

BILL ANALYSIS

C.S.H.B. 20
By: Schaefer
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The health and welfare of Texans and the safety of the state have been threatened by the deadly activities of transnational cartels operating throughout the State of Texas and the United States. Many Texans have lost the peaceful use and enjoyment of their properties due to criminal activities along the border. In addition, lethal quantities of opioids like fentanyl are being trafficked into Texas and resulting in the deaths of thousands of people throughout the country according to the National Institutes of Health.

The legislature, acting with the governor, has the solemn duty to protect and defend the citizens of Texas and to maintain the sovereignty of Texas borders. A bold new, focused strategy is needed to address the rampant illegal activity of cartels along the border. More specifically, a permanent border protection unit is needed to relieve the national guardsmen and Department of Public Safety (DPS) officers currently patrolling the border.

Accordingly, C.S.H.B. 20, the Border Protection Unit Act, creates the Border Protection Unit under the Public Safety Commission housed within DPS. The bill also seeks to create a state-level third degree felony offense for trespassing into another's property while entering Texas.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes 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 border security unit chief in SECTION 2.07 of this bill.

ANALYSIS

C.S.H.B. 20 establishes provisions relating to measures to ensure the safety and welfare of the border region of Texas, including provisions providing for the protection from ongoing criminal activity and public health threats and provisions establishing a new border protection unit.

Border Protection

C.S.H.B. 20 amends the Government Code to expand the purposes for which the Department of Public Safety (DPS) is established to include defending and securing the air, maritime, and land borders of Texas and to require the Public Safety Commission to formulate plans and policies for the defense and security of those borders.

Border Protection Unit; Border Protection Unit Chief

C.S.H.B. 20 establishes a new division under the commission known as the border protection unit, which is to be headquartered in the border region and consists of the number of commissioned and noncommissioned officers and other employees authorized by the legislature. The unit is subject to appropriations by the legislature and is scheduled to be abolished December 31, 2030, unless continued in existence by the legislature. On that date, the bill's provisions providing for the creation of the unit expire.

C.S.H.B. 20 requires the governor to appoint a border protection unit chief as soon as practicable after the bill's effective date. The unit chief serves in that role until removed by the governor and must be a U.S. citizen. The bill authorizes the unit chief to appoint, with the advice and consent of the commission, deputy unit chiefs and assistant unit chiefs to perform the duties that the unit chief designates. The bill establishes that deputy unit chiefs and assistant unit chiefs serve until removed by the unit chief and entitles the unit chief and any deputy or assistant unit chiefs to annual salaries as provided by the legislature.

C.S.H.B. 20 provides the following with respect to the unit chief:

- the unit chief is directly responsible to the commission for all conduct of the border unit, but may only be removed by the governor;
- the unit chief acts as the executive director of the unit and acts with the commission in an advisory capacity, without vote; and
- the unit chief is required to do the following:
 - adopt rules, subject to commission approval, considered necessary for the control and general administration of the unit, including rules governing the procurement of facilities and equipment for the unit and the training and working conditions for unit personnel;
 - issue commissions as law enforcement officers, under the commission's direction, and to members of the unit;
 - create as necessary, with the advice and consent of the commission, operational or administrative divisions within the unit and appoint heads of those divisions;
 - employ as necessary commissioned and noncommissioned officers and other employees to perform unit operations and functions;
 - quarterly, annually, and biennially submit to the commission detailed reports of the operation of the unit, including statements of its expenditures; and
 - prepare, swear to, submit to the governor, and file in the unit's records a quarterly statement containing an itemized list of all money received and its source and all money spent and the purposes for which it was spent.

The bill requires the unit chief or their designee to provide to members of the commission and to the unit's employees, as often as necessary, information regarding the requirements for office or employment, including information regarding a person's responsibilities under applicable law relating to standards of conduct for state officers or employees.

