CHAPTER 1337

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

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

(d-1) The commission 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 5. Article 2.122, Code of Criminal Procedure, is amended by adding Subsection (g) to read as follows:

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

(1) misdemeanor offenses under the laws of this state; and
(2) any criminal offense under federal law.

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

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

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

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

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

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

SECTION 9. The heading to Subchapter B, Chapter 421,
Government Code, is amended to read as follows:

SUBCHAPTER B. **HOMELAND SECURITY [CRITICAL INFRASTRUCTURE PROTECTION] COUNCIL**

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

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

(1) Department of Agriculture;
(2) office of the attorney general;
(3) General Land Office;
(4) Public Utility Commission of Texas;
(5) [Texas] Department of **State Health Services**;
(6) Department of Information Resources;
(7) Department of Public Safety of the State of Texas;
(8) division of emergency management of the office of the governor;
(9) **adjutant general's department [Texas National Guard]**;
(10) Texas Commission on Environmental Quality;
(11) Railroad Commission of Texas;
(12) Texas Strategic Military Planning Commission;
(13) Texas Department of Transportation;
(14) Commission on State Emergency Communications;
(15) Office of State-Federal Relations;
(16) secretary of state;
(17) Senate Committee on Transportation and Homeland Security;
(18) House Committee on Defense Affairs and State-Federal Relations;
(19) Texas Animal Health Commission;
(20) Texas Association of Regional Councils;
(21) Texas Commission on Law Enforcement Officer Standards and Education;
(22) state fire marshal's office;
(23) Texas Education Agency;
(24) Texas Commission on Fire Protection;
(25) Parks and Wildlife Department;
(26) Texas Forest Service; and
(27) Texas Water Development Board.

(b) To be eligible for appointment as a member of the council, a person must 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.

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

SUBCHAPTER B-1. PERMANENT SPECIAL ADVISORY COMMITTEES

Sec. 421.041. FIRST RESPONDER ADVISORY COUNCIL. (a) The First Responder Advisory Council is a permanent special advisory
committee created to advise the governor or the governor's designee on homeland security issues relevant to first responders, radio interoperability, the integration of statewide exercises for hazards, and the related use of available funding.

(b) The council is composed of:

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

(A) law enforcement;
(B) firefighters;
(C) private first responders; and
(D) emergency medical services; and

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

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

(b) The council is composed of:

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

(A) agriculture and food;
(B) banking and finance;
(C) chemicals and hazardous materials;
(D) the defense industry;
(E) energy;
emergency services;
(G) information technology;
(H) telecommunications;
(I) postal and shipping;
(J) public health;
(K) transportation;
(L) ports and waterways; and
(M) national monuments and icons; and
(2) other members, as determined by the governor or
the governor's designee.
Sec. 421.043. ELIGIBILITY. (a) To be eligible for
appointment as a member of a permanent special advisory committee
created under this subchapter, a person must demonstrate experience
in the sector that the person is under consideration to represent
and be directly involved in related policies, programs, or funding
activities that are relevant to homeland security or infrastructure
protection.
(b) Each member of a permanent special advisory committee
created under this subchapter serves at the will of the governor.
Sec. 421.044. COMPENSATION AND REIMBURSEMENT OF EXPENSES
PROHIBITED. A person who is a member of a permanent special
advisory committee created under this subchapter is not entitled to
receive compensation from this state for service on the committee
or travel expenses incurred by the person while conducting the
business of the committee.
Sec. 421.045. DUTIES. Each permanent special advisory
committee created under this subchapter shall advise the governor
(1) the development and coordination of a statewide critical infrastructure protection strategy;
(2) the implementation of the governor's homeland security strategy by state and local agencies and provide specific suggestions for helping those agencies implement the strategy;
(3) specific priorities related to the governor's homeland security strategy that the committee determines to be of significant importance to the statewide security of critical infrastructure; and
(4) other matters related to the planning, development, coordination, and implementation of initiatives to promote the governor's homeland security strategy.

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

Sec. 421.071. COOPERATION AND ASSISTANCE. 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 shall cooperate with and assist the office of the governor, the Homeland Security [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.

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

(a) The office of the governor shall:
(1) allocate available federal and state grants and other funding related to homeland security to state and local agencies and defense base development authorities created under Chapter 379B, Local Government Code, that perform homeland security activities;

(2) periodically review the grants and other funding for appropriateness and compliance; [and]

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

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

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

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

(2) any expenditures made using the funding;

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

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

SECTION 14. Chapter 421, Government Code, is amended by adding Subchapter F to read as follows:
SUBCHAPTER F. GOVERNOR'S INTEROPERABLE RADIO COMMUNICATIONS PROGRAM

Sec. 421.095. DEFINITIONS. In this subchapter:

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

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

(B) fire protection personnel under Section 419.021;

(C) a volunteer firefighter who is:

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

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

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

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

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

(1) develop and administer a strategic plan to design and implement a statewide integrated public safety radio communications system that promotes interoperability within and
between local, state, and federal agencies and first responders;

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

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

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

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

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

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

SUBCHAPTER Z. MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) an unauthorized attempt to probe for or gain access to proprietary information that supports the key activities
of the public water supply or wastewater system;

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

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

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

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

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

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

(A) a chemical manufacturing facility;

(B) a refinery;

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

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

(E) a natural gas transmission compressor
station;

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

(G) a telecommunications central switching office;

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

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

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

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

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

(1) the offense is committed:

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

(B) on a Superfund site; or

(C) on or in a critical infrastructure facility;

or

(2) the actor carries a deadly weapon on or about his
person during the commission of the offense.

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

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

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

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

SECTION 23. On the effective date of this Act:

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

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

(3) all property, including records, in the custody of
the Department of Public Safety of the State of Texas that relates
to the Public Safety Radio Communications Council or a program to promote the interoperability of radio communications becomes the property of the office of the governor and shall be made available to the office of the governor no later than December 1, 2005; and

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

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

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

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

(b) The former law is continued in effect for the purpose of determining liability, if any, for services furnished under an interlocal cooperation contract entered into before the effective
date of this Act to furnish or obtain the services of a fire department.

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

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

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

Jim Ashcraft  
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.

Larry Spaulding  
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.

Robert Harper  
Chief Clerk of the House

Approved:

18 JUNE '05  
Date

Rick Perry  
Governor

Filed in the Office of the Secretary of State  
10:20 A.M. 1 O'CLOCK  
18 JUNE '05  
Secretary of State