

SUBJECT: Establishing the Border Protection Unit; creating a criminal offense

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 8 ayes — Hunter, Dean, Geren, Guillen, Metcalf, Slawson, Smithee, Spiller

3 nays — Hernandez, Anchía, S. Thompson

2 absent — Raymond, Turner

WITNESSES: For —RJ Hauman, Texans for Strong Borders; Tom Glass, Texas Constitutional Enforcement; Joshua Treviño, Texas Public Policy Foundation; Natalie Ibe, True Texas Project; Cary Cheshire (*Registered, but did not testify*: Dawn Bednarz, Mark Meckler, Convention of States Action; Stacy McMahan, East Texans for Liberty; Angela Smith, Fredericksburg Tea Party; Roy Boyd, Goliad County Sheriff; Brent Smith, Kinney County Attorney; Charles Maley, South Texans’ Property Rights Association; Thaddeus Cleveland, Terrell County Sheriff’s Office; Melissa Hamilton, Texas & Southwestern Cattle Raisers Association; Cindi Castilla, TX Eagle Forum; Terri Hall, We the People - Liberty in Action; and 16 individuals)

Against — Dina Nuñez, Border Workers United; Joslynn Sanchez, Deeds Not Words; David Stout, El Paso County; Jaime Puente, Every Texan; Cathryn Torres, Frontera Fund; Bethany Carson, Alicia Torres, Grassroots Leadership; Bob Libal, Human Rights Watch; Jennefer Canales-Pelaez, Priscilla Olivarez, Immigrant Legal Resource Center; Marvel Maddox, Interfaith Welcome Coalition San Antonio; Emma Alaniz, Carlos Alvarez, Evon Bueno, Alexis Elicerio, Joaquin Garcia, Blanca Munoz, Sergio Trevino, LUPE (La Union del Pueblo Entero); Priscilla Lugo, LatinoJustice; Samantha Serna Uribe, MALDEF (Mexican American Legal Defense and Educational Fund); Sarah Cruz, National Network for Immigrant and Refugee Rights; Libby Goldman, Never Again Action; Denni Arjona, South Texans for Reproductive Justice; Katy Miles-Wallace, Southwestern Texas Synod, ELCA and Texas Impact; Alondra

Andrade, Anna Katharina Dechert, Tahirih Justice Center; Alexis Bay, Texas Civil Rights Project; Rocio Fierro-Perez, Texas Freedom Network; Robert Mueller, Texas Impact; Sofia Avant-Mier, Alexa Carranco, Ivonne Diaz, Manuel Guzman, Aaron Hernandez, Isabel Herrera, Kyle Jacquez, Jasmine Tellez, Texas Rising; Samantha Singleton, The Border Network for Human Rights; Si Hwa Gi, Kyou Kim, Nicole Ma, Joshua Na, Quynh-Huong Nguyen, Hyunja Norman, Hyang Sook Rhee, Sarah Syed, Steven Wu, Woori Juntos; Dona Murphey, Woori Juntos, Project Lifeline; Jasmine Parish Moreno, Young Invincibles; Fabiola Barreto, Youth Rise Texas; and 17 individuals (*Registered, but did not testify*: Lauren Johnson, ACLU of Texas; Ruth Tiguila, Ashley Vasquez, ARISE; Calletana Martinez, Maria Reyes, Arise Adelante; Yaneth Flores, Avow; Maria Gonzalez, Irma Martinez, Veronica Mata, Nora Mata, Erika Vazquez, Border Workers United; Will Davies, Breakthrough Central Texas; Victoria Uriostegui, Breakthrough Central Texas; Esther Reyes, Childrens Defense Fund-Texas; Lissette Castillo, Detention Watch Network; Elisa M. Tamayo, El Paso County; Stephen Reeves, Fellowship Southwest; Joanna Vaughn, Friends Meeting of Austin (Quaker); David Johnson, Sybil Sybille, Grassroots Leadership; Nadia Brione, Victor Trevino, LUPE (La Union del Pueblo Entero); Karina Alvarez, Laredo Immigrant Alliance; Nataly Avendano, Mano Amiga; Sara Ramey, Migrant Center for Human Rights; Geovanna Balderas, Dulce Garcia, MISMA; Amber Mills, MOVE Texas Action Fund; Sulma Franco, Helen Monroy Ortiz, Mujeres Luchadoras; Shannon Doyle, National Association of Social Workers - Texas Chapter; Nancy Cardenas, National Latina Institute Reproductive Justice; Adrian Shelley, Public Citizen; Marco Mancillas, Adriana Quiroga, RAICES; Abel Vega, Rio Texas Conference, UMC; Ray Scifres, Brian Hawthorne, Kelly Rowe, Sheriffs' Association of Texas; Emma Espino, Julio Vasquez, Southwestern Texas Synod ELCA, Border Network for Human Rights; Gloria Leal, State League of United Latin Am Citizens LULAC; Ana Gonzalez, Jesus Perales, Texas AFL-CIO; Alycia Castillo, Texas Center for Justice and Equity; Kassandra Gonzalez, Roberto Lopez, Texas Civil Rights Project; Allen Place, Texas Criminal Defense Lawyers Association; Carisa Lopez, Adri Perez, Emily Witt, Texas Freedom Network; Joshua Houston, LyAnna Johnson, Franz Schemmel, Texas Impact; Janice Resendiz, Texas Rising Action; Erin