C.S.H.B. 20 makes statutory provisions relating to the following applicable to the unit chief with respect to the unit in the same manner as the provisions apply to the director with respect to DPS or, as applicable, to the unit when acting at the direction of the unit chief in the same manner as the provisions apply to DPS when acting at the direction of the director:

- DPS officers and employees generally;
- direct appointment to management team positions by the director;
- personnel policies;
- working conditions for certain pregnant officers;
- local cooperation with DPS;
- vehicle theft checkpoints at border crossings;
- transportation and inspections meetings with representatives of Mexican states;
- multicounty drug task forces;

- coordination with the Texas Department of Transportation regarding the development of transportation infrastructure projects that affect both agencies;
- the authority to accept donations of money and other real or personal property from any individual, group, association, corporation, or governmental agency and the authority to use those donations for any purpose designated by the donor that furthers the exercise of applicable duties imposed by law;
- the use of seized and forfeited assets;
- the use of appropriated funds to purchase food and beverages for certain functions and persons;
- the availability of the multiuse training and operations center maintained by DPS;
- the organization of DPS into divisions;
- compensatory time and overtime pay;
- the donation of accrued compensatory time or accrued annual leave for legislative purposes;
- salaries for certain troopers;
- the hiring of officers with previous law enforcement experience;
- the authority to implement a 10-hour workday and 50-hour workweek for commissioned officers;
- certain unauthorized acts involving DPS's name or insignia or a division's name;
- the reporting of transportation incidents involving releases of reportable quantities of hazardous materials occurring on public roads or railroads that are not on a private industrial site;
- the duties of the public corruption unit;
- the appointment of members of the reserve officer corps and the calling into service of the reserve officer corps;
- the provision of assistance to local and federal law enforcement authorities at international border checkpoints to prevent the unlawful transfer of contraband from Texas to the United Mexican States and other unlawful activity;
- the statewide program for the prevention and detection of certain criminal offenses involving the unlawful possession or unlawful and imminent movement or transfer between Texas and an adjacent state or the United Mexican States of firearms, controlled substances, or currency or the commission or imminent commission of the offenses of smuggling of persons and trafficking of persons occurring in Texas or involving travel between Texas and an adjacent state or the United Mexican States;
- contracts for fingerprinting services;
- the provision of access to state and national criminal history record information to qualified entities entitled to that information under federal law for certain background check purposes;
- the authority to obtain and use certain criminal history record information maintained by the FBI or by DPS; and
- the enforcement by court order of provisions governing the DPS DNA database system or a rule adopted thereunder.

The bill prohibits the director from exercising any operational or administrative control over the unit chief or the unit and prohibits the unit chief from exercising any operational or administrative control over the director or DPS, other than the border unit. The bill clarifies that the director is directly responsible to the commission for the conduct of and acts as executive director of the Texas Highway Patrol, the Texas Rangers, and other administrative divisions and departments assigned by the commission, other than the Border Protection Unit.

C.S.H.B. 20 classifies the unit as a criminal justice agency for purposes of state law governing DPS and as a law enforcement agency for purposes of the requirement for such agencies, when arresting a defendant for an applicable offense as outlined in state law, to immediately after fingerprinting the defendant and at the same location as the fingerprinting occurs require the defendant to provide one or more specimens for the purpose of creating a DNA record. The bill authorizes the unit to collect, preserve, ship, and analyze a DNA sample for DPS's DNA

database subject to the rules that have been adopted by the director regarding the collection, preservation, shipment, and analysis of a DNA database sample and entitles the unit to access or use a DNA sample or record subject to the rules that have been adopted by the director relating to the internal disclosure, access, or use of a sample or DNA record in a DNA laboratory. The bill authorizes the unit to assist local law enforcement with the investigation of crime.

C.S.H.B. 20 authorizes the unit chief to employ commissioned or noncommissioned officers meeting the qualifications established by the bill to perform the duties of the unit and entitles those officers to compensation as provided by the legislature. The bill requires that the officers be recruited and trained within the border region to the extent practicable and also authorizes the unit chief to employ individuals who are not officers as necessary to carry out the duties of the unit. The bill authorizes the unit chief, subject to the bill's provisions, to appoint, promote, reduce, suspend, or discharge any officer or employee of the unit. The bill specifically states that the director does not have this authority with respect to officers and employees of the unit.

C.S.H.B. 20 conditions a person's authority to be a commissioned officer of the unit on the person holding a peace officer license and meeting any other qualifications set by the commission. The bill conditions a person's authority to be a noncommissioned officer of the unit on the person being a U.S. citizen and meeting any other qualifications set by the commission. The bill requires that a noncommissioned officer operate under the accountability requirements and standards of professional conduct set forth by the commission. The unit is an equal employment opportunity employer and may not discriminate against or give preferential treatment to any employee or job applicant on account of the individual's race, color, sex, national origin, or religion.

