland Security [~~Critical Infrastructure~~
7 ~~Protection~~] Council is composed of the governor or the governor's
8 designee and one representative of each of the following entities,
9 appointed by the single statewide elected or appointed governing
10 officer, ~~or~~ administrative head, or chair, as appropriate, of the
11 entity:

- 12 (1) Department of Agriculture;
- 13 (2) office of the attorney general;
- 14 (3) General Land Office;
- 15 (4) Public Utility Commission of Texas;
- 16 (5) [~~Texas~~] Department of State Health Services;
- 17 (6) Department of Information Resources;
- 18 (7) Department of Public Safety of the State of Texas;
- 19 (8) division of emergency management of the office of
20 the governor;
- 21 (9) adjutant general's department [~~Texas National~~
22 ~~Guard~~];
- 23 (10) Texas Commission on Environmental Quality;
- 24 (11) Railroad Commission of Texas;
- 25 (12) Texas Strategic Military Planning Commission;
- 26 [~~and~~]
- 27 (13) Texas Department of Transportation;

- 1 (14) Commission on State Emergency Communications;
- 2 (15) Office of State-Federal Relations;
- 3 (16) secretary of state;
- 4 (17) Senate Committee on Transportation and Homeland
5 Security;
- 6 (18) House Committee on Defense Affairs and
7 State-Federal Relations;
- 8 (19) Texas Animal Health Commission;
- 9 (20) Texas Association of Regional Councils;
- 10 (21) Texas Commission on Law Enforcement Officer
11 Standards and Education;
- 12 (22) state fire marshal's office;
- 13 (23) Texas Education Agency;
- 14 (24) Texas Commission on Fire Protection;
- 15 (25) Parks and Wildlife Department;
- 16 (26) Texas Forest Service; and
- 17 (27) Texas Water Development Board.

18 (b) To be eligible for appointment as a member of the
19 council, a person must be directly involved in ~~[the]~~ policies,
20 programs, or funding activities ~~[of the appointing agency, office,~~
21 ~~or division]~~ that are relevant to homeland security or
22 infrastructure protection.

23 SECTION 11. Chapter 421, Government Code, is amended by
24 adding Subchapter B-1 to read as follows:

25 SUBCHAPTER B-1. PERMANENT SPECIAL ADVISORY COMMITTEES

26 Sec. 421.041. FIRST RESPONDER ADVISORY COUNCIL. (a) The
27 First Responder Advisory Council is a permanent special advisory

1 committee created to advise the governor or the governor's designee
2 on homeland security issues relevant to first responders, radio
3 interoperability, the integration of statewide exercises for
4 hazards, and the related use of available funding.

5 (b) The council is composed of:

6 (1) one representative for each of the following
7 sectors of the state, appointed by the governor or the governor's
8 designee:

9 (A) law enforcement;

10 (B) firefighters;

11 (C) private first responders; and

12 (D) emergency medical services; and

13 (2) other members, as determined by the governor or
14 the governor's designee.

15 Sec. 421.042. PRIVATE SECTOR ADVISORY COUNCIL. (a) The
16 Private Sector Advisory Council is a permanent special advisory
17 committee created to advise the governor or the governor's designee
18 on homeland security issues relevant to the private sector.

19 (b) The council is composed of:

20 (1) one representative of a private organization or
21 entity for each of the following sectors of the state, each
22 appointed by the governor or the governor's designee:

23 (A) agriculture and food;

24 (B) banking and finance;

25 (C) chemicals and hazardous materials;

26 (D) the defense industry;

27 (E) energy;

- 1 (F) emergency services;
- 2 (G) information technology;
- 3 (H) telecommunications;
- 4 (I) postal and shipping;
- 5 (J) public health;
- 6 (K) transportation;
- 7 (L) ports and waterways; and
- 8 (M) national monuments and icons; and

9 (2) other members, as determined by the governor or
10 the governor's designee.

11 Sec. 421.043. ELIGIBILITY. (a) To be eligible for
12 appointment as a member of a permanent special advisory committee
13 created under this subchapter, a person must demonstrate experience
14 in the sector that the person is under consideration to represent
15 and be directly involved in related policies, programs, or funding
16 activities that are relevant to homeland security or infrastructure
17 protection.

18 (b) Each member of a permanent special advisory committee
19 created under this subchapter serves at the will of the governor.

20 Sec. 421.044. COMPENSATION AND REIMBURSEMENT OF EXPENSES
21 PROHIBITED. A person who is a member of a permanent special
22 advisory committee created under this subchapter is not entitled to
23 receive compensation from this state for service on the committee
24 or travel expenses incurred by the person while conducting the
25 business of the committee.

