

By: Carona

S.B. No. 11

A BILL TO BE ENTITLED

AN ACT

relating to homeland security; providing a penalty.

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

ARTICLE 1. CERTAIN DISASTER RESPONSE PROCEDURES FOR
POLITICAL SUBDIVISIONS

SECTION 1.01. Section 418.004, Government Code, is amended
by adding Subdivisions (10) through (14) to read as follows:

(10) "Local government entity" means a county, incorporated city, independent school district, emergency services district, other special district, joint board, or other entity defined as a political subdivision under the laws of this state that maintains the capability to provide mutual aid.

(11) "Mutual aid" means a homeland security activity, as defined by Section 421.001, performed under the system or a written mutual aid agreement.

(12) "Requesting local government entity" means a local government entity requesting mutual aid assistance under the system.

(13) "Responding local government entity" means a local government entity providing mutual aid assistance in response to a request under the system.

(14) "System" means the Texas Statewide Mutual Aid System.

SECTION 1.02. Subchapter E, Chapter 418, Government Code,

1 is amended by adding Section 418.1015 to read as follows:

2 Sec. 418.1015. EMERGENCY MANAGEMENT DIRECTORS. (a) The
3 presiding officer of the governing body of an incorporated city or a
4 county or the chief administrative officer of a joint board is
5 designated as the emergency management director for the officer's
6 political subdivision.

7 (b) An emergency management director serves as the
8 governor's designated agent in the administration and supervision
9 of duties under this chapter. An emergency management director may
10 exercise the powers granted to the governor under this chapter on an
11 appropriate local scale.

12 (c) An emergency management director may designate a person
13 to serve as emergency management coordinator. The emergency
14 management coordinator shall serve as an assistant to the emergency
15 management director for emergency management purposes.

16 SECTION 1.03. Section 418.107(c), Government Code, is
17 amended to read as follows:

18 (c) A local government entity [~~political subdivision or~~
19 ~~regional planning commission~~] may render mutual aid to other local
20 government entities [~~political subdivisions or regional planning~~
21 ~~commissions~~] under mutual aid agreements or the system.

22 SECTION 1.04. The heading to Section 418.109, Government
23 Code, is amended to read as follows:

24 Sec. 418.109. AUTHORITY TO RENDER MUTUAL AID ASSISTANCE.

25 SECTION 1.05. Section 418.109(d), Government Code, is
26 amended to read as follows:

27 (d) A local government entity or [~~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 local government entity or ~~[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 1.06. Section 418.110, Government Code, is amended to read as follows:

Sec. 418.110. STATEWIDE MUTUAL AID PROGRAM FOR FIRE EMERGENCIES. (a) Representatives of statewide associations of fire service personnel [The division], in consultation with the division, the fire fighters' pension commissioner's office, the Office of Rural Community Affairs, the state fire marshal's office, the Texas Commission on Fire Protection, the Texas Engineering Extension Service, and the Texas Forest Service, may [shall] develop a statewide mutual aid program for fire emergencies that provides for a coordinated deployment of response assets and personnel by the associations' members.

(b) A program developed under this section:

1 (1) does not alter the legal obligations of a
2 political subdivision participating in the system; and

3 (2) must be consistent with the state emergency
4 management plan.

5 SECTION 1.07. Chapter 418, Government Code, is amended by
6 adding Subchapter E-1 to read as follows:

7 SUBCHAPTER E-1. TEXAS STATEWIDE MUTUAL AID SYSTEM

8 Sec. 418.111. CREATION OF TEXAS STATEWIDE MUTUAL AID
9 SYSTEM. (a) The Texas Statewide Mutual Aid System is established
10 to provide integrated statewide mutual aid response capability
11 between local government entities without a written mutual aid
12 agreement.

13 (b) A request for mutual aid assistance between local
14 government entities is considered to be made under the system,
15 unless the requesting and responding entities are parties to a
16 written mutual aid agreement in effect when the request is made.

17 (c) This subchapter does not affect a written mutual aid
18 agreement between local government entities in effect on or before
19 the effective date of this subchapter or restrict the ability of
20 local government entities to enter into a written mutual aid
21 agreement as otherwise authorized by statute after the effective
22 date of this subchapter. If a request is made between local
23 government entities that are parties to a written mutual aid
24 agreement, the terms of that agreement control the rights and
25 obligations of the parties.