C.S.H.B. 20 establishes that a commissioned officer of the unit is governed by the law regulating and defining the powers and duties of sheriffs performing similar duties, except that the officer may make arrests and execute processes in a criminal case in any county. The bill authorizes a commissioned or noncommissioned officer of the unit, to the extent consistent with the United States and Texas Constitutions, to arrest, apprehend, or detain persons crossing the Texas-Mexico border unlawfully and deter persons attempting to cross the border unlawfully, including with the use of non-deadly crowd control measures. The bill prohibits a noncommissioned officer from exercising that authority unless specifically authorized by the commission and the governor and unless the officer has been provided training approved by the commission and the governor. The bill requires the commission to develop or recognize such a training program and establishes that a noncommissioned officer may exercise their applicable arrest authority only in a county contiguous with the Texas-Mexico border or adjoining such a county.

C.S.H.B. 20 makes any defense or affirmative defense that applies to a peace officer in a civil or criminal action applicable also to the unit chief and the officers and other employees of the unit in a civil or criminal action brought against the unit chief or an officer or other employee of the unit arising from conduct engaged in while discharging the duties of the unit.

C.S.H.B. 20 requires the unit to acquire equipment and facilities and conduct training necessary to fulfill the operational, intelligence, communication, logistics, and administrative duties provided by the bill and the unit chief. The bill requires the commission to transfer existing personnel, equipment, and facilities to the unit from within DPS as determined necessary by the commission or the governor, in the commission's or governor's discretion, while maintaining accountability and adequate support for all officers and activities within the commission's responsibility.

C.S.H.B. 20 requires the unit to oversee the construction and maintenance of walls, fences, and other physical barriers along the Texas-Mexico border in order to enhance the safety and security of citizens of Texas. The bill authorizes the unit chief, or the unit chief's designee, to negotiate and acquire the necessary rights-of-way, leases, permissions, materials, and services

needed to erect and maintain physical barriers and authorizes the unit to use funds appropriated by the legislature, other government funds, or donations from U.S. citizens and domestic entities. The bill authorizes the commission to delegate authority granted under these provisions to another state agency.

C.S.H.B. 20 establishes that, pursuant to a legislative finding or a declaration by the governor that a state of invasion or imminent danger exists under Section 10, Article I, U.S. Constitution, the unit chief and director may order personnel under their authority to take, and the personnel may take, the following actions to the extent consistent with the U.S. and Texas Constitutions:

- deter and repel persons attempting to enter Texas unlawfully at locations other than ports of entry;
- return aliens to Mexico who have been observed actually crossing the Texas-Mexico border unlawfully and were apprehended, detained, or arrested in the vicinity of the Texas-Mexico border;
- enhance the examination 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.

C.S.H.B. 20 requires the unit to develop and recommend to the governor and report to the legislature a strategic plan that establishes the framework for the budget and operations of the unit, including homeland security strategies and the assistance of other state and local entities. The bill requires the unit to annually report to the governor and the legislature on the implementation of the strategic plan and requires the unit to include in the strategic plan goals, objectives, and performance measures that involve collaboration with other state agencies and local entities. The bill requires the unit to create plans and conduct operations consistent with the strategic plan and requires that operational plan to include an evaluation of 8 U.S.C. Section 1325(a), which establishes the conduct constituting the offense of improper entry by an alien, as well as any other federal laws relating to the requirement that border crossings occur only at designated ports of entry.

C.S.H.B. 20 requires the governor to establish the office of audit and review within the unit and to appoint the director of the office to perform with respect to the unit the duties of the office of audit and review for DPS. The director of the office serves until removed by the governor.

C.S.H.B. 20 requires the governor to establish the office of the inspector general within the unit and appoint the inspector general of the unit who must perform with respect to the unit the duties of state law governing the office of inspector general for DPS or as may be provided by other law. The inspector general serves until removed by the governor and is responsible for the following:

- preparing and delivering assessments concerning the administration of the unit to the governor, the legislature, and the unit chief;
- acting to prevent and detect serious breaches of unit policy, fraud, and abuse of office, including any acts of criminal conduct within the unit; and
- independently and objectively reviewing, investigating, delegating, and overseeing the investigation of:
 - conduct constituting those aforementioned offenses;
 - criminal activity occurring within the unit;
 - allegations of wrongdoing by unit employees;
 - crimes committed on unit property; and
 - serious breaches of unit policy.