Walter, Texas Unitarian Universalist Justice Ministry; Ware Wendell, Texas Watch; Fernando Garcia, The Border Network for Human Rights; Sadie Hernandez, Transgender Education Network of Texas; Katie Naranjo, Cynthia Van Maanen, Travis County Democratic Party; Milo Grant, Natalie Webb, University Baptist Church, Austin, TX; Myung Kim, John Kim, Yun Hwa Lee, Myung J. Kim, Myoung Soon Ryoo, Terry Yun, Woori Juntos; Tevin English, Workers Defense; Hannah Alexander, David Chincanchan, Daniela Hernandez, Emily Timm, Workers Defense Action Fund; and 131 individuals)

On — Nelson Barnes, 452nd District Attorneys Office; Sheena Rodriguez, Alliance for a Safe Texas; Rachel Horton, Republican Party of Texas, State Republican Executive Committeewoman Sd30; David Carter, Texas Chapter of the Minuteman Civil Defense Corps (MCDC); Mark Morgan (*Registered, but did not testify*: Mark Meckler, Convention of States Action; AJ Louderback, Texas Sheriffs Regional Alliance; Shawn Hall Lecuona, The Voice of Justice and of Consanguinity)

BACKGROUND: Concerns have been raised that the health, safety, and welfare of Texans is threatened by criminal activity, including by transnational cartels, in the Texas-Mexico border region. Some have suggested a new law enforcement unit focused on border protection would provide relief to the national guardsmen and Department of Public Safety (DPS) officers currently patrolling the border.

DIGEST: **Border Protection Unit.** CSHB 20 would establish a Border Protection Unit as a division under the Public Safety Commission, required to be headquartered in the border region. The governor would be required to appoint a U.S. citizen as the unit chief, who would serve until removed by the governor. The unit chief would be authorized to appoint deputy and assistant unit chiefs and designate their required duties. The unit chief would:

- be responsible to the commission for all unit conduct;
- act as executive director of the unit;
- act with the commission in an advisory, non-voting capacity;

- adopt rules necessary for control and administration of the unit;
- issue law enforcement officer commissions to unit members;
- create operational or administrative divisions as necessary;
- employ officers and other employees to perform unit operations and functions;
- submit quarterly, annual, and biennial reports to the commission on unit operations; and
- prepare, swear to, and submit to the governor a quarterly statement of money received and spent and purposes for which it was spent.

The unit chief or a designee would be required to provide information to the commission and unit employees regarding the requirements for office or employment in the unit. The bill would specify certain regulatory statutes of Government Code that would apply to the unit and the unit chief in the same manner as they apply to the Department of Public Safety (DPS) and its director. The DPS director could not exercise any operational or administrative control over the unit chief or the unit, and the unit chief could not exercise any such control over the director or DPS other than the established unit.

The unit would be considered a criminal justice agency and would be authorized to collect and analyze DNA samples and have access to the DPS DNA database. The unit would be considered a law enforcement agency for purposes of requiring defendants arrested for certain felonies to provide a DNA sample. The unit would be authorized to assist local law enforcement in criminal investigations.

The bill would require the governor to establish an office of audit and review within the unit and appoint the office director to perform internal oversight duties for the unit. The governor also would establish an office of the inspector general for the unit. The inspector general would be responsible for preparing and delivering administration assessments to the governor, the Legislature, and the unit chief, and preventing and detecting serious breaches of unit policy, fraud, and abuse of office.

The unit chief could employ commissioned and noncommissioned officers

to perform unit duties. The officers would be entitled to compensation and would have to be recruited and trained within the border region as practicable. The unit chief also could employ individuals who were not officers as necessary, and could appoint, promote, reduce, suspend, or discharge any officer or employee.

A commissioned officer would be governed by the law regulating and defining the powers and duties of sheriffs performing similar duties with the exception that the officer could make arrests and execute processes in any county. A commissioned or noncommissioned officer could arrest, apprehend, or detain persons crossing the Texas-Mexico border unlawfully, and deter persons attempting to do so. A noncommissioned officer could only exercise this authority if:

- the officer was authorized by the commission and the governor to do so;
- the officer had received training approved by the commission and the governor; and
- the authority was exercised in a county on the border or a county adjoining a border county.

