

BILL ANALYSIS

C.S.H.B. 7
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The southern border region of Texas is facing significant challenges related to individuals and contraband crossing the Texas-Mexico border between the ports of entry. The challenges created by these undocumented crossings are not limited to the immediate areas closest to the border but permeate throughout the other border region counties. This creates a strain across various public services throughout the border region counties, especially with respect to the judicial system, law enforcement, public safety, and public health. Individual property owners face damages to their assets. Economic drivers like commercial trade and primary dollar industries also suffer from direct and indirect consequences negatively impacting them. C.S.H.B. 7 seeks to address funding shortages in Texas border region communities dealing with the crossings between the ports of entry related to facilities, equipment, and operations in the judicial system, law enforcement, public safety, communications, public health, and more. The bill also seeks to create a mechanism to compensate property owners for damages caused by crossings between ports of entry and to address challenges in the homeland security workforce pipeline, commercial trade, and investment attraction.

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 Office of Court Administration of the Texas Judicial Council in SECTION 3.01 of this bill, the governor in SECTIONS 4.01 and 5.03 of this bill, and the Texas Higher Education Coordinating Board in SECTION 6.01 of this bill.

ANALYSIS

C.S.H.B. 7 establishes that the legislature, acting with the governor, has the solemn duty to protect and defend the citizens of Texas and maintain sovereignty over the borders of Texas. Accordingly, the bill sets out provisions relating to services and programs in the southern border region of Texas to address the effects of ongoing criminal activity and public health threats in that region. For purposes of the bill's provisions, "border region" means the portion of Texas that is located in a county that:

- is adjacent to an international border;
- is adjacent to a county adjacent to an international border; or
- is served by a prosecuting attorney whose jurisdiction includes any of these counties.

Border Protection Agreements with United Mexican States

C.S.H.B. 7 amends the Government Code to require the governor, on the state's behalf, to coordinate, develop, and execute agreements with the United Mexican States and the states thereof regarding the authority of the State of Texas to protect and defend its citizens.

Border Region Specialty Court Program

C.S.H.B. 7 requires the Office of Court Administration of the Texas Judicial Council (OCA), from money appropriated for that purpose, to establish and administer a grant program to support the operation of courts in the border region with the adjudication of border-related offenses. The bill establishes that, for this purpose, a "border-related offense" is an offense:

- associated with or involving:
 - a person unlawfully entering or attempting to enter Texas by crossing the Texas-Mexico border at any place other than at a port of entry;
 - the smuggling of individuals or contraband across the Texas-Mexico border; or
 - an operative of a transnational cartel;
- an offense similar to any such offense that OCA by rule defines as a border-related offense for purposes of the grant program; or
- for which OCA has determined prosecutions have increased as a result of Operation Lone Star.

In addition to other funds appropriated by the legislature and for purposes of administering and funding the grant program, OCA may seek and apply for any available federal funds and solicit and accept gifts, grants, and donations from any other source, public or private, as necessary to ensure resources are available to achieve the purpose for which the grant program is established.

C.S.H.B. 7 authorizes the grants awarded under the program to be used for the reimbursement of costs associated with the operation of a court, including the following:

- salary of a visiting judge appointed under the Court Administration Act;
- salary and benefits of an associate judge, court coordinator, court administrator, court reporter, and court interpreter;
- salary and benefits of district and county clerk staff;
- travel costs and other expenses incurred by court personnel and judges in the performance of their duties;
- cost of equipment necessary for personnel dedicated to the processing and adjudicating of border-related offenses; or
- fees and related expenses for the appointment of counsel to represent an indigent defendant or the costs to operate a public defender's office or managed assigned counsel program, as those fees and expenses relate to the adjudication of border-related offenses.

C.S.H.B. 7 requires OCA to adopt rules for the administration and operation of the grant program and requires OCA, in adopting the rules, to take the following actions:

- conduct a study of the data available on crime, arrests, detentions, and convictions to identify offenses for which prosecutions have increased as a result of Operation Lone Star; and
- solicit from governmental officials, community leaders, and other interested persons in the border region information necessary to identify the courts of the region needing financial assistance.

The rules must include:

- administrative provisions for grants awarded under the program, including:
 - eligibility criteria for grant applicants, including criteria to limit eligibility to those applicants experiencing an increase in caseloads;
 - grant application procedures;
 - guidelines relating to grant amounts;
 - procedures for evaluating grant applications; and
 - procedures for monitoring the use of grants;
- methods for tracking the effectiveness of grants and the efficiency of the applicants receiving grants; and
- procedures for reporting caseload data at least annually.