C.S.H.B. 20 expands the conduct constituting the Class A misdemeanor offense for unauthorized acts involving the DPS name, insignia, or division name to include using the term

"Border Protection Unit" without the director's authorization in connection with an object, with the intent to create the appearance that the object belongs to or is being used by DPS.

C.S.H.B. 20 amends the Code of Criminal Procedure to make a conforming change.

Legislative Border Safety Oversight Committee

C.S.H.B. 20 amends the Government Code to establish the legislative border safety oversight committee to do the following:

- provide objective research, analysis, and recommendations to help guide state border safety policies;
- provide oversight for the border protection unit; and
- perform other duties required by law.

The committee consists of the lieutenant governor, speaker of the house of representatives, and four members from each chamber of the legislature appointed by the lieutenant governor and speaker, as appropriate, with the lieutenant governor and speaker serving as joint committee chairs.

C.S.H.B. 20 requires the committee to do the following:

- use statistical analyses and other research methods to conduct an in-depth examination of border safety initiatives and programs in Texas that includes:
 - an assessment of the cost-effectiveness of the use of state and local funds in ensuring border safety;
 - an identification of critical border safety problems; and
 - a determination of the state's long-range border safety needs;
- recommend to the legislature, in a biennial report due not later than January 1 of each odd-numbered year, strategies to solve those identified problems and policy priorities to address those long-range needs; and
- advise and assist the legislature in developing plans, programs, and proposed legislation to improve the effectiveness of border safety initiatives and programs.

C.S.H.B. 20 grants the committee all other powers and duties provided to a special committee by the Legislative Reorganization Act of 1961, the rules of the house and senate, and the policies of the house and senate administration committees. With respect to the administration and operation of the committee, the bill provides the following:

- a majority of the members of the committee from each house of the legislature constitutes a quorum to transact business and if a quorum is present the committee may act on any matter within its jurisdiction by majority vote;
- the committee must meet as often as necessary to perform its duties;
- committee meetings may be held at any time at the request of either chair or on written petition of a majority of the committee members from each house of the legislature;
- the committee must meet in Austin, except that if a majority of the committee members from each house of the legislature agree, the committee may meet in any location determined by the committee;
- for a meeting in Austin at which both joint chairs of the committee are physically present, any number of the other committee members may attend the meeting by use of telephone conference call, videoconference call, or other similar technology as a specific exception to state open meetings law or any other law;
- such remote attendance at committee meetings applies for purposes of establishing a quorum or voting or any other purpose allowing the members to fully participate in any committee meeting and applies without regard to the subject or topics considered by the members at the meeting;
- a committee meeting held by use of telephone conference call, videoconference call, or other similar technology:
 - is subject to the notice requirements applicable to other meetings;

- must specify in the notice of the meeting the location in Austin at which the joint chairs will be physically present;
- must be open to the public and audible to the public at the location specified in the notice; and
- must provide two-way audio communication between all committee members attending the meeting during the entire meeting, and if the two-way audio communication link with any member attending the meeting is disrupted at any time, the meeting may not continue until the two-way audio communication link is reestablished;
- the committee may hire staff or may contract with universities or other suitable entities to assist the committee in carrying out its duties; and
- funding to support the operation of the committee must be provided from funds appropriated to the Texas Legislative Council.

Trespass While Entering the State of Texas

C.S.H.B. 20 amends the Penal Code to create a third degree felony offense for a person who knowingly enters the property of another, without the effective consent of the owner, while knowingly entering Texas from any neighboring jurisdiction, regardless of the person's immigration status. The bill also makes the offender liable to the state for a civil penalty in an amount capped at \$10,000 for each occurrence of the conduct and authorizes the attorney general to bring an action to collect the penalty and recover attorney's fees and costs incurred in bringing the action. If conduct that constitutes this offense also constitutes another offense, the actor may be prosecuted for either or both offenses.

C.S.H.B. 20 amends the Code of Criminal Procedure to require a magistrate to require as a condition of release on bond of someone arrested for the offense that the defendant submit to electronic monitoring unless the magistrate finds that the defendant is not a flight risk.