26 Sec. 418.112. ADMINISTRATION BY DIVISION. The division
27 shall administer the system. In administering the system, the

1 division shall encourage and assist political subdivisions in
2 planning and implementing comprehensive all-hazards emergency
3 management programs, including assisting political subdivisions to
4 ensure that the local emergency management plan of each subdivision
5 adequately provides for the rendering and receipt of mutual aid.

6 Sec. 418.113. DISASTER DISTRICTS. (a) This state is
7 divided into disaster districts to engage in homeland security
8 preparedness and response activities. The boundaries of the
9 disaster districts coincide with the boundaries of the Texas
10 Department of Transportation districts as provided by Section
11 201.105, Transportation Code.

12 (b) A disaster district committee is established for each
13 disaster district. Each committee is composed of local
14 representatives of the state agencies, boards, and commissions and
15 organized volunteer groups with representation on the emergency
16 management council.

17 (c) Each disaster district committee shall coordinate with
18 political subdivisions located in the disaster district to ensure
19 that state and federal emergency assets are made available as
20 needed to provide the most efficient and effective response
21 possible.

22 (d) The public safety director of the Department of Public
23 Safety of the State of Texas shall appoint a commanding officer from
24 the Texas Highway Patrol to serve as chair of each disaster district
25 committee. The chair shall:

26 (1) report to the State Director of Homeland Security
27 on matters relating to disasters and emergencies; and

1 (2) inform the public safety director of the
2 Department of Public Safety of the State of Texas on all matters as
3 requested by the director.

4 (e) Representatives of the emergency management council
5 assigned to each district shall assist the chair of their disaster
6 district committee and provide guidance, counsel, and
7 administrative support as required.

8 Sec. 418.114. PROCEDURES FOR MUTUAL AID. (a) The political
9 subdivisions in each disaster district shall agree on procedures
10 that specify the manner in which mutual aid will be provided in
11 response to a request from a political subdivision in the district
12 or another district or from this state.

13 (b) A copy of the procedures must be provided to the
14 division and the disaster district committee chair.

15 Sec. 418.115. REQUESTING AND PROVIDING MUTUAL AID
16 ASSISTANCE. (a) A request for mutual aid assistance may be
17 submitted verbally or in writing. If a request is submitted
18 verbally, it must be confirmed in writing not later than the 30th
19 day after the date the request was made.

20 (b) If a request for mutual aid assistance is made to a
21 department or agency of a political subdivision, the chief or
22 highest ranking officer of the department or agency, with the
23 approval and consent of the presiding officer of the governing body
24 of the political subdivision or that officer's designee, may
25 provide the requested assistance in accordance with the policies,
26 ordinances, and procedures established by the governing body of the
27 political subdivision.

Sec. 418.1151. ASSESSMENT OF ABILITY TO RENDER ASSISTANCE.

(a) When contacted with a request for mutual aid assistance, a local government entity shall assess local resources to determine availability of personnel, equipment, and other assistance to respond to the request.

(b) A responding local government entity may provide assistance to the extent personnel, equipment, and resources are determined to be available, based on current or anticipated events in its jurisdiction.

Sec. 418.1152. SUPERVISION AND CONTROL. When providing mutual aid assistance under the system:

(1) the response effort must be organized and function in accordance with the National Incident Management System guidelines;

(2) the personnel, equipment, and resources of a responding local government entity are under the operational control of the requesting local government entity unless otherwise agreed;

(3) direct supervision and control of personnel, equipment, and resources and personnel accountability remain the responsibility of the designated supervisory personnel of the responding local government entity;

(4) unless otherwise agreed in advance, an emergency medical service organization providing assistance under the system shall use the medical protocols authorized by the organization's medical director;

(5) the designated supervisory personnel of the

responding local government entity shall:

(A) maintain daily personnel time records, material records, and a log of equipment hours;

(B) be responsible for the operation and maintenance of the equipment and other resources furnished by the responding local government entity; and

(C) report work progress to the requesting local government entity; and

(6) the responding local government entity's personnel and other resources are subject to recall at any time, subject to reasonable notice to the requesting local government entity.

Sec. 418.1153. DURATION OF AID. The provision of mutual aid assistance under the system may continue until:

(1) the services of the responding local government entity are no longer required; or

(2) the responding local government entity determines that further assistance should not be provided.

Sec. 418.116. RIGHTS AND PRIVILEGES. (a) A person assigned, designated, or ordered to perform duties by the governing body of the local government entity employing the person in response to a request under the system is entitled to receive the same wages, salary, pension, and other compensation and benefits, including injury or death benefits, disability payments, and workers' compensation benefits, for the performance of the duties under the system as though the services were rendered for the entity employing the person.

