

BILL ANALYSIS

C.S.H.B. 3782
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Security along Texas' southern border with Mexico is constantly evolving, with the number of migrant encounters and drug seizures fluctuating yearly. State law must include an advisory committee to advise the governor or the governor's designee and the legislature on homeland security issues related to the Mexico-U.S. border. Many Texans in leadership roles possess a wealth of experience in border policy, and their advice could assist the governor and the legislature in continuing to make effective and educated decisions. C.S.H.B. 3782 seeks to provide for the creation of the Border Security Advisory Council for this purpose, as well as for the creation of the Border Protection Task Force.

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 chief of the Border Protection Task Force in SECTION 2.02 of this bill.

ANALYSIS

Border Security Advisory Council

C.S.H.B. 3782 amends the Government Code to create the Border Security Advisory Council as a permanent special advisory committee to advise the legislature and the governor or the governor's designee on homeland security issues impacting the security of the Texas-Mexico border and on streamlining statewide border security activities and initiatives.

C.S.H.B. 3782 establishes that the council is composed of the following members:

- the lieutenant governor;
- the speaker of the house of representatives;
- four senators appointed by the lieutenant governor who collectively meet the following requirements:
 - two senators must be members of the political party with the most members in the senate and two senators must be members of the political party with the second most members in the senate;
 - two senators must represent senatorial districts located in the border region; and
 - one senator must be the chair of the senate standing committee with primary jurisdiction over border security issues;
- four members of the house of representatives appointed by the speaker who collectively meet the following requirements:

- two representatives must be members of the political party with the most members in the house and two representatives must be members of the political party with the second most members in the house;
- two representatives must represent house districts located in the border region; and
- one representative must be the chair of the house standing committee with primary jurisdiction over border security issues;
- as nonvoting members, the executive head of or a designee from each of the following agencies:
 - the Department of Public Safety (DPS);
 - the Texas Military Department;
 - the Texas Division of Emergency Management;
 - the Parks and Wildlife Department (TPWD);
 - the Texas Department of Criminal Justice (TDCJ); and
 - the Office of Court Administration of the Texas Judicial System (OCA);
- the following nonvoting members appointed by the governor or the governor's designee:
 - one representative of a county located in the border region, other than a sheriff;
 - one sheriff of a county located in the border region;
 - one representative of a municipality located in the border region, other than a municipal police chief;
 - one police chief of a municipality located in the border region; and
 - one representative of the business community involved in international trade across the Texas-Mexico border; and
- other nonvoting members as determined by the governor or the governor's designee.

The bill establishes the lieutenant governor and the speaker are joint chairs of the council and that a majority of the voting members of the council constitutes a quorum to transact business. The council is authorized to act on any matter within the council's jurisdiction by a majority vote if a quorum is present. The bill entitles a council member to receive travel expenses incurred while conducting council business as provided by the General Appropriations Act.

C.S.H.B. 3782 requires the council to meet as often as necessary to perform the council's duties and meetings may be held at any time at the request of either chair. As a specific exception to state open meeting law and other law, for a meeting at which both joint chairs of the council are physically present, any number of the other council members may attend the meeting by use of telephone conference call, video conference call, or other similar technology. This exception applies for purposes of establishing a quorum or voting or for any other purpose allowing the members to fully participate in any council meeting without regard to the subject or topics considered by the members at the meeting. The bill establishes the following relating to a meeting held by use of a telephone conference call, video conference call, or other similar technology:

- the meeting is subject to the notice requirements applicable to other meetings;
- the meeting notice must specify the location at which the joint chairs will be physically present;
- the meeting must be open to the public and audible to the public at the location specified in that notice; and
- the meeting must provide two-way audio communication between all council 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 link is reestablished.

C.S.H.B. 3782 requires the council, in addition to the duties prescribed by law for permanent special advisory committees, to do as follows:

- use statistical analyses and other research methods to conduct an in-depth examination of border safety initiatives and programs in Texas that includes the following:
 - 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;
- submit, not later than January 1 of each odd-numbered year, a report containing recommendations regarding the following to the legislature and the governor:
 - strategies to solve the critical border safety problems identified;
 - policy priorities to address the long-range border safety needs determined; and
 - measures based on objective research and analysis to help guide state border safety policies;
- advise the legislature and the governor regarding the following:
 - coordinating the goals and responsibilities for border security efforts of local and state agencies with jurisdiction over border security;
 - developing procedures for streamlining decision-making of local and state agencies with jurisdiction over border security; and
 - improving transparency of border security operations; and
- advise and assist the legislature and the governor in developing plans, programs, and proposed legislation to improve the effectiveness of border safety initiatives and programs.