Public Health Emergency

C.S.H.B. 20 amends the Health and Safety Code to require, to the extent consistent with the U.S. Constitution, all persons entering Texas by land during any of the following periods from another country to pass through a legal port of entry for appropriate medical review during:

- the pendency of any federally declared public health emergency for COVID-19;
- any time that a federal agency has in place any vaccination requirement for any person lawfully residing in the United States, including government contractors or health care workers, for the purposes of preventing the spread of COVID-19 in the United States; or
- any time when the U.S. Department of State has in place any travel warning related to COVID-19 for any country from which citizens have unlawfully entered the United States during the most recent year for which there is available data.

The bill, to the extent consistent with the U.S. Constitution, requires a person who enters Texas from a foreign country other than through a legal port of entry during any of those periods to be removed to the country from which they entered, their country of origin, or another location as practicable as rapidly as possible and with as little time spent in congregate settings as practicable under the circumstances.

C.S.H.B. 20 defines the following terms for purposes of such a public health emergency:

- "COVID-19" means the 2019 novel coronavirus disease;
- "federally declared public health emergency" means:
 - a public health emergency declared by the U.S. secretary of health and human services under the federal Public Health Service Act; or
 - an emergency or disaster declared, including under a renewal of the declaration, by the U.S. president in relation to such a public health emergency under the federal National Emergencies Act or the federal Robert T. Stafford Disaster Relief and Emergency Assistance Act;

- "person" means any individual other than one described by the first sentence of Section 1 of the Fourteenth Amendment, which relates to naturally-born or naturalized U.S. citizens, to the U.S. Constitution or 8 U.S.C. Section 1101(a)(20), which relates to lawful permanent residents; and
- "port of entry" means a port of entry described by either of the following:
 - Part 101, Title 19, Code of Federal Regulations (19 C.F.R. part 101), which includes any place designated by executive order of the U.S. president, by order of the U.S. secretary of the treasury, or by act of the U.S. Congress, at which a U.S. customs and border protection officer is authorized to accept entries of merchandise to collect duties, and to enforce the various provisions of the customs and navigation laws; or
 - 22 C.F.R. Section 40.1, which includes a port or place designated by the U.S. Department of Homeland Security (DHS) at which an alien may apply to DHS for admission into the United States.

Legislative Findings

C.S.H.B. 20 includes the following legislative findings:

- the security of Texans and the sovereignty of the State of Texas have been threatened by the deadly activities of transnational cartels operating throughout Texas and the United States;
- many Texans have lost the peaceful use and enjoyment of their properties due to criminal activities along the Texas-Mexico border;
- lethal quantities of opioids such as fentanyl are being trafficked into Texas and resulting in the poisoning deaths of people throughout Texas and the United States;
- human trafficking by transnational cartels has resulted in the deaths of many people and the exploitation of women and children;
- the State of Texas is "in such imminent [d]anger as will not admit of delay," and declares authority under Section 10, Article 1, U.S. Constitution;
- deaths from fentanyl and other synthetic opioids are increasing in Texas and throughout the United States and number in the tens of thousands according to the National Institutes of Health;
- fentanyl is being produced on an industrial scale by Mexican cartels and smuggled across the border into Texas;
- the number of people unlawfully entering Texas from Mexico at locations other than ports of entry has reached historic levels and local communities are increasingly overwhelmed;
- law enforcement cannot adequately interdict fentanyl and human trafficking operations along the Texas-Mexico border because resources are diverted to address the unlawful entry by large numbers of people into Texas from Mexico; and
- the legislature, acting with the governor, has the solemn duty to protect and defend the citizens of Texas and maintain sovereignty over the state's borders.

Severability

C.S.H.B. 20 provides generally for the severability of the bill's provisions.

Moreover, C.S.H.B. 20 amends the Government Code and Health and Safety Code to provide specifically for the following with respect to the portions of the bill establishing the border protection unit and governing entry into Texas from another country during the COVID-19 public health emergency:

- specific severability of every provision, section, subsection, sentence, clause, phrase, or word in those portions of the bill, and every application of the provisions in those portions of the bill to every person, group of persons, or circumstances, in light of the U.S. Supreme Court's decision in *Leavitt v. Jane L.*;

- severability of constitutionally valid applications of those portions of the bill from any applications that a court finds to be preempted, unconstitutional, or otherwise invalid;
- a declaration that the legislature would have enacted those portions of the bill, and each provision, section, subsection, sentence, clause, phrase, or word therein, and all constitutional applications of those portions of the bill, irrespective of the fact that any part or applications were to be declared invalid, preempted, or unconstitutional; and
- severability in the event that any provision in those portions of the bill are found to be unconstitutionally vague.