(b) The local government entity employing the person is

1 responsible for the payment of wages, salary, pension, and other
2 compensation and benefits associated with the performance of duties
3 under the system.

4 Sec. 418.117. LICENSE PORTABILITY. If the assistance of a
5 person who holds a license, certificate, permit, or other document
6 evidencing qualification in a professional, mechanical, or other
7 skill is requested by a local government entity under the system,
8 the person is considered licensed, certified, permitted, or
9 otherwise documented in the political subdivision in which the
10 service is provided as long as the service is required, subject to
11 any limitations imposed by the chief executive officer or the
12 governing body of the requesting local government entity.

13 Sec. 418.118. REIMBURSEMENT OF COSTS: STATE REQUEST OR
14 FEDERAL DISASTER DECLARATION. (a) The division shall administer
15 all requests for reimbursement for costs associated with providing
16 mutual aid assistance in response to a request made by the division
17 for an incident resulting in the issuance of a disaster declaration
18 by the president of the United States. A request for reimbursement
19 made to the division must be made in accordance with procedures
20 developed by the division.

21 (b) The division may directly request the provision of
22 mutual aid assistance from any local government entity
23 participating in the system. If the division requests the
24 provision of assistance, the state shall reimburse the actual costs
25 of providing assistance, including costs for personnel, operation
26 and maintenance of equipment, damaged equipment, medical expenses,
27 food, lodging, and transportation, incurred by the responding local

government entity. The state shall pay reimbursements from available state money. If the governor finds that the demands placed on money regularly appropriated to state and local agencies are unreasonably great for coping with a particular disaster under Section 418.073, and has made money available from the disaster contingency fund, the division shall make reimbursement from the disaster contingency fund to the extent that available state money is inadequate.

(c) If federal money is available to pay costs associated with the provision of mutual aid assistance in response to a request made by the division, the division shall make the claim for the eligible costs of the responding local government entity on the division's grant application and shall disburse the federal share of the money to the responding local government entity, with sufficient state funds to cover the actual costs incurred by the responding local government entity in providing the assistance.

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

(b) The requesting local government entity shall pay the

1 reimbursement from available funds. If federal money is available
2 to pay costs associated with the provision of mutual aid
3 assistance, the requesting local government entity shall make the
4 claim for the eligible costs of the responding local government
5 entity on the requesting entity's subgrant application and shall
6 disburse the federal share of the money to the responding local
7 government entity, with sufficient state funds to cover the actual
8 costs of the responding local government entity in providing
9 assistance.

10 SECTION 1.08. Sections 418.004(9) and 418.109(a), (b), and
11 (c), Government Code, are repealed.

12 ARTICLE 2. PREPAID MOBILE TELEPHONES

13 SECTION 2.01. Title 4, Business & Commerce Code, is amended
14 by adding Chapter 51 to read as follows:

15 CHAPTER 51. SALE OF MOBILE TELEPHONES

16 Sec. 51.01. DEFINITIONS. In this chapter:

17 (1) "Mobile telephone" includes a cellular telephone,
18 or similar wireless communication device that can be used as a
19 telephone.

20 (2) "Prepaid mobile telephone" means a mobile
21 telephone for which access to a wireless communication service is
22 paid in advance and not under a contract.

23 Sec. 51.02. RESTRICTION OF ACCESS TO PREPAID MOBILE
24 TELEPHONE. A business establishment that sells a prepaid mobile
25 telephone shall display the telephone in a manner that makes the
26 telephone accessible to a patron of the business establishment only
27 with the assistance of an employee of the establishment.

1 Sec. 51.03. PREREQUISITES TO SALE OF MOBILE TELEPHONE.

2 Before completing a sale of a mobile telephone, including a prepaid
3 mobile telephone, a business establishment that engages in those
4 sales shall:

5 (1) require the person purchasing the mobile telephone
6 to:

7 (A) display a driver's license or other form of
8 identification containing the person's photograph; and

9 (B) sign for the purchase;

10 (2) make a record of the sale, including the name and
11 address of the person purchasing the mobile telephone, the date of
12 purchase, and the number of any prepaid mobile telephones
13 purchased; and

14 (3) take action as necessary to ensure that a person
15 does not purchase more than two prepaid mobile telephones from the
16 establishment during a single transaction.

17 Sec. 51.04. MINIMUM AGE FOR PURCHASE. A business
18 establishment may not sell a prepaid mobile telephone to a person
19 younger than 18 years of age.