The bill authorizes the council to hire staff or contract with universities or other suitable entities to assist the council in carrying out its duties. The bill requires the funding to support the operation of the council to be provided from funds appropriated to the Texas Legislative Council.

Border Protection Task Force

C.S.H.B. 3782 requires the council to provide to the governor a list of recommendations for the state agency to establish a Border Protection Task Force and requires the governor to select the state agency that will establish the task force from the list. The bill requires the governing body of the state agency selected by the governor to establish the task force as a division within the agency to provide cross-functional expertise to border protection operations and improve efficiency and effectiveness of the border protection operations of the state agencies and political subdivisions of Texas. The bill requires the agency's governing body to appoint, with the approval of the governor, a chief of the task force who serves at the will of the governing body. The bill establishes that the task force is subject to appropriations from the legislature and is set to be abolished September 1, 2031, unless reauthorized by the legislature. The bill's provisions relating to the task force also expire September 1, 2031.

C.S.H.B. 3782 requires the task force to be headquartered in the border region and authorizes the task force to establish regional offices along the Texas-Mexico border. The bill requires the chief of the task force to identify resources the task force needs to conduct border protection operations, including personnel, equipment, and facilities owned or controlled by state agencies that conduct border protection operations under Operation Lone Star. The bill authorizes the chief to identify any resources dedicated to border security that are owned or controlled by the governor's office, the attorney general's office, DPS, the Texas Military Department, TPWD, the Texas Alcoholic Beverage Commission, TDCJ, the Commission on Jail Standards, the Texas Commission on Law Enforcement, OCA, the Department of State Health Services, the Texas Department of Motor Vehicles, the State Soil and Water Conservation Board, and any other state agency designated by the governor. The bill requires each state agency that owns or controls identified resources to dedicate those resources to the task force and its duties by written agreement with the task force.

C.S.H.B. 3782 requires the chief to identify resources the task force needs to conduct border protection operations, including personnel, equipment, and facilities owned or controlled by local governments that conduct border protection operations along the Texas-Mexico border. The bill authorizes a local government that owns or controls any identified resources to dedicate those resources to the task force and its duties by written agreement with the task force. The bill

entitles a local government that does so to reimbursement for the use of those resources as provided by the written agreement and the General Appropriations Act.

C.S.H.B. 3782 authorizes the task force to accept gifts, grants, and donations from any source, including private and nonprofit organizations, for the purposes of implementing the bill's provisions governing the task force. The bill requires the task force to coordinate with any federal agency or any local government as necessary to perform its duties.

C.S.H.B. 3782 requires the chief to do the following:

- formulate plans and policies for the protection of the citizens of Texas in the Texas-Mexico border region, including the air, maritime, and land borders of Texas;
- organize the task force and supervise its operation;
- maintain records of all task force proceedings and official orders; and
- biennially submit a report of the task force's operations to the governor and legislature.

The bill requires the chief to act as the task force's chief administrative officer and establishes the chief is responsible to the governing body of the state agency that establishes that task force for the conduct of the task force. The bill authorizes the chief, with the approval of the agency's governing body, to adopt rules necessary to perform the duties of the task force, including rules for procuring equipment and facilities, providing training, and adopting policies governing task force personnel.

C.S.H.B. 3782 requires the chief or the chief's designee to develop and recommend to the governor, the legislature, and the agency's governing body a strategic plan that establishes the framework for the budgeting and operations of the task force, including homeland security strategies, to be administered by the task force and state agencies that provide assistance to the task force. The bill requires the strategic plan to include goals and performance measures that involve collaboration with other state agencies and local governments and an evaluation of federal laws relating to the requirement that the admission of aliens into the United States occur only at ports of entry. The bill requires the chief to annually report to the governor, the legislature, and the agency's governing body on the implementation of the strategic plan.

C.S.H.B. 3782 authorizes the chief, with the approval of the agency's governing body, to appoint deputy chiefs and regional commanders to oversee the task force's regional offices and to commission officers of the task force as peace officers. The bill authorizes the chief to hire any employees as necessary to perform the duties of the task force.