The bill prohibits a court from declining to enforce these severability requirements on the ground that severance would rewrite the statute or involve the court in legislative or lawmaking activity. The bill specifies that a court that declines to enforce or enjoins a state official from enforcing a statutory provision is never rewriting a statute or engaging in legislative or lawmaking activity, as the statute continues to contain the same words as before the court's decision, and that a judicial injunction or declaration of unconstitutionality:

- is nothing more than an edict prohibiting enforcement of the disputed statute against the named parties to that lawsuit, which may subsequently be vacated by a later court if that court has a different understanding of the requirements of the U.S. or Texas Constitutions or federal law;
- is not a formal amendment of the language in a statute; and
- no more rewrites a statute than a decision by the executive not to enforce a duly enacted statute in a limited and defined set of circumstances.

The bill further establishes that if any state or federal court disregards any of these specific severability requirements and declares or finds any provision of these applicable portions of the bill facially invalid, preempted, or unconstitutional, when there are discrete applications of that provision that can be enforced against a person, group of persons, or circumstances without violating federal law or the U.S. or Texas Constitutions, then that provision must be interpreted, as a matter of state law, as if the legislature had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application will not violate federal law or the U.S. or Texas Constitutions, and every court must adopt this saving construction of that provision until the court ruling that pronounced the provision facially invalid, preempted, or unconstitutional is vacated or overruled. The bill establishes that the bill's general severability clause does not affect any of these other specific severability provisions.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 20 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.

Border Protection Unit; Border Unit Chief

The introduced provided blanket authority to the unit chief to employ law-abiding citizens without a felony conviction to participate in unit operations and functions, while establishing certain qualifications that a person must meet in order to be commissioned as an officer of the unit. Moreover, the introduced authorized the unit chief to employ licensed state or local law enforcement personnel to participate in unit operations and functions. The substitute instead provides authority for the unit chief to employ officers, both commissioned and noncommissioned, to perform the duties of the unit and then also authorizes the unit chief to employ individuals who are not officers as necessary to carry out the duties of the unit.

Regarding the qualifications to be a commissioned officer of the unit, the introduced required a person to be a U.S. citizen or legal permanent resident, be a graduate of a Texas police academy,

have experience as sworn law-enforcement officer in another state or federal law-enforcement agency, or be appointed or employed on the basis of being a law-abiding citizen without a felony conviction. In the substitute, a person must hold a peace officer license and meet any other qualifications set by the commission in order to qualify to be a commissioned officer of the unit. Moreover, the substitute includes provisions not in the introduced requiring that a person be a U.S. citizen and meet any other qualifications set by the commission to be a noncommissioned officer of the unit and requiring a noncommissioned officer to operate under the accountability requirements and standards of professional conduct set forth by the commission.

With respect to the authority of officers, the substitute clarifies that the provision in the introduced establishing that an officer of the unit is governed by the law regulating and defining the powers and duties of sheriffs performing similar duties, except that the officer may make arrests and execute processes in a criminal case in any county, applies only with respect to a commissioned officer. Moreover, the substitute revises the provision in the introduced authorizing officers of the unit, to the extent consistent with the Constitution and federal law, to arrest, detain, and deter individuals within Texas who are crossing the border illegally, including with the use of non-deadly force, as follows:

- clarifies that the provision applies to both commissioned and noncommissioned officers;
- omits the reference to federal law and clarifies that the constitution being referenced includes both the U.S. Constitution and the Texas Constitution;
- includes apprehension of persons unlawfully crossing the Texas-Mexico border among the authorized actions; and
- replaces the language allowing for the use of non-deadly force to deter individuals unlawfully crossing the border with language allowing for the use of non-deadly crowd control measures for such purposes.

The introduced contained a provision establishing that the law-abiding citizens without a felony conviction employed to participate in unit operations and functions could only have arresting authority if trained and specifically authorized by the governor. The substitute includes a provision that instead conditions the authority of a noncommissioned officer to exercise the above-described powers on the officer receiving specific authorization from the commission and the governor and the officer having been provided training approved by the commission and the governor. Moreover, the substitute includes language not in the introduced limiting the areas of Texas within which a noncommissioned officer may exercise arresting authority to a county contiguous with the Texas-Mexico border or a county adjoining such a county. Finally, the substitute also includes a requirement not in the introduced for the commission to develop or recognize a training program for noncommissioned officers.

