

**SUBJECT:** Granting state law enforcement authority to federal officers and agents

**COMMITTEE:** Culture, Recreation, and Tourism — committee substitute recommended

**VOTE:** 8 ayes — Guillen, Elkins, Dukes, T. King, Kuempel, Larson, Price, T. Smith  
0 nays  
1 absent — Deshotel

**WITNESSES:** For — (*Registered, but did not testify:* Chris Jones, Combined Law Enforcement Associations of Texas)  
  
Against — None  
  
On — Weylan G. Luckey, U.S. Fish and Wildlife Service

**BACKGROUND:** Article 2.122(c) of the Code of Criminal Procedure grants certain powers to an officer of the U.S. Customs and Border Protection and to border agents, immigration enforcement agents, and deportation officers of the U.S. Department of Homeland Security. The law specifically states that these particular federal personnel are not Texas peace officers.  
  
Designated as special investigators under Texas law, these federal personnel may detain a person for public intoxication, driving while intoxicated, intoxication assault, or intoxication manslaughter if the investigator has probable cause to believe a person has committed a crime. Persons can be detained at land entry ports into the U.S. or at permanent border patrol traffic check points designated by the U.S. Customs and Border Protection.

**DIGEST:** CSHB 1161 would expand the authority of U.S. Customs and Border Protection officers and border patrol agents to include the powers of arrest, search, and seizure for Texas felony offenses. The bill would also remove intoxication assault and intoxication manslaughter as specific offenses for which a border officer or agent could detain someone.

The bill also would grant the powers of arrest, search, and seizure to commissioned law enforcement officers of the U.S. Fish and Wildlife Service. The officers' authority would extend to any offense under Texas law committed within the National Wildlife Refuge System's boundaries.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

**SUPPORTERS  
SAY:**

CSHB 1161 would strengthen the relationships among federal, state, and local law enforcement officers by allowing them to work together more efficiently and effectively. Certain federal officers already have arrest authority for Texas felonies. The bill simply would extend that authority to other federal officers working in the state. Currently, U.S. Fish and Wildlife agents and officers regularly receive the cooperation of state and local authorities as they carry out their federal duties. The bill would allow federal officers and agents to foster a more symbiotic relationship with state and local law enforcement, and assist Texas officers in their duties as well. As a result, the public would benefit from increased protection.

CSHB 1161 would protect federal officers and agents who work to defend the innocent citizens of Texas. Texas law allows any peace officer or private citizen to make an arrest for a felony committed in their view. Without the specific authorization granted in the bill, federal officers and agents who arrested offenders outside of their federal duties could be treated as private citizens under Texas law. For example, a border patrol agent killed while protecting the public should be guaranteed the protection of federal death benefits by acting within the scope of his or her duties, not as a private citizen. Without the specific authorization as would be granted in CSHB 1161, federal officers and agents would risk exposing themselves and their families to financial harm.

**OPPONENTS  
SAY:**

CSHB 1161 would grant unnecessary authority to federal border agents and officers, and the risk of abuse would be too high. Texas law authorizes private citizens only to arrest offenders committing certain crimes in their view. The bill needlessly would include search and seizure actions for any felony offense under Texas law and potentially would subject border citizens to increased harassment and mistreatment. The border communities currently have a better relationship with local law enforcement than with border personnel and would be better served by state and local officers. Furthermore, past legislative intent should be

considered when evaluating CSHB 1161 because border agents and officers were treated differently from other federal personnel for a reason.

Without specific provisions requiring training for proper arrest, search, and seizure under state law, CSHB 1161 assumes that federal officers granted this authority would be adequately prepared for these duties. Since case law is continuously updated to reflect changes in the interpretation of what qualifies as proper procedure for arrest, search, and seizure, peace officers in Texas receive constant up-to-date training. The bill would not ensure that the federal officers covered would have adequate training for the powers given to them.

**NOTES:**

The substitute differs from the original by granting the expanded powers to U.S. Customs and Border Protection officers and agents. It also removed intoxication manslaughter and intoxication assault as specific violations for which a border officer or agent could detain someone.