

BILL ANALYSIS

C.S.H.B. 82
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In fiscal year 2022, U.S. Customs and Border Protection figures showed the agency recorded more than 2.3 million illicit crossings of the southern border, the most ever in American history. So far in fiscal year 2023, the rate of illegal border crossings has only increased. Because the federal statistics record only "encounters" and not the number of migrants that evade law enforcement, the true scale of the crisis at our southern border is unknowable, but certainly of a much greater magnitude than what is portrayed by the official data.

According to a March 2023 press release from the Biden administration, there are approximately 23,000 federal agents currently stationed along the southern border. These officers have been given an impossible task. They are asked to ensure the security of our national borders, while operating with a 100:1 ratio of undocumented migrants to enforcement personnel, with scant support from a federal administration that has consistently refused to make border enforcement a priority. The inevitable gaps in federal enforcement caused by such insufficient resources have placed enormous strain on border communities, state law enforcement and human services agencies, and the nation as a whole.

In response, Texas and other southern border states have devoted considerable resources to border security and enforcement efforts. While these individual—though occasionally cooperative—state-led actions have helped to assuage the ongoing border security emergency, the sheer scale of this issue demands greater efforts and heightened collaboration.

An interstate compact for border enforcement would equip Texas and other participating states with the resources needed to address the shortcomings of existing federal border policy. Allowing states to share enforcement resources, intelligence, and assistance in creating and maintaining defensive border structures would strengthen states' capabilities to address, manage, and overcome the continuing security crisis at our southern border.

C.S.H.B. 82 seeks to require the governor to develop and execute an interstate compact for border security, allowing participating states' law enforcement agencies to share resources and intelligence for purposes of border enforcement, and allowing states to share funding and other assistance in creating and maintaining defensive border structures, including comprehensive surveillance technology. Because this interstate compact does not alter the balance of power between states and the federal government, congressional consent is not required for the agreement to take or remain in effect.

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 this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 82 amends the Government Code to require the governor, on the state's behalf, to develop and execute an interstate compact for border security among interested states. The bill requires the compact to provide for joint action among compacting states on matters that include the following:

- sharing law enforcement intelligence on illegal activity occurring at the border with Mexico;
- sharing state resources in order to build a physical barrier, a comprehensive technological surveillance system, or both, on state land to deter or detect illegal activity occurring at the border with Mexico; and
- sharing other law enforcement resources to ensure the protection of personnel and property.

The bill establishes that it is the legislature's intent that the compact not require congressional approval. The bill prohibits the compact from increasing the political power of the compacting states in relation to the federal government.

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. 82 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 revises the provision in the introduced authorizing the governor to coordinate, develop, and execute an interstate compact for border security among interested states by instead making the governor's development and execution of such a compact mandatory and by omitting reference to the governor's coordination of the compact. Moreover, whereas the introduced authorized the governor to seek the approval of the U.S. Congress for the compact and established that the compact takes effect only if approved by the U.S. Congress not later than the 10th anniversary of the date the compact is executed by the governor, the substitute includes a provision that instead establishes that it is the legislature's intent that the compact not require congressional approval.

The substitute includes a prohibition against the compact increasing the political power of the compacting states in relation to the federal government, which was absent from the introduced.

The substitute changes the matters on which the compact must provide for joint action among compacting states as follows:

- omits the requirement from the introduced that those matters include the operational control of the Texas-Mexico border by the total detection and apprehension or deflection of illegal aliens attempting to cross the border into Texas and any other enforcement of federal immigration laws, including the detecting, apprehending, detaining, prosecuting, releasing, and monitoring of illegal aliens; and
- requires instead that those matters include:
 - sharing law enforcement intelligence on illegal activity occurring at the border with Mexico;

- sharing state resources in order to build a physical barrier, a comprehensive technological surveillance system, or both, on state land to deter or detect illegal activity occurring at the border with Mexico; and
- sharing other law enforcement resources to ensure the protection of personnel and property.

Accordingly, the substitute omits the definition of "illegal alien" that was present in the introduced.