20 Sec. 51.05. MAINTENANCE OF RECORDS. A business
21 establishment that sells a mobile telephone shall maintain all
22 records made under Section 51.03(2) in a secure centralized
23 location. The establishment shall maintain each record until at
24 least the first anniversary of the date the record is made.

25 Sec. 51.06. CIVIL PENALTY. (a) A business establishment
26 that violates this chapter is subject to a civil penalty of \$1,000
27 for each violation.

1 (b) The attorney general may bring suit to recover a civil
2 penalty under this chapter.

3 ARTICLE 3. AMATEUR RADIO OPERATORS

4 SECTION 3.01. Subchapter Z, Chapter 661, Government Code,
5 is amended by adding Section 661.919 to read as follows:

6 Sec. 661.919. AMATEUR RADIO OPERATORS. (a) A state
7 employee who holds an amateur radio station license issued by the
8 Federal Communications Commission may be granted leave not to
9 exceed 10 days each fiscal year to participate in specialized
10 disaster relief services without a deduction in salary or loss of
11 vacation time, sick leave, earned overtime credit, or state
12 compensatory time if the leave is taken:

13 (1) with the authorization of the employee's
14 supervisor; and

15 (2) with the approval of the governor.

16 (b) The number of amateur radio operators who are eligible
17 for leave under this section may not exceed 350 state employees at
18 any one time during a state fiscal year. The division of emergency
19 management in the governor's office shall coordinate the
20 establishment and maintenance of the list of eligible employees.

21 ARTICLE 4. CERTAIN OPEN MEETINGS

22 PROVISIONS RELATED TO SCHOOLS AND

23 GOVERNMENTAL BODIES

24 SECTION 4.01. Section 12.1051(b), Education Code, is
25 amended to read as follows:

26 (b) With respect to the operation of an open-enrollment
27 charter school, any requirement in Chapter 551 or 552, Government

1 Code, or another law that concerns open meetings or the
2 availability of information, that applies to a school district, the
3 board of trustees of a school district, or public school students
4 applies to an open-enrollment charter school, the governing body of
5 a charter holder, the governing body of an open-enrollment charter
6 school, or students attending an open-enrollment charter school.

7 SECTION 4.02. Section 37.108(c), Education Code, is amended
8 to read as follows:

9 (c) A school district shall report the results of the
10 security audit conducted under Subsection (b) to the district's
11 board of trustees and the Texas School Safety Center.

12 SECTION 4.03. Section 37.203(a), Education Code, is amended
13 to read as follows:

14 (a) The center is advised by a board of directors composed
15 of:

16 (1) the attorney general, or the attorney general's
17 designee;

18 (2) the commissioner, or the commissioner's designee;

19 (3) the executive director of the Texas Juvenile
20 Probation Commission, or the executive director's designee;

21 (4) the executive director of the Texas Youth
22 Commission, or the executive director's designee;

23 (5) the commissioner of the [~~Texas~~] Department of
24 State [~~Mental~~] Health Services [~~and Mental Retardation~~], or the
25 commissioner's designee; and

26 (6) the following members appointed by the governor
27 with the advice and consent of the senate:

- 1 (A) a juvenile court judge;
- 2 (B) a member of a school district's board of
- 3 trustees;
- 4 (C) an administrator of a public primary school;
- 5 (D) an administrator of a public secondary
- 6 school;
- 7 (E) a member of the state parent-teacher
- 8 association;
- 9 (F) a teacher from a public primary or secondary
- 10 school;
- 11 (G) a public school superintendent who is a
- 12 member of the Texas Association of School Administrators;
- 13 (H) a school district police officer or a peace
- 14 officer whose primary duty consists of working in a public school;
- 15 and
- 16 (I) two members of the public.

17 SECTION 4.04. Section 551.076, Government Code, is amended

18 to read as follows:

19 Sec. 551.076. DELIBERATION REGARDING SECURITY DEVICES,

20 SECURITY AUDITS, OR EMERGENCY OPERATIONS PLANS; CLOSED MEETING.

21 This chapter does not require a governmental body to conduct an open

22 meeting to deliberate:

- 23 (1) the deployment, or specific occasions for
- 24 implementation, of security personnel or devices;
- 25 (2) a security audit; or
- 26 (3) an emergency operations plan.