26 Sec. 421.045. DUTIES. Each permanent special advisory
27 committee created under this subchapter shall advise the governor

1 on:

2 (1) the development and coordination of a statewide
3 critical infrastructure protection strategy;

4 (2) the implementation of the governor's homeland
5 security strategy by state and local agencies and provide specific
6 suggestions for helping those agencies implement the strategy;

7 (3) specific priorities related to the governor's
8 homeland security strategy that the committee determines to be of
9 significant importance to the statewide security of critical
10 infrastructure; and

11 (4) other matters related to the planning,
12 development, coordination, and implementation of initiatives to
13 promote the governor's homeland security strategy.

14 SECTION 12. Section 421.071, Government Code, is amended to
15 read as follows:

16 Sec. 421.071. COOPERATION AND ASSISTANCE. A state or local
17 agency that performs a homeland security activity or a
18 nongovernmental entity that contracts with a state or local agency
19 to perform a homeland security activity shall cooperate with and
20 assist the office of the governor, the Homeland Security [~~Critical~~
21 ~~Infrastructure Protection~~] Council, the Texas Infrastructure
22 Protection Communications Center, and the National Infrastructure
23 Protection Center in the performance of their duties under this
24 chapter and other state or federal law.

25 SECTION 13. Subsections (a) and (c), Section 421.072,
26 Government Code, are amended to read as follows:

27 (a) The office of the governor shall:

1 (1) allocate available federal and state grants and
2 other funding related to homeland security to state and local
3 agencies and defense base development authorities created under
4 Chapter 379B, Local Government Code, that perform homeland security
5 activities;

6 (2) periodically review the grants and other funding
7 for appropriateness and compliance; ~~and~~

8 (3) designate state administering agencies to
9 administer all grants and other funding to the state related to
10 homeland security; and

11 (4) measure the effectiveness of the homeland security
12 grants and other funding.

13 (c) A state or local agency or defense base development
14 authority that receives a grant or other funding related to
15 homeland security must provide an annual report to the office of the
16 governor detailing:

17 (1) the ~~[agency's]~~ compliance of the agency or
18 authority with the state homeland security strategy;

19 (2) any expenditures made using the funding;

20 (3) any programs developed or implemented using the
21 funding; and

22 (4) the manner in which any expenditures made or
23 programs developed or implemented have improved the ability of the
24 agency or authority to detect, deter, respond to, and recover from a
25 terrorist attack.

26 SECTION 14. Chapter 421, Government Code, is amended by
27 adding Subchapter F to read as follows:

1 SUBCHAPTER F. GOVERNOR'S INTEROPERABLE RADIO COMMUNICATIONS

2 PROGRAM

3 Sec. 421.095. DEFINITIONS. In this subchapter:

4 (1) "First responder" means a public safety employee
5 or volunteer whose duties include responding rapidly to an
6 emergency. The term includes:

7 (A) a peace officer whose duties include
8 responding rapidly to an emergency;

9 (B) fire protection personnel under Section
10 419.021;

11 (C) a volunteer firefighter who is:

12 (i) certified by the Texas Commission on
13 Fire Protection or by the State Firemen's and Fire Marshalls'
14 Association of Texas; or

15 (ii) a member of an organized volunteer
16 fire-fighting unit as described by Section 615.003; and

17 (D) an individual certified as emergency medical
18 services personnel by the Department of State Health Services.

19 (2) "Infrastructure equipment" means the underlying
20 permanent equipment required to establish interoperable
21 communication between radio systems used by local, state, and
22 federal agencies and first responders.

23 Sec. 421.096. INTEROPERABILITY OF RADIO SYSTEMS. The
24 office of the governor shall:

25 (1) develop and administer a strategic plan to design
26 and implement a statewide integrated public safety radio
27 communications system that promotes interoperability within and

1 between local, state, and federal agencies and first responders;

2 (2) develop and administer a plan in accordance with
3 Subdivision (1) to purchase infrastructure equipment for state and
4 local agencies and first responders;

5 (3) advise representatives of entities in this state
6 that are involved in homeland security activities with respect to
7 interoperability; and

8 (4) use appropriated money, including money from
9 relevant federal homeland security grants, for the purposes of
10 designing, implementing, and maintaining a statewide integrated
11 public safety radio communications system.

12 Sec. 421.097. ASSISTANCE. The office of the governor may
13 consult with a representative of an entity described by Section
14 421.096(3) to obtain assistance or information necessary for the
15 performance of any duty under this subchapter.

16 Sec. 421.098. REPORT. Not later than September 1 of each
17 year, the office of the governor shall provide to the legislature a
18 report on the status of its duties under this subchapter.