The substitute includes a provision not in the introduced authorizing the commission to delegate the authority granted under provisions of the bill relating to the construction and maintenance of physical barriers along the Texas-Mexico border to another state agency.

The introduced authorized the unit chief to order the unit to take certain actions in the event that the legislature finds, or the governor has declared, or declares, a state of invasion or imminent danger under the U.S. Constitution, to the extent those actions were consistent with the U.S. Constitution, the Texas Constitution, and federal and state law. The substitute revises this provision as follows:

- extends the authority also to the director with respect to personnel under their authority;
- retains only the requirement that the actions be consistent with the U.S. and Texas Constitutions and omits reference to federal and state law;
- includes as an additional authorized action enhancing the examination 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
- with respect specifically to the authority to return aliens to Mexico who have been observed actually crossing the border unlawfully and were apprehended or detained in the immediate vicinity of the border, clarifies that the border in question is the

Texas-Mexico border and includes also a reference to aliens who were arrested in the vicinity of that border.

The substitute replaces the provision in the introduced granting the unit chief, all officers and employees of the unit, and any law-abiding citizens employed to participate in unit operations immunity from criminal and civil liability for any actions taken that are authorized by applicable provisions of the bill with a provision that instead establishes that any defense or affirmative defense that applies to a peace officer in a civil or criminal action applies to the unit chief and the officers and other employees of the unit in a civil or criminal action brought against the unit chief or an officer or other employee of the unit arising from conduct engaged in while discharging the duties of the unit.

The substitute revises the requirement in the introduced for the unit chief to adopt rules, subject to commission approval, considered necessary for the control of the unit to require also that rules be adopted that are considered necessary for the general administration of the unit and to require specifically the rules be adopted governing the procurement of facilities and equipment for the unit and the training and working conditions for unit personnel. Accordingly, the substitute omits the provision from the introduced authorizing the unit chief to promulgate such substantive or procedural rules as may be required to carry out the general administration of the unit, including, but not limited to: procurement of facilities, training and equipment, and effectuation of personnel policies.

The introduced included a provision vesting the unit chief with the same powers and duties vested in the director under certain specified Government Code sections. The substitute revises that provision so that it instead states that certain specified Government Code sections apply to the unit chief with respect to the unit in the same manner as the provisions apply to the director with respect to DPS or, as applicable, apply to the unit when acting at the direction of the unit chief in the same manner as the provisions apply to DPS when acting at the direction of the director. Regarding the specific sections of the Government Code listed, the substitute omits the following, which were in the introduced:

- Section 411.041, which relates to the composition of the administrative division of DPS;
- Section 411.043, which relates to the DPS bureau of communications;
- Section 411.044, which relates to the DPS bureau of intelligence;
- Section 411.045, which relates to the DPS bureau of training;
- Section 411.048, which relates to threats against peace officers and detention officers;
- Section 411.0603, which relates to the confidentiality of, and dissemination of, information in the central index of information regarding additional offenses that forensic DNA test results indicate may have been committed by certain defendants that is included in DPS's law enforcement information system;
- Section 411.0604, which relates to rulemaking authority and that central index;
- Section 411.146, which relates to DNA samples;
- Section 411.147, which relates to access to DNA database information;
- Section 411.1471, which relates to DNA records of persons arrested for or convicted of certain specified offenses;
- Section 411.151, which relates to the expunction or removal of DNA records;
- Section 411.242, which relates to the director of audit and review;
- Section 411.243, which relates to the powers and duties of the office of audit and review;
- Section 411.251, which relates to the establishment and purpose of the office of inspector general;
- Section 411.252, which relates to the oversight of investigations by the office of inspector general;
- Section 411.253, which relates to the initiation of investigations by the office of inspector general;
- Section 411.255, which relates to reporting requirements for the office of inspector general;

- Section 411.263, which relates to assistance provided to local law enforcement by employees of the unsolved crimes investigation program; and
- Section 411.506, which relates to informal complaint resolution and informal proceedings.