C.S.H.B. 7 caps the amount of a grant awarded under the program at the amount set by the General Appropriations Act. The bill requires a grant recipient to submit to OCA an annual report on the grant money spent during the year covered by the report and the purposes for which that money was spent. Unless otherwise provided by the appropriation, OCA may use a reasonable amount, not to exceed five percent, of any general revenue appropriated for purposes of the grant program to pay the costs of administering the program.

Grant Programs for Infrastructure, Facilities, Equipment, and Services in the Border Region

C.S.H.B. 7 requires the criminal justice division of the governor's office, from money appropriated for that purpose, to establish and administer the following funds for the following purposes:

- the Border Protection Equipment and Infrastructure Fund to award grants to state agencies and local governments located or operating in the border region for the construction and maintenance of temporary border security infrastructure, including temporary barriers, fences, wires, roads, trenches, surveillance technology, or other improvements, designed or adapted to surveil or impede the movement of persons or objects across the Texas-Mexico border at locations other than ports of entry and for the purchase or maintenance of equipment related to providing public health and safety services in the border region, including law enforcement services, communication services, and emergency services, to enhance the safety and security of the citizens of Texas;
- the Border Protection Criminal Justice Facilities Fund to award grants to state agencies, local governments, or private entities located or operating in the border region for the construction and maintenance of facilities related to prosecuting and adjudicating offenses committed in the border region, including court facilities, processing facilities, detention facilities, criminal justice centers, and other similar facilities;
- the Border Protection Public Safety Personnel Fund to award grants to state agencies or local governments located or operating in the border region for the payment of staff salaries and benefits and the payment of operational expenses related to providing law enforcement services; and
- the Border Protection Secure Trade Fund to award grants to state agencies, local governments, entities operating ports of entry, or private entities located or operating in the border region for the construction of improvements to an area in the immediate vicinity of a port of entry to enhance vehicle inspection capabilities and assist in the investigation, interdiction, and prosecution of persons smuggling individuals or contraband across the Texas-Mexico border and for the construction or improvement of roadways and similar transportation facilities that provide for detailed monitoring of commercial motor vehicles traveling along the roadways and facilities in the border region.

The bill defines "local government" as a municipality, county, special purpose district, or other political subdivision of the state.

C.S.H.B. 7 authorizes the division, in addition to other funds appropriated by the legislature and for purposes of administering and funding the grant programs, to seek and apply for any available federal funds and solicit and accept gifts, grants, and donations from any other source, public or private, as necessary to ensure effective implementation of the programs.

C.S.H.B. 7 requires the governor to adopt rules for the administration of the grant programs and requires the governor, in adopting the rules, to do the following:

- solicit from public officials and community leaders in the border region and any other interested stakeholders information necessary to identify the greatest needs for financial assistance in that region; and

- with respect to the rules relating to the grant program funded through the Border Protection Secure Trade Fund, consult federal agencies, state agencies, local governments, and private entities with particular knowledge and expertise on:
 - the investigation, interdiction, and prosecution of persons smuggling individuals and contraband over the Texas-Mexico border; and
 - the construction or improvement of roadways and similar transportation facilities that provide for detailed monitoring of commercial motor vehicles traveling along the roadways and facilities.

The bill requires the rules to include the following:

- administrative provisions for grants awarded under the programs, including:
 - eligibility criteria for grant applicants;
 - grant application procedures;
 - guidelines relating to grant amounts;
 - procedures for evaluating grant applications; and
 - procedures for monitoring the use of grants;
- methods for tracking the effectiveness of grants; and
- provisions for donations to the grant program funded through the Border Protection Equipment and Infrastructure Fund.

C.S.H.B. 7 caps the amount of a grant awarded under any of the grant programs at the amount set by the General Appropriations Act. The bill requires a grant recipient to submit to the division an annual report on the grant money spent during the year covered by the report and the purposes for which that money was spent. Unless otherwise provided by the appropriation, the division may use a reasonable amount, not to exceed five percent, of any general revenue appropriated for purposes of the grant programs to pay the costs of administering the programs.

Border Property Damage Compensation Account

C.S.H.B. 7 creates the border property damage compensation account within the compensation to victims of crime fund to be administered by the criminal justice division under rules adopted by the governor. The bill establishes that the legislature finds that a person in the border region who incurs actual damages to the person's real or personal property is a victim of crime for purposes of the provisions of the Texas Constitution providing for the creation of a fund to compensate crime victims, if the damage is caused by:

- a person who entered or attempted to enter Texas by crossing the Texas-Mexico border at a place other than at a port of entry or a person who assisted the person; or
- a law enforcement action taken to repel, arrest, or detain any such person.