Any defense or affirmative defense that applied to a peace officer in a civil or criminal action would apply to unit officers. To be a commissioned officer in the unit, a person would be required to hold a peace officer license. Noncommissioned officers would be required to be a U.S. citizen, and all officers would have to meet any other qualifications established by the commission.

The unit would be required to acquire equipment and facilities and conduct training as needed to fulfill its duties. The commission would be required to transfer existing personnel, equipment, and facilities to the unit from within DPS as the commission or the governor determined necessary.

The unit would be required to oversee the construction and maintenance of walls, fences, and other physical barriers along the border for safety

and security purposes. The unit chief or a designee would be authorized to negotiate and acquire rights-of-way, leases, permissions, materials, and services needed to erect and maintain physical barriers and could use funds appropriated by the Legislature, other government funds, or donations from U.S. citizens and domestic entities. The commission could delegate this authority to another state agency.

In case of a legislative finding or governor's declaration that a state of invasion or imminent danger under Section 10, Article I, U.S. Constitution existed, CSHB 20 would authorize the border protection unit chief and the DPS director to order their personnel to take the following actions to the extent consistent with the U.S. and state Constitutions:

- deter and repel persons attempting to enter this state unlawfully at locations other than ports of entry;
- return to Mexico aliens that had been observed crossing the border unlawfully and were apprehended, detained, or arrested in the border vicinity;
- enhance examinations of aircraft, ships, vehicles, railcars, and cargo at or near ports of entry for the purposes of interdicting fentanyl and other dangerous drugs and interdicting human smuggling; and
- use force to repel, arrest, and detain known transnational cartel operatives in the border region.

The unit would be required to develop and recommend to the governor and the Legislature a strategic plan that established the framework for unit budget and operations, including homeland security strategies and the assistance of other state and local entities. The bill would require that the unit annually report to the governor and the Legislature on the implementation of the plan.

The Border Protection Unit would be abolished on December 31, 2030.

Legislative Border Safety Oversight Committee. CSHB 20 would establish a legislative Border Safety Oversight Committee to provide

oversight for the Border Protection Unit established by the bill, as well as research, analysis, and recommendations to guide border safety policies. The committee would consist of the lieutenant governor, the speaker of the House, four senators appointed by the lieutenant governor, and four House members appointed by the speaker of the House. Under the bill, the committee would be required to examine border safety initiatives and programs, assess the cost-effectiveness of using state and local funds for such initiatives, identify critical border safety problems, and determine long-range border safety needs. The committee would have to recommend to the Legislature strategies to solve the problems identified and policy priorities to address the long-range needs by January 1 of each odd-numbered year.

The bill would provide for the general powers of the committee and the committee's meetings, including quorum requirements and virtual meetings. The committee could hire staff or contract with universities or other entities to assist the committee in its duties. Funding to support the operations of the committee would be provided from funds appropriated to the Texas Legislative Council.

Trespass while entering the state. CSHB 20 would establish that a person committed a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if the person knowingly entered another's property without the owner's consent while knowingly entering the state from any neighboring jurisdiction, regardless of the person's immigration status. A person who engaged in such conduct also would be liable for a civil penalty in an action brought by the attorney general of up to \$10,000 for each occurrence. The attorney general could bring an action to collect the civil penalty and could recover any fees and costs incurred in bringing the action. A defendant arrested for this offense would be required to submit to electronic monitoring as a condition of release on bond, unless the magistrate found that the defendant was not a flight risk.

Suspension of entry during a public health emergency. CSHB 20 would require all persons entering the state by land from another country, other than citizens and lawful permanent residents, to pass through a port

of entry for medical review during:

- the pendency of any federally declared public health emergency for COVID-19;
- any time that a federal agency required COVID-19 vaccination for any person lawfully residing in the U.S.; or
- any time the U.S. Department of State had in place any travel warning related to COVID-19 for any country from which citizens had unlawfully entered the United States during the most recent year for which data was available.

The bill would require a person who entered the state from a foreign country other than in accordance with these requirements to be removed to the country from which they entered, their country of origin, or another location as practicable, as rapidly as possible with as little time spent in congregate settings as practicable.

Severability. With regard to provisions establishing the Border Protection Unit and entry requirements during public health emergencies, the bill would provide for the severability of every provision, section, subsection, sentence, clause, or word, and every application of the bill's provisions to every person, group of persons, or circumstances. The bill would prohibit a court from declining to enforce its severability requirements on grounds specified by the bill.

Other provisions. The bill would add the defense and security of the state's air, maritime, and land borders to the areas for which the Public Safety Commission was required to formulate plans and policies, and would add defending and securing these borders to the purposes of DPS.

CSHB 20 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, 2023.

NOTES:

According to the Legislative Budget Board, the fiscal implications of the bill, while assumed to be significant, cannot be determined at this time

due to the size and scope of the Border Protection Unit being unknown.