Accounting for the omission of certain of those statutory sections, the substitute includes the following provisions not in the introduced:

- a provision regarding establishment of the office of audit and review within the unit;
- a provision classifying the unit as a criminal justice agency for purposes of state law governing DPS;
- a provision classifying the unit as a law enforcement agency for purposes of the requirement for such agencies, when arresting a defendant for an applicable offense as outlined in state law, to immediately after fingerprinting the defendant and at the same location as the fingerprinting occurs require the defendant to provide one or more specimens for the purpose of creating a DNA record;
- a provision authorizing the unit to collect, preserve, ship, and analyze a DNA sample for DPS's DNA database subject to the rules that have been adopted by the director regarding the collection, preservation, shipment, and analysis of a DNA database sample and entitling the unit to access or use a DNA sample or record subject to the rules that have been adopted by the director relating to the internal disclosure, access, or use of a sample or DNA record in a DNA laboratory; and
- a provision authorizing the unit to assist local law enforcement with the investigation of crime.

Whereas the introduced required the commission to establish the office of inspector general for the unit, the substitute requires the governor to establish such an office within the unit. The substitute retains the requirement for the inspector general to perform the duties prescribed under state law governing the inspector general for DPS or as may be provided by other law but omits the requirement for the inspector general to perform any duties that the unit chief designates.

The substitute includes a provision absent from the introduced prohibiting the unit chief from exercising any operational or administrative control over the director or DPS, other than the unit.

The substitute expands the scope of the provision in the introduced requiring the commission to transfer existing personnel, equipment, and facilities to the unit from within DPS as necessary at the discretion of the commission while maintaining accountability and adequate support for all officers and activities within the commission's responsibility so as to make this requirement applicable also if the governor, in the governor's discretion, determines that any such transfer is necessary.

The substitute includes a procedural provision absent from the introduced specifying that, with respect to the requirement for the governor to appoint a unit chief, the governor must do so as soon as practicable after the bill's effective date.

Legislative Border Safety Oversight Committee

The substitute revises the provision in the introduced authorizing any number of the committee members to attend a committee meeting by use of telephone conference call, video conference call, or other similar telecommunication device if the meeting is held in Austin and both joint chairs are physically present to replace the reference to other similar telecommunications device with a reference to other similar technology.

Trespass While Entering the State of Texas

The introduced and the substitute both create the offense of trespass while entering the State of Texas, however the substitute revises the provision in the introduced establishing the conduct that constitutes this new offense as follows:

- with respect to the element of the offense involving the fact that the entry into the property of another was without effective consent, includes a clarification absent from the introduced that the effective consent that was not obtained is that of the property owner; and
- includes a specification that the offense applies regardless of the actor's immigration status.

Whereas the introduced subjected the offender to a civil penalty of not less than \$10,000 for each violation, the substitute instead caps the amount of the civil penalty at \$10,000 for each violation and includes a specification absent from the introduced that the entity to which the actor is liable for this penalty is the state. The substitute omits the provision from the introduced establishing that the fact that conduct is subject to a civil or criminal penalty under these provisions does not abolish or impair any remedy for the conduct that is available in a civil suit. The substitute includes a provision that was absent from the introduced establishing that, if conduct that constitutes this offense also constitutes another offense, the actor may be prosecuted for either or both offenses.

Public Health Emergency

The substitute revises the provisions in the introduced establishing that the bill's provisions regarding the entry into Texas during certain public health emergencies applied to the extent consistent with the Constitution and federal immigration laws by omitting references to federal immigration laws and specifying that the constitution being referenced is the U.S. Constitution.

Legislative Findings

With respect to the finding included in the introduced that lethal quantities of opioids such as fentanyl are being trafficked into Texas and resulting in the poisoning deaths of thousands of people throughout the United States, the substitute omits the reference to the quantity of people who have been poisoned and includes a reference to people having been poisoned in Texas as well as the rest of the United States. Moreover, the substitute includes the following additional findings not in the introduced:

- human trafficking by transnational cartels has resulted in the deaths of many people and the exploitation of women and children;
- deaths from fentanyl and other synthetic opioids are increasing in Texas and throughout the United States and number in the tens of thousands according to the National Institutes of Health;
- fentanyl is being produced on an industrial scale by Mexican cartels and smuggled across the border into Texas;
- the number of people unlawfully entering Texas from Mexico at locations other than ports of entry has reached historic levels and local communities are increasingly overwhelmed; and
- law enforcement cannot adequately interdict fentanyl and human trafficking operations along the Texas-Mexico border because resources are diverted to address the unlawful entry by large numbers of people into Texas from Mexico.

Severability

The substitute includes a provision not in the introduced establishing that the bill's general severability clause does not affect any of the other specific severability provisions included in the bill.