C.S.H.B. 7 establishes that the account consists of the following:

- money appropriated, credited, or transferred to the account by the legislature;
- revenue that the legislature by statute dedicates for deposit to the credit of the account;
- investment earnings and interest earned on money in the account; and
- gifts, grants, and donations received by the state for the purpose of the account.

Moreover, the bill requires that, in a forfeiture hearing regarding forfeited property seized in connection with an offense of smuggling of persons in which a judgment is rendered in the favor of the state, the state's attorney transfer the proceeds from the sale of the forfeited property to the comptroller of public accounts for deposit to the credit of the account.

C.S.H.B. 7 requires the division, with money appropriated from the account for that purpose, to establish a program to compensate a person residing in the border region for actual damages to the person's real or personal property caused by any of the following:

- a person who entered or attempted to enter Texas by crossing the Texas-Mexico border at a place other than at a port of entry or a person who assisted such a person; or
- a law enforcement action taken to repel, arrest, or detain any of these persons.

C.S.H.B. 7 authorizes the governor to adopt rules to administer the bill's provisions relating to the account.

Border Protection Economic Development Initiative

C.S.H.B. 7 requires the Texas Economic Development and Tourism Office (TEDTO), in consultation with stakeholders in the border region, to develop and execute a campaign to:

- attract domestic and foreign entities to locate their headquarters in the border region or expand their operations to the border region;
- support and promote tourism in the border region; and
- support institutions and initiatives in the border region that create an environment conducive to starting or operating a company whose primary business is providing homeland security technology or services.

The bill authorizes TEDTO to coordinate with and assist any municipality, county, or other political subdivision in supporting or promoting the same purposes as this campaign.

C.S.H.B. 7 requires TEDTO, in developing and executing the campaign, to identify and research particular companies and types of companies with a high potential of commercial success if the companies were to operate in the border region. For each company identified, TEDTO is required to develop and execute a campaign to attract the company to locate its headquarters or expand operations into the border region. For a type of company identified, TEDTO is required to create programs for supporting the formation of new companies in the border region of that type.

C.S.H.B. 7 requires TEDTO, to achieve the purposes of the campaign, to seek and apply for any available federal funds and solicit and accept gifts, grants, and donations from any other source, public or private, as necessary to ensure effective implementation of the campaign. The bill requires TEDTO, not later than December 31 of each year, to report to the legislature on its activities related to the campaign. Unless otherwise provided by the appropriation, TEDTO may use a reasonable amount, not to exceed five percent, of any general revenue appropriated for the purposes of the campaign and its administration.

Educational Program

C.S.H.B. 7 amends the Education Code to require the Texas Higher Education Coordinating Board (THECB), subject to the availability of funds and not later than September 1, 2024, to establish a border institution grant program under which the THECB awards financial assistance to public institutions of higher education located in the border region that administer innovative programs designed to:

- recruit, train, retain, or otherwise increase the number of professionals in fields related to border safety or affected by ongoing criminal activity and public health threats to the border region, as determined by THECB rule, including by providing a salary increase or stipend to a faculty member who provides instruction to additional students in a degree or certificate program that graduates those professionals; and
- conduct research in areas of study related to border safety or the effects of ongoing criminal activity and public health threats to the border region.

The bill requires the THECB to begin to award grants under the program as soon as practicable after its establishment.

C.S.H.B. 7 authorizes the THECB, in addition to other funds appropriated by the legislature and for the purposes of that grant program, to seek and apply for any available federal funds and solicit and accept gifts, grants, and donations from any other source, public or private, as necessary to ensure effective implementation of the grant program. The bill requires the THECB to adopt rules for the administration of the grant program and, in adopting the rules, to solicit, from border region officials, community leaders in the border region, and other stakeholders,

information necessary to identify innovative programs anticipated to produce the best outcomes and serve the greatest need. The bill requires that the rules include the following:

- administrative provisions for grants awarded under the program, including:
 - eligibility criteria for institutions of higher education, including a requirement that the institution demonstrate regional and state workforce need;
 - grant application procedures;
 - guidelines relating to grant amounts;
 - procedures for evaluating grant applications; and
 - procedures for monitoring the use of grants; and
- methods for tracking the effectiveness of grants that:
 - using data reasonably available to the THECB, consider relevant information regarding the career paths of the applicable professionals during the four-year period following their graduation; and
 - evaluate whether and for how long those professionals practice in an applicable field described in Texas.

