

BILL ANALYSIS

C.S.H.B. 48

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Homeland Security & Public Safety
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There is concern that large amounts of illegal cash and weapons are being trafficked southbound across the Texas-Mexico border and that such weapons and cash are being used by drug cartels to wage war against law enforcement in northern Mexico. C.S.H.B. 48 seeks to allow the Department of Public Safety to establish checkpoints in specified locations near the Texas-Mexico border to prevent the unlawful transfer or movement of certain items, such as firearms, ammunition, bulk currency, trade secrets, vehicles and equipment, from Texas to Mexico.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the public safety director of the Department of Public Safety in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 48 amends the Government Code to authorize the Department of Public Safety (DPS) to establish border checkpoints, rather than a program for the purpose of establishing border crossing checkpoints, to specify that provisions of law relating to vehicle theft checkpoints at a border crossing apply to vehicle checkpoints near the Texas-Mexico border, and to make related conforming changes. The bill changes the established purpose of the checkpoints from preventing stolen vehicles, farm tractors or implements, construction equipment, aircraft, or watercraft entering Mexico to preventing the unlawful transfer or movement of firearms, ammunition, bulk currency, trade secrets, vehicles, farm tractors or implements, construction equipment, aircraft, or watercraft from Texas to Mexico and makes related conforming changes. The bill includes a checkpoint located within one mile of a federally designated checkpoint that is located on a road running north to south among the checkpoints authorized to be established by DPS. The bill prohibits a peace officer at a checkpoint from directing a driver or passenger of a motor vehicle to display a driver's license or provide evidence of financial responsibility unless the officer has reasonable suspicion or probable cause to believe the person committed or is committing an offense of theft, theft of trade secrets, unauthorized use of a vehicle, money laundering, unlawful transfer of certain weapons, or firearm smuggling and from directing the driver or passenger to leave the vehicle or move the vehicle off of the roadway on that suspicion or cause to believe that the person committed or is committing an offense. The bill prohibits a peace officer employed by DPS from conducting an inspection of a vehicle at a checkpoint unless the officer has reasonable suspicion or probable cause to believe that a driver or passenger of the vehicle has committed one of those offenses.

C.S.H.B. 48 requires the public safety director of DPS to adopt rules as necessary to administer the bill's provisions relating to the vehicle checkpoints near the Texas-Mexico border and requires DPS, in establishing the checkpoints, to comply with rules of the Texas Transportation Commission regarding lane closures on a public highway or street. The bill requires DPS to place signs and other appropriate devices along each appropriate public highway or street to advise drivers of motor vehicles that the drivers are approaching a checkpoint and of the purpose of the checkpoint. The bill requires DPS, as necessary, to demarcate a checkpoint with flares,

flags, traffic cones, or other appropriate devices. The bill requires DPS, not later than January 15 of each calendar year, to submit to the governor, lieutenant governor, and speaker of the house of representatives a report regarding the operation of checkpoints under the bill's provisions during the preceding calendar year. The bill requires the report to include the number of motor vehicles searched at each checkpoint subsequent to a determination that reasonable suspicion or probable cause existed to believe that an offense of theft, theft of trade secrets, unauthorized use of a vehicle, money laundering, unlawful transfer of certain weapons, or firearm smuggling had been or was being committed; disaggregated by week and month, an estimate of the total number of motor vehicles that passed through each checkpoint and the average period required for a motor vehicle to pass through each checkpoint; the specific days during the year that the highest and lowest numbers of motor vehicles passed through each checkpoint; and any other information that DPS determines to be of public interest.

C.S.H.B. 48 makes conforming and nonsubstantive changes. The bill, effective September 1, 2013, restores the provisions of law relating to vehicle theft checkpoints at a border crossing to the state as those provisions of law existed before being amended by the bill.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 48 differs from the original by authorizing the Department of Public Safety (DPS) to establish border checkpoints to prevent the unlawful transfer or movement of firearms, ammunition, bulk currency, trade secrets, vehicles, farm tractors or implements, construction equipment, aircraft, or watercraft from Texas to Mexico, whereas the original requires DPS to investigate the feasibility of assisting federal authorities in establishing checkpoints along the international border of Texas to prevent the unlawful transfer of firearms and bulk currency from Texas to the United Mexican States. The substitute contains a provision not included in the original authorizing the establishment of a checkpoint located within one mile of a federally designated checkpoint located on a road running north to south. The substitute contains a provision not included in the original authorizing a checkpoint to be established if the checkpoint is operated in such a manner as to stop only those items previously specified believed to be unlawfully transferred or moved from Texas to Mexico.

C.S.H.B. 48 differs from the original by authorizing DPS to establish border checkpoints in conjunction with local law enforcement authorities, whereas the original requires DPS to cooperate with appropriate federal agencies to set up checkpoints on determination that assisting federal authorities is feasible. The substitute differs from the original by authorizing DPS and local law enforcement authorities to share the cost of staffing the checkpoints, whereas the original authorizes those entities to share that cost with the federal government. The substitute contains provisions not included in the original prohibiting a peace officer at a checkpoint from directing a driver or passenger of a motor vehicle to leave the vehicle or move the vehicle off the roadway or to display a driver's license or provide evidence of financial responsibility unless the officer has reasonable suspicion or probable cause to believe that the person committed or is committing certain specified offenses and authorizing the peace officer to require each motor vehicle passing through the checkpoint to be diverted to a specified location for safety purposes.

C.S.H.B. 48 differs from the original by prohibiting an officer employed by DPS from conducting an inspection of a vehicle for purposes of the checkpoint unless the officer has reasonable suspicion or probable cause to believe that a driver or passenger of the vehicle committed certain specified offenses of theft, theft of trade secrets, unauthorized use of a vehicle, money laundering, unlawful transfer of certain weapons, or firearm smuggling, whereas the original makes the prohibition apply with respect to the officer's belief that a passenger in the vehicle has committed an offense of money laundering, firearm smuggling, or violated certain

related and other federal laws. The substitute contains provisions not included in the original requiring DPS to comply with certain Texas Transportation Commission rules in establishing checkpoints, to place signs and other appropriate devices in certain places to advise drivers of an approaching checkpoint and its purpose, and, as necessary, to demarcate a checkpoint with certain devices. The substitute contains a provision not included in the original requiring DPS to submit to state officials a report containing certain statistics and information regarding the operation of checkpoints during the preceding calendar year.

C.S.H.B. 48 omits provisions included in the original requiring the attorney general, if necessary to implement international border checkpoints, to enter into an agreement with an appropriate federal agency and requiring such an agreement to be signed by certain state officials and as otherwise required by the federal agency. The substitute omits a provision included in the original authorizing a law enforcement agency to enter into an agreement with a private entity to provide goods or services for the establishment and operation of a checkpoint or the performance of inspections at a checkpoint.

C.S.H.B. 48 differs from the original by establishing its provisions as amendments to provisions of law relating to vehicle theft checkpoints at a border crossing and restoring those provisions of law, effective September 1, 2013, to the state in which they existed before being amended, whereas the original establishes its provisions as a new statutory section. The substitute differs from the original by making the bill effective September 1, 2011, except as otherwise provided, whereas the original makes the bill effective on passage or, if the bill does not receive the necessary vote, September 1, 2011. The substitute differs from the original in nonsubstantive ways.