19 SECTION 15. Chapter 421, Government Code, is amended by
20 adding Subchapter Z to read as follows:

21 SUBCHAPTER Z. MISCELLANEOUS

22 Sec. 421.901. INTEROPERABILITY OF CRITICAL INFORMATION
23 SYSTEMS. The office of the governor shall develop a plan for
24 appropriate entities to use information systems that:

25 (1) employ underlying computer equipment and software
26 required to establish interoperable communication between computer
27 systems used by local, state, and federal agencies and first

1 responders; and

2 (2) provide a single point of entry to disseminate
3 information, applications, processes, and communications.

4 SECTION 16. Section 791.006, Government Code, is amended by
5 amending Subsection (a) and adding Subsections (a-1) and (d) to
6 read as follows:

7 (a) If governmental units contract under this chapter to
8 furnish or obtain [~~the~~] services of a fire department, such as
9 training, fire suppression, fire fighting, ambulance services,
10 hazardous materials response services, fire and rescue services, or
11 paramedic services, the governmental unit that would have been
12 responsible for furnishing the services in the absence of the
13 contract is responsible for any civil liability that arises from
14 the furnishing of those services.

15 (a-1) Notwithstanding Subsection (a), if a municipality,
16 county, rural fire prevention district, emergency services
17 district, fire protection agency, regional planning commission, or
18 joint board enters into a contract with a governmental unit under
19 this chapter to furnish or obtain fire or emergency services, the
20 parties to the contract may agree to assign responsibility for
21 civil liability that arises from the furnishing or obtaining of
22 services under the contract in any manner agreed to by the parties.
23 To assign responsibility for civil liability under this subsection,
24 the parties to the contract must assign responsibility in a written
25 provision of the contract that specifically references this
26 subsection and states that the assignment of liability is intended
27 to be different than liability otherwise assigned under Subsection

1 (a).

2 (d) Notwithstanding any other provision of this chapter, a
3 contract under this chapter is not a joint enterprise for the
4 purpose of assigning or determining liability.

5 SECTION 17. Subchapter B, Chapter 12, Health and Safety
6 Code, is amended by adding Section 12.0128 to read as follows:

7 Sec. 12.0128. HEALTH ALERT NETWORK. The department shall
8 include the Texas Association of Local Health Officials, the Texas
9 Association of Community Health Centers, and the Texas Organization
10 of Rural and Community Hospitals in the department's Texas Health
11 Alert Network to the extent federal funds for bioterrorism
12 preparedness are available for that purpose.

13 SECTION 18. Section 341.033, Health and Safety Code, is
14 amended by adding Subsection (i) to read as follows:

15 (i) An owner, agent, manager, operator, or other person in
16 charge of a public water supply system that furnishes water for
17 public or private use or a wastewater system that provides
18 wastewater services for public or private use shall maintain
19 internal procedures to notify the commission immediately of the
20 following events, if the event may negatively impact the production
21 or delivery of safe and adequate drinking water:

22 (1) an unusual or unexplained unauthorized entry at
23 property of the public water supply or wastewater system;

24 (2) an act of terrorism against the public water
25 supply or wastewater system;

26 (3) an unauthorized attempt to probe for or gain
27 access to proprietary information that supports the key activities

1 of the public water supply or wastewater system;

2 (4) a theft of property that supports the key
3 activities of the public water supply or wastewater system; or

4 (5) a natural disaster, accident, or act that results
5 in damage to the public water supply or wastewater system.

6 SECTION 19. Subchapter G, Chapter 756, Health and Safety
7 Code, as added by Chapter 1082, Acts of the 78th Legislature,
8 Regular Session, 2003, is amended by adding Section 756.106 to read
9 as follows:

10 Sec. 756.106. SAFETY STANDARDS AND BEST PRACTICES. The
11 Railroad Commission of Texas shall adopt and enforce safety
12 standards and best practices, including those described by 49
13 U.S.C. Section 6105 et seq., relating to the prevention of damage by
14 a person to a facility under the jurisdiction of the commission.

15 SECTION 20. Subsection (b), Section 30.05, Penal Code, is
16 amended by adding Subdivision (7) to read as follows:

17 (7) "Critical infrastructure facility" means one of
18 the following, if completely enclosed by a fence or other physical
19 barrier that is obviously designed to exclude intruders:

20 (A) a chemical manufacturing facility;

21 (B) a refinery;

22 (C) an electrical power generating facility,
23 substation, switching station, electrical control center, or
24 electrical transmission or distribution facility;

25 (D) a water intake structure, water treatment
26 facility, wastewater treatment plant, or pump station;

27 (E) a natural gas transmission compressor

1 station;

2 (F) a liquid natural gas terminal or storage
3 facility;

4 (G) a telecommunications central switching
5 office;

6 (H) a port, railroad switching yard, trucking
7 terminal, or other freight transportation facility;

8 (I) a gas processing plant, including a plant
9 used in the processing, treatment, or fractionation of natural gas;

10 or

11 (J) a transmission facility used by a federally
12 licensed radio or television station.