C.S.H.B. 7 requires the THECB, in awarding grants under the program, to give priority to applicants that propose to:

- enhance or leverage existing degree programs that graduate the applicable professionals;
- establish or maintain a program that serves a rural or underserved area;
- partner with another institution of higher education to develop a joint program;
- establish or maintain a program that incentivizes the applicable professionals to serve in their field or a related field of study for at least three consecutive years following graduation; and
- establish or maintain a degree or certificate program to educate professionals in specialties that face significant workforce shortages, including those described by the bill.

C.S.H.B. 7 caps the amount of a grant awarded under the program at an amount specified in the General Appropriations Act. The bill requires an institution of higher education that receives a grant awarded under the program to submit to the THECB an annual report on the amounts and purposes for which grant money was spent during the year covered by the report. Unless otherwise provided by the appropriation, the THECB may use a reasonable amount, not to exceed five percent, of any general revenue appropriated for purposes of the grant program to pay the costs of administering the program.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 7 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes provisions relating to the following that were not in the introduced:

- a finding that the legislature, acting with the governor, has the solemn duty to protect and defend the citizens of Texas and maintain sovereignty over the borders of Texas;
- border protection agreements with the United Mexican States and the states of the United Mexican States; and
- a border protection economic development initiative.

The substitute does not include provisions from the introduced establishing a legislative border safety oversight committee.

Border Region Specialty Courts

Both the introduced and the substitute provide for the creation of a grant program by OCA to fund border protection courts. However, whereas the introduced included provisions that authorized certain county commissioners courts to establish a border protection court program to handle all issues arising under applicable Penal Code provisions and related border issues and provided for the funding of these programs through the OCA grant program, the substitute does not. The substitute requires instead that OCA provide grants to support the operation of courts in the border region with the adjudication of border-related offenses and sets out a definition of "border-related offenses" that was absent from the introduced. The substitute makes the following additional revisions to the provisions it shares with the introduced providing for the grant program:

- establishes a list of costs associated with various court operations that may be reimbursed using grant money, which the introduced did not;
- expands the scope of the requirement for OCA to adopt rules for the program's administration to require also that OCA adopt rules for the program's operation, which the introduced did not;
- includes a requirement not in the introduced for OCA, in adopting the rules, to conduct a study of the data available on crime, arrests, detentions, and convictions to identify offenses for which prosecutions have increased as a result of Operation Lone Star;
- includes a requirement not in the introduced for the grant program eligibility criteria, as established by rule in both the substitute and introduced, to include criteria to limit eligibility to those applicants experiencing an increase in caseloads; and
- includes a requirement not in the introduced for the OCA rules adopted for the program to include methods for tracking the efficiency of the applicants receiving grants and procedures for reporting caseload data at least annually.

Border Property Damage

The substitute and the introduced both provide for compensation for border property damage but the substitute revises the provisions in the introduced that provided for the creation of the border property damage compensation fund as a special fund in the state treasury outside the general revenue fund and provides instead for the creation of the border property damage compensation account within the compensation to victims of crime fund. Moreover, the substitute replaces the provision in the introduced requiring the fund to be administered by the comptroller under rules adopted by the comptroller with a provision requiring the account to be administered by the governor's criminal justice division under rules adopted by the governor. Whereas the introduced established that the fund consisted only of money appropriated by the legislature for deposit to the credit of the fund, gifts to the state for the purposes of the fund, and money directed by law for deposit to the credit of the fund, the substitute establishes that the account consists of the same as well as money credited or transferred by the legislature, investment earnings and interest earned on money in the account, grants and donations received by the state for the purpose of the account, and the proceeds from the sale of certain seized assets. Accordingly, the substitute includes an amendment to the Code of Criminal Procedure, absent from the introduced, requiring that, in a forfeiture hearing regarding forfeited property seized in connection with an offense of smuggling of persons in which a judgment is rendered in the favor of the state, the state's attorney transfer the proceeds from the sale of the forfeited property to the comptroller for deposit to the credit of the account.

With respect to the property damage considered compensable, the introduced provided only for compensation for property damage caused by a person who entered or attempted to enter the state by crossing its border with Mexico at any time or place other than at a port of entry. The substitute expands this to include also damage caused by a person who assisted such a person or by law enforcement action taken to repel, arrest, or detain any of these persons.