27 ARTICLE 5. PROVISIONS RELATED TO TOLL ROADS

SECTION 5.01. Subtitle G, Title 6, Transportation Code, is amended by adding Chapter 371 to read 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) In this section:

(1) "Toll project" means a toll project described by Section 201.001(b), regardless of whether the toll project is:

(A) a part of the state highway system; or

(B) subject to the jurisdiction of the department.

(2) "Toll project entity" means an entity authorized by law to acquire, design, construct, finance, operate, and maintain a toll project, including:

(A) the department under Chapter 227 or 228;

(B) a regional tollway authority under Chapter 366;

(C) a regional mobility authority under Chapter 370; or

(D) a county under Chapter 284.

(b) A toll project entity may not require a vehicle registered under Section 502.203 to pay a toll for the use of a toll project.

SECTION 5.02. Section 228.058(d), Transportation Code, is repealed.

ARTICLE 6. OPERATION OF DESIGNATED EMERGENCY VEHICLES

SECTION 6.01. Section 418.013, Government Code, is amended

by adding Subsection (c) to read as follows:

(c) The emergency management council shall make recommendations to the Department of Public Safety 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 with the capability to supplement the state's resources in disaster situations, should be authorized to operate certain vehicles as designated emergency vehicles in the case of a disaster.

SECTION 6.02. Subchapter A, Chapter 546, Transportation Code, is amended by adding Section 546.006 to read as follows:

Sec. 546.006. DESIGNATED EMERGENCY VEHICLE DURING DECLARED DISASTERS. (a) From recommendations made under Section 418.013(c), Government Code, the department shall designate which organizations and vehicles may be operated as emergency vehicles during declared disasters.

(b) A vehicle designated under Subsection (a) may be operated as if the vehicle were an authorized emergency vehicle under this subtitle if:

(1) the governor declares a state of disaster under Section 418.014, Government Code;

(2) the department requests assistance from the designated organization; and

(3) the vehicle is operated by the designated organization or a member of the designated organization in response to the state of disaster.

(c) The department shall adopt rules as necessary to

implement this section.

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

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

Sec. 4. OFFENSES FOR WHICH INTERCEPTIONS MAY BE AUTHORIZED.

A judge of competent jurisdiction may issue an order authorizing interception of wire, oral, or electronic communications only if the prosecutor applying for the order shows probable cause to believe that the interception will provide evidence of the commission of:

- (1) a felony under Section 19.02, 19.03, or 43.26, Penal Code;
- (2) a felony under:
 - (A) Chapter 481, Health and Safety Code, other than felony possession of marihuana;
 - (B) Section 485.033, Health and Safety Code; or
 - (C) Chapter 483, Health and Safety Code; ~~or~~
- (3) an offense under Chapter 20, 20A, or 34, Penal Code; or
- (4) an attempt, conspiracy, or solicitation to commit an offense listed in this section.

Sec. 9A. INTERCEPTION ORDER FOR COMMUNICATION BY SPECIFIED PERSON. (a) Notwithstanding Section 8(a)(2)(B), an application for an order authorizing the interception of a wire, oral, or electronic communication is not required to contain a particular

1 description of the nature and location of the facilities from which
2 or the place where the communication is to be intercepted if a judge
3 of competent jurisdiction determines there are exigent
4 circumstances requiring that the order:

5 (1) apply to any communication by the person whose
6 communications are to be intercepted; and

7 (2) not be limited to a specific facility or place.

8 (b) A judge who makes a determination of exigent
9 circumstances under Subsection (a) is not required to include in
10 the order a description of the nature or location of the
11 communications facility from which or the place where authority to
12 intercept is granted, as required by Section 9(b)(2). As an
13 alternative to including that description, the judge may authorize
14 the interception of any communication made by a specified person
15 while the person is present in the geographic jurisdiction of the
16 court.

17 SECTION 7.02. The change in law made by this article applies
18 only to an application for an order authorizing the interception of
19 a wire, oral, or electronic communication that is submitted on or
20 after the effective date of this article. An application that was
21 submitted before the effective date of this article is covered by
22 the law in effect on the date the application was submitted, and the
23 former law is continued in effect for that purpose.

24 ARTICLE 8. EFFECTIVE DATE

25 SECTION 8.01. This Act takes effect September 1, 2007,
26 except that Article 1 of this Act takes effect immediately if this
27 Act receives a vote of two-thirds of all the members elected to each

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1 house, as provided by Section 39, Article III, Texas Constitution.
2 If this Act does not receive the vote necessary for immediate
3 effect, Article 1 takes effect September 1, 2007.