

BILL ANALYSIS

S.B. 1133
By: Blanco
State Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

According to the Senate Committee on Border Security's Interim Report to the 88th Texas Legislature, increased migrant and law enforcement activity, particularly within border and rural counties, has left many landowners with record financial losses and property damage in the form of destroyed crops, fence damage, outhouses, farm equipment, and lost livestock. S.B. 1133 seeks to establish a grant program under the Office of the Attorney General to compensate landowners who suffered property damage on agricultural land by a trespasser in the course of smuggling of persons, evading arrest or detention, human trafficking, or drug trafficking.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the attorney general in SECTION 1 of this bill.

ANALYSIS

S.B. 1133 amends the Code of Criminal Procedure to require the attorney general, from money appropriated for the purpose, to establish and administer a program to compensate landowners who suffer property damage on agricultural land caused by the following:

- a trespasser as a result of an offense of arson, criminal mischief, or other property damage or destruction that was committed in the course of or in furtherance of a border crime; or
- a law enforcement response to a trespasser who was engaged in a border crime.

The bill establishes that the compensation program is a payer of last resort for such real property damage and defines the following terms:

- "agricultural land" as any land the use of which qualifies the land for special appraisal as open-space land;
- "border crime" as any conduct involving transnational criminal activity that also constitutes the smuggling of persons, evading arrest or detention, a trafficking of persons offense, or an offense under the Texas Controlled Substances Act; and
- "trespasser" by reference as a person who enters the land of another without any legal right, express or implied.

S.B. 1133 requires the attorney general to establish the following with respect to the compensation program:

- eligibility criteria for compensation, including requirements for providing proof of eligibility for compensation;
- application procedures;

- criteria for evaluating applications and awarding compensation;
- guidelines related to compensation amounts, provided that the maximum amount awarded per incident causing damage may not exceed \$75,000; and
- procedures for monitoring the use of awarded compensation and ensuring compliance with any conditions of the award.

The bill prohibits the attorney general from awarding compensation for real property damage caused by a trespasser that is not documented in a written report by a law enforcement agency as having occurred in connection with a border crime and also prohibits the attorney general from awarding compensation to an applicant if the attorney general determines that the applicant is eligible for reimbursement from another source, including under an insurance contract or a state, local, or federal program, and failed to seek reimbursement from that other source. In awarding compensation for real property damage caused by a trespasser, the attorney general may not consider the outcome of any criminal prosecution arising out of the offense under Penal Code provisions relating to arson, criminal mischief, and other property damage or destruction as a result of which the applicant suffered property damage or the applicable offense that qualifies as a border crime.

S.B. 1133 requires the attorney general to determine whether a hearing on an application for compensation is necessary. On determining that a hearing is not necessary, the attorney general may approve the application. On determining that a hearing is necessary or on request for a hearing by the applicant, the attorney general must consider the application at a hearing at a time and place of the attorney general's choosing. The bill requires the attorney general to notify all interested persons not later than the 10th day before the date of the hearing and requires the attorney general, at the hearing, to review the application for compensation and receive other evidence that the attorney general finds necessary or desirable to evaluate the application properly. The bill authorizes the attorney general to appoint hearing officers to conduct hearings or prehearing conferences and establishes that a hearing or prehearing conference is open to the public unless the hearing officer or attorney general determines in a particular case that all or part of the hearing or conference should be held in private because a private hearing or conference is in the interest of the applicant. The bill makes provisions of the Administrative Procedure Act relating to contested cases and court enforcement inapplicable to the attorney general or the attorney general's orders and decisions under the bill.

S.B. 1133 requires the attorney general, not later than the 100th day after the end of each state fiscal year, to submit to the governor and the legislature a report on the attorney general's activities under the compensation program during the preceding fiscal year that includes the following information, disaggregated by each offense that may qualify as a border crime:

- the number of applications made;
- the number of applicants receiving compensation; and
- the amount of compensation awarded.

S.B. 1133 requires the attorney general to adopt rules to administer the bill's provisions and makes the general and rulemaking provisions of the Administrative Procedure Act, other than those about indexing a rule, order, or decision, applicable to the attorney general. The bill authorizes the attorney general to delegate to a person in the attorney general's office a power or duty given to the attorney general under the bill. The bill's provisions expire on the second anniversary of the date that all money appropriated for the compensation program has been expended.

EFFECTIVE DATE

September 1, 2023.