The substitute does not include the legislative finding in the introduced that the conditions required under the Texas Constitution for the disbursement of money from the fund created by the introduced exist, which is that there is a public calamity. Instead, the substitute includes a legislative finding regarding the fact that a person in the border region who incurs actual damages to the person's real or personal property is a victim of crime for purposes of the provisions of the Texas Constitution providing for the creation of a fund to compensate crime victims, if the damage is caused by:

- a person who entered or attempted to enter Texas by crossing the Texas-Mexico border at a place other than at a port of entry or a person who assisted the person; or
- a law enforcement action taken to repel, arrest, or detain any such person.

Border Institution Grant Program

Whereas in the introduced, the THECB was required to give priority in awarding grants under the border institution grant program to applicants that propose to partner with another institution of higher education to develop a joint program or with a public school to implement early recruitment in high school, the substitute requires the THECB to give priority only to applicants who propose to partner with another institution for the development of a joint program.

Whereas the introduced required the THECB to give priority in awarding such grants to applicants that propose to establish or maintain a degree or certificate program to educate professionals in specialties that face significant workforce shortages, including those described by statutory provisions regarding the repayment of certain mental health professional education loans, the substitute requires the THECB to give such priority to applicants that propose to establish or maintain a degree or certificate program to educate professionals in specialties that face significant workforce shortages, including those described by the bill's provisions establishing the grant program.

Additionally, whereas both the introduced and the substitute allow for the use of up to five percent of the general revenue appropriated for the grant program to be used for administrative costs, the substitute includes a provision absent from the introduced providing that the cap applies unless otherwise provided by the appropriation itself.

Border Infrastructure

The introduced required the governor's criminal justice division, subject to available funds, to establish and administer a grant program under which the division awards financial assistance to local governments and community institutions in the border region for the construction and maintenance of facilities related to border safety, including facilities used to mitigate ongoing criminal activity and public health threats to the border region, as determined by rule. The substitute requires the division instead, from money appropriated for the purpose, to establish and administer the following funds and grant programs:

- the Border Protection Equipment and Infrastructure Fund to award grants to state agencies and local governments located or operating in the border region for the construction and maintenance of temporary border security infrastructure, including temporary barriers, fences, wires, roads, trenches, surveillance technology, or other improvements, designed or adapted to surveil or impede the movement of persons or objects across the Texas-Mexico border at locations other than ports of entry and for the purchase or maintenance of equipment related to providing public health and safety services in the border region, including law enforcement services, communication services, and emergency services, to enhance the safety and security of the citizens of Texas;
- the Border Protection Criminal Justice Facilities Fund to award grants to state agencies, local governments, or private entities located or operating in the border region for the construction and maintenance of facilities related to prosecuting and adjudicating

- offenses committed in the border region, including court facilities, processing facilities, detention facilities, criminal justice centers, and other similar facilities;
- the Border Protection Public Safety Personnel Fund to award grants to state agencies or local governments located or operating in the border region for the payment of staff salaries and benefits and the payment of operational expenses related to providing law enforcement services; and
 - the Border Protection Secure Trade Fund to award grants to state agencies, local governments, entities operating ports of entry, or private entities located or operating in the border region for the construction of improvements to an area in the immediate vicinity of a port of entry to enhance vehicle inspection capabilities and assist in the investigation, interdiction, and prosecution of persons smuggling individuals or contraband across the Texas-Mexico border and for the construction or improvement of roadways and similar transportation facilities that provide for detailed monitoring of commercial motor vehicles traveling along the roadways and facilities in the border region.

Moreover, the substitute includes a definition not in the introduced for the term "local government" and does not include the provisions from the introduced providing for the construction and maintenance of physical barriers along the border with Mexico by the border protection unit.

The substitute retains the requirement from the introduced for the governor to adopt rules for the administration of the grant programs but includes provisions absent from the introduced that:

- require the rules to include provisions for donations to the grant program funded through the Border Protection Equipment and Infrastructure Fund; and
- require the governor, in adopting rules for the grant program funded through the Border Protection Secure Trade Fund, to consult federal agencies, state agencies, local governments, and private entities with particular knowledge and expertise on the investigation, interdiction, and prosecution of persons smuggling individuals and contraband over the Texas-Mexico border and construction or improvement of roadways and similar transportation facilities that provide for detailed monitoring of commercial motor vehicles traveling along the roadways and facilities.

Additionally, whereas both the introduced and the substitute allow for the use of up to five percent of the money appropriate for the grant program to be used for administrative costs, the substitute includes a provision absent from the introduced providing that the cap applies unless otherwise provided by the appropriation itself.

Effective Date

The substitute provides that the bill takes effect September 1, 2023, whereas the introduced provided for the bill to take effect immediately upon the required vote or, absent that vote count, on September 1, 2023.