13 SECTION 21. Section 30.05, Penal Code, is amended by
14 amending Subsection (d) and adding Subsections (g) and (h) to read
15 as follows:

16 (d) An offense under Subsection (e) is a Class C misdemeanor
17 unless it is committed in a habitation or unless the actor carries a
18 deadly weapon on or about the actor's person during the commission
19 of the offense, in which event it is a Class A misdemeanor. An
20 offense under Subsection (a) is a Class B misdemeanor, except that
21 the offense is a Class A misdemeanor if:

22 (1) the offense is committed:

23 (A) in a habitation or a shelter center; [~~or~~]

24 (B) on a Superfund site; or

25 (C) on or in a critical infrastructure facility;

26 or

27 (2) the actor carries a deadly weapon on or about his

1 person during the commission of the offense.

2 (g) It is a defense to prosecution under this section that
3 the actor entered a railroad switching yard or any part of a
4 railroad switching yard and was at that time an employee or a
5 representative of employees exercising a right under the Railway
6 Labor Act (45 U.S.C. Section 151 et seq.).

7 (h) At the punishment stage of a trial in which the attorney
8 representing the state seeks the increase in punishment provided by
9 Subsection (d)(1)(C), the defendant may raise the issue as to
10 whether the defendant entered or remained on or in a critical
11 infrastructure facility as part of a peaceful or lawful assembly,
12 including an attempt to exercise rights guaranteed by state or
13 federal labor laws. If the defendant proves the issue in the
14 affirmative by a preponderance of the evidence, the increase in
15 punishment provided by Subsection (d)(1)(C) does not apply.

16 SECTION 22. (a) Section 411.0105, Government Code, is
17 repealed.

18 (b) Section 752.006, Health and Safety Code, is repealed.

19 SECTION 23. On the effective date of this Act:

20 (1) the Public Safety Radio Communications Council is
21 abolished;

22 (2) the office of the governor replaces the Public
23 Safety Radio Communications Council as the entity responsible for
24 oversight of the development of a program related to the
25 interoperability of radio communications;

26 (3) all property, including records, in the custody of
27 the Department of Public Safety of the State of Texas that relates

1 to the Public Safety Radio Communications Council or a program to
2 promote the interoperability of radio communications becomes the
3 property of the office of the governor and shall be made available
4 to the office of the governor no later than December 1, 2005; and

5 (4) all funds appropriated by the legislature to the
6 Department of Public Safety of the State of Texas for the purpose of
7 providing administrative support to the Public Safety Radio
8 Communications Council are transferred to the office of the
9 governor.

10 SECTION 24. The head of each entity listed in Subdivision
11 (9) and Subdivisions (14) through (27), Subsection (a), Section
12 421.021, Government Code, as amended by this Act, shall appoint a
13 representative to the Homeland Security Council, as required by
14 that section, not later than December 1, 2005.

15 SECTION 25. The governor shall make all required
16 appointments to the First Responder Advisory Council and the
17 Private Sector Advisory Council, in accordance with Subchapter B-1,
18 Chapter 421, Government Code, as added by this Act, not later than
19 December 1, 2005.

20 SECTION 26. (a) The change in law made by this Act to
21 Section 791.006, Government Code, does not affect any civil
22 liability for services furnished under an interlocal cooperation
23 contract entered into before the effective date of this Act to
24 furnish or obtain the services of a fire department.

25 (b) The former law is continued in effect for the purpose of
26 determining liability, if any, for services furnished under an
27 interlocal cooperation contract entered into before the effective

1 date of this Act to furnish or obtain the services of a fire
2 department.

3 SECTION 27. The Railroad Commission of Texas shall adopt
4 the safety standards and best practices required by Section
5 756.106, Health and Safety Code, as added by this Act, not later
6 than June 1, 2007.

7 SECTION 28. The change in law made by this Act to Section
8 30.05, Penal Code, applies only to an offense committed on or after
9 September 1, 2005. An offense committed before September 1, 2005,
10 is covered by the law in effect when the offense was committed, and
11 the former law is continued in effect for that purpose. For
12 purposes of this section, an offense was committed before September
13 1, 2005, if any element of the offense was committed before that
14 date.

15 SECTION 29. This Act takes effect immediately if it
16 receives a vote of two-thirds of all the members elected to each
17 house, as provided by Section 39, Article III, Texas Constitution.
18 If this Act does not receive the vote necessary for immediate
19 effect, this Act takes effect September 1, 2005.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 9 passed the Senate on April 19, 2005, by the following vote: Yeas 29, Nays 0; and that the Senate concurred in House amendments on May 28, 2005, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 9 passed the House, with amendments, on May 25, 2005, by the following vote: Yeas 144, Nays 1, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor