

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

May 1, 2023

TO: Honorable Todd Hunter, Chair, House Committee on State Affairs

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB20 by Schaefer (Relating to measures to ensure the safety and welfare of the border region of this state, including protection from ongoing criminal activity and public health threats and the establishment of the Border Protection Unit; creating a criminal offense; creating a civil penalty.), **Committee Report 1st House, Substituted**

The fiscal implications of the bill, while assumed to be significant, cannot be determined at this time due to the size and scope of the Border Patrol Unit being unknown.

The bill would amend the Code of Criminal Procedure, Government Code, Penal Code, and Health and Safety Code to ensure the safety and welfare of the southern border region of Texas and establish the legal framework to create a Border Protection Unit (BPU) as a separate division under the Public Safety Commission (PSC).

The bill would amend the powers and duties of the Department of Public Safety (DPS) to include air, maritime, and land border defense and create a Unit Chief position to direct the newly created BPU. The Unit Chief would be appointed by the Governor for an indefinite term and be authorized to appoint deputies and assistants, adopt rules necessary to control the BPU, employ local law enforcement as necessary, and employ law-abiding citizens without a felony conviction to participate in BPU operations and functions.

The bill would establish the BPU as a criminal justice agency and authorize it to collect, analyze, and use a DNA samples subject to certain rules.

The bill would require the PSC to establish an office of Audit and Review and an Office of Inspector General to investigate and oversee BPU operations and property. The directors of both offices would be appointed by the Governor for an indefinite term.

The bill would authorize the Unit Chief to oversee the construction of a border wall along the international border and to acquire the necessary right of way, leases, permissions, materials, and services needed to erect and maintain physical barriers. The BPU may delegate this authority to another state agency.

The bill would create a Class A misdemeanor offense for using the term "Border Protection Unit" with the intent to create the appearance that an object belongs to or is being used by BPU.

The bill would create a third-degree felony offense for knowingly entering the property of another without effective consent when knowingly entering the State of Texas from a neighboring jurisdiction.

The bill would create a civil penalty of not less than \$10,000 for each violation of trespass while entering the State of Texas and would authorize the Office of the Attorney General (OAG) to file an action to recover the civil penalty as well as attorney's fees and costs incurred in bringing the action.

The bill would authorize a magistrate, as a condition of release on bond for someone arrested for the offense of trespass while entering the State of Texas, to require a defendant to submit to electronic monitoring unless the magistrate makes a finding that the defendant is not a flight risk.

The bill would establish the Legislative Border Safety Oversight Committee to provide analysis, research, and recommendations on border security policies.

This Act would take effect immediately if it receives a vote of two-thirds of all the members elected to each house, or September 1, 2023.

According to DPS, the costs associated with implementing the provisions of the bill, while assumed to be significant, cannot be determined at this time due to the size and scope of the BPU being unknown. For context, if it is determined to add 100.0 Commissioned Officer positions, the agency would require \$45,871,688 in General Revenue in fiscal year 2024 and \$21,691,332 in fiscal year 2025. This includes funding for an additional 32.2 FTE support positions and 125.0 Trooper Trainee positions. If it is determined to add 1,000.0 Commissioned Officer positions, the agency would require \$458,704,392 in fiscal year 2024 and \$219,602,055 in fiscal year 2025. This includes funding for an additional 321.9 FTE support positions and 1,250.0 Trooper Trainee positions.

The Texas Facilities Commission (TFC) is currently charged with implementing the Texas Border Infrastructure program to build permanent bollard barriers along the border with Mexico, which necessitates direct coordination with DPS and acquiring land agreements with willing landowners for construction of permanent bollard barriers. The bill would assign oversight of construction and maintenance of physical barriers to the BPU. This analysis assumes TFC would continue to coordinate efforts to implement the Texas Border Infrastructure program with the BPU and that BPU would manage ongoing maintenance services for constructed permanent bollard barriers. According to TFC, it is estimated that the ongoing maintenance costs could be as high as 2.0-2.5 percent of the construction cost.

The bill does not detail where the BPU will be located or if new facilities would need to be constructed to house the unit personnel and equipment. If new facilities are needed, it is assumed that the BPU would contract with the TFC to construct the buildings and structures necessary for its operation. According to TFC, managing a new construction project would require at a minimum \$720,822 in fiscal year 2024 and \$666,978 in fiscal year 2025 for 8.0 FTEs. Total construction costs, while assumed to be significant, cannot be determined at this time due to the location, size, and number of facilities being unknown. This analysis assumes the operation and maintenance of the buildings constructed for BPU, including utilities, would be the responsibility of the BPU.

According to OAG, it would require \$1,447,164 in fiscal year 2024 and \$1,321,699 in fiscal year 2025 and 13.0 FTE positions, including 8.0 Assistant Attorneys General and 5.0 Legal Assistants, to provide legal support for the BPU's property acquisitions related to the construction of the border wall and for an anticipated increase in civil and criminal suits stemming from the BPU's involvement with border security.

According to TDCJ, no significant fiscal impact to the agency is anticipated, unless it is determined to have an impact on the inmate population.

According to Office of Court Administration (OCA), the fiscal implications to the state judicial system by the creation a new felony-level offense for trespass and the related civil penalty cannot be determined at this time due to the number of offenses that would be prosecuted being unknown.

According to the Texas Commission on Law Enforcement and the Trusteed Programs within the Office of the Governor, it is assumed that any agency costs associated with the bill could be absorbed using existing resources.

According to the Comptroller of Public Accounts, creating new criminal penalties could increase court cost revenue to the state but the fiscal implications cannot be determined at this time due to the number of offenses that would be prosecuted being unknown.

Creating a new offense and expanding the conduct constituting an existing offense may result in additional demands upon state and local correctional resources due to a possible increase in the number of individuals placed under supervision in the community or sentenced to a term of confinement. The impact on state correctional populations or on the demand for state correctional resources cannot be determined due to a lack of data to estimate the prevalence of conduct outlined in the bill's provisions that would be subject to criminal penalties.

Local Government Impact

According to OCA, counties may see an increase in costs related to the potential increase in electronic monitoring for individuals out on bond as allowed under the provisions of the bill.

While the fiscal impact to units of local government associated with criminal offenses cannot be determined, creating a new offense and expanding the conduct constituting an existing offense may result in additional demands upon local correctional resources due to a possible increase in the number of individuals placed under supervision in the community or sentenced to a term of confinement.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 300 Trusteed Programs Within the Office of the Governor, 302 Office of the Attorney General, 303 Facilities Commission, 304 Comptroller of Public Accounts, 405 Department of Public Safety, 407 Commission on Law Enforcement, 454 Department of Insurance, 458 Alcoholic Beverage Commission, 476 Racing Commission, 504 Texas State Board of Dental Examiners, 529 Health and Human Services Commission, 601 Department of Transportation, 696 Department of Criminal Justice

LBB Staff: JMc, SMAT, KFB, DA