C.S.H.B. 3782 requires a person to hold or obtain a peace officer license to be eligible to be a commissioned officer of the task force and requires a person to meet the qualifications set by the chief by rule to be eligible to be a noncommissioned officer of the task force. The bill authorizes the chief to provide by rule for the qualifications of any other task force employees. The bill establishes that the task force 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. 3782 requires the task force to acquire equipment and facilities and conduct training necessary to conduct the operational, intelligence, communication, logistics, and administrative duties of the task force, including land, air, and maritime responsibilities. The bill requires the task force to conduct the training in the border region.

C.S.H.B. 3782 establishes that a person dedicated to the task force and its duties under the bill retains the authority of the office held by the person with the dedicating state agency or local government and may exercise any powers granted to the task force with the approval of the chief. The bill authorizes the agency's governing body, with the approval of the governor, to assign the person additional duties consistent with the duties of the task force.

C.S.H.B. 3782 establishes that any property, including equipment or facilities, dedicated to the task force and its duties under the bill may be used for the purposes of the dedicating state agency or local government or the purposes of the task force.

C.S.H.B. 3782 defines the following terms, among others, for purposes of the bill's provisions relating to the task force:

- "alien" has the meaning assigned by the federal Immigration and Nationality Act, which is any person not a citizen or national of the United States;
- "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 that is adjacent to an international border; or
 - is served by a prosecuting attorney whose jurisdiction includes any such county;
- "local government" means a municipality, county, special purpose district, or other political subdivision of the state; and
- "port of entry" means a port or place designated by the U.S. Department of Homeland Security at which an alien may apply to the department for admission into the United States.

Conforming Changes

C.S.H.B. 3782 amends the Code of Criminal Procedure to make a conforming change.

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. 3782 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.

Whereas the introduced created the Border Security Advisory Council to advise only the governor or the governor's designee, the substitute provides for the council to also advise the legislature. With respect to the membership of the council, the substitute:

- retains the same list, as provided in the introduced, of state agencies the executive heads of which or their designees serve on the council but, whereas the introduced included those members as voting members the substitute instead makes them nonvoting members;
- substitute expands the council's membership to include the following members, none of whom were included on the council in the introduced:
 - as voting members:
 - the lieutenant governor and the speaker;
 - four senators appointed by the lieutenant governor;
 - four members of the house of representatives appointed by the speaker; and
 - the following nonvoting members appointed by the governor or the governor's designee:
 - one representative of a county located in the border region, other than a sheriff;
 - one sheriff of a county located in the border region;
 - one representative of a municipality located in the border region, other than a municipal police chief;
 - one police chief of a municipality located in the border region; and
 - one representative of the business community involved in international trade across the Texas-Mexico border;

- retains the authorization in the introduced for the governor or the governor's designee to determine other members to serve on the council but specifies that any such members are nonvoting members.

The substitute includes the following additional provisions regarding the council that were not in the introduced:

- provisions establishing criteria and qualifications for the appointment of the senators and state representatives appointed as voting members;
- a provision establishing that the lieutenant governor and speaker are the council's joint chairs;
- provisions regarding what constitutes a quorum to transact business and the requisite vote threshold for council action;
- provisions regarding council meetings, including provisions regarding hybrid remote meetings where the council joint chairs are physically present and any of the other members are remote;
- provisions authorizing the council to hire staff and contract with universities and other suitable entities for assistance;
- a provision requiring the funding to support the operation of the council to be provided from funds appropriated to the Texas Legislative Council;
- provisions authorizing council members to receive travel expenses incurred by the person while conducting council business.

The substitute retains the duties prescribed for the council in the introduced but clarifies that the requirement to coordinate agency goals and responsibilities for border security efforts and to develop procedures for streamlining agency decision-making applies with respect to local and state agencies with jurisdiction over border security. Moreover, the substitute expands upon the duties set out for the council in the introduced by including the following as additional duties:

- using statistical analyses and other research methods to conduct an in-depth examination of border safety initiatives and programs in this state 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;
- submitting a biennial report of recommendations to the legislature and the governor on:
 - strategies to solve the problems identified;
 - policy priorities to address the long-range needs determined; and
 - measures based on objective research and analysis to help guide state border safety policies; and
- advising and assisting the legislature and the governor in developing plans, programs, and proposed legislation to improve the effectiveness of border safety initiatives and programs.

The substitute includes provisions providing for the creation of the Border Protection Task Force, which the introduced did not, as well as provisions classifying as peace officers the officers commissioned by the chief of the task force.

The substitute changes the bill's effective date to provide for its possible immediate effect, contingent on receiving the requisite constitutional vote, whereas the introduced provided only for the bill to take effect September 1, 2023, with no possibility for immediate effect.