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LSG Floor Report For Major State Calendar – Tuesday, November 14, 2023

<p>SB 3</p> <p>By: Huffman</p> <p>Sponsor: Jetton, Jacey Bonnen Cain DeAyala Kitzman</p>	<p>Relating to an appropriation to provide funding for the construction, operation, and maintenance of border barrier infrastructure and border security operations, including funding for additional overtime expenses and costs due to certain increased law enforcement presence.</p>	<p>Appropriations</p> <p>15 Ayes, 7 Nays, 0 PNV, 5 Absent</p>	<p>SB 3 appropriates \$1.54 billion for 50 miles of border wall construction in South Texas and increased police presence in the Colony Ridge development.</p> <p>The funds will be appropriated to the Office of the Governor (OOG)— \$1.2 billion for an additional 50 miles of permanent border wall construction for land easements already obtained; \$27.6 million for border wall maintenance and operations; and \$272 million for flexible use, such as bussing, buoys, and additional barriers, depending on future migration surges. The OOG will transfer \$40 million to the Department of Public Safety (DPS) for “border security operations,” including personnel overtime costs associated with increased law enforcement presence in the Colony Ridge development. All funds must be used within two years of the bill’s effective date.</p> <p>SB 3 clarifies that funds cannot be used to acquire or build on property through eminent domain or barriers between Texas and another U.S. state.</p> <p>Concerns Border walls have not been shown to deter or curb migration. For example, 455 miles of border wall were constructed under former President Trump, mostly in Arizona and New Mexico. As migration grew, so too did the number of crossings. The wall has not stopped immigrants from coming or successfully entering illegally. Many migrants simply free-climbed or used cheap ladders to scale the wall, many suffering serious injuries as a result.</p> <p>Texas taxpayers are footing the bill for ineffective political stunts with no end in sight. The 87th Legislature appropriated \$900 million, plus \$55 million in donations, for the border wall. The 88th Legislature appropriated \$5.1 billion for border security during the regular session, \$650 million of which will be spent on a border wall, as determined by the Office of the Governor (OOG). SB 3 adds another \$1.5 billion to this effort for a total of \$3.1 billion of Texas taxpayer funds for the wall if the bill passes. And this is only the beginning. After all of these appropriations, there will still be another 700 miles that the Abbott Administration intends to cover. The Texas Facilities Commission has estimated the cost of building the wall at roughly \$25 to \$27 million per mile. That would equate to \$18.9 billion on the low end.</p>	<p><u>Unfavorable</u></p>
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Even if border walls were effective at curbing immigration, immigration policy is the responsibility of the federal government, not state legislatures. The Biden administration approved 20 miles of border wall construction with funds appropriated in 2019. Additionally, the White House recently issued a funding request to Congress that includes nearly \$14 billion for U.S.-Mexico border security. The funds would help hire new asylum officers, processing personnel, and border patrol agents, as well as add immigration judges and boost homeland security efforts. Why is the state pitching in extra tax dollars for this effort?

Even if border walls were effective and the state had a role in immigration enforcement, the scale and magnitude of an 800-mile steel wall with necessary technology and upkeep should be coordinated with the federal government to allocate resources efficiently, avoid duplicative efforts, and ensure that the state does not over-tax its citizens for an international matter. One-time, inconsistent appropriations by the Legislature without a long-term plan or coordination with the federal government is a mismanagement of taxpayer dollars.

The Legislature is making funding decisions based on misinformation about Colony Ridge. Colony Ridge is a residential subdivision in an unincorporated area roughly 30 miles outside of Houston. It is home to roughly 40,000 residents, primarily Hispanic families, many of whom work in construction, landscaping, and house cleaning. A contentious history between the primarily Republican-run city of Plum Grove and Colony Ridge developers John and Trey Harris has morphed into right-wing conspiracies of a crime-ridden, poverty-stricken haven for illegal aliens, smugglers, and Cartel members. Journalists like Todd Bensman have propelled lies about Colony Ridge into mainstream media. For example, Bensman incorrectly cited Colony Ridge as the location of an April shooting in which Francisco Oropeza, a Mexican national who had been deported four times, allegedly killed five of his neighbors. However, the incident actually occurred fifteen miles from Colony Ridge near Cleveland, Texas.

There are issues within the development, but they are not unique to Colony Ridge. Other unincorporated areas share similar problems, such as fewer local police and fire protection and a lack of animal control services typically provided by cities. One-time funding for increased police presence in Colony Ridge will not solve this problem in the short or long term; it will only work to criminalize and profile Hispanics in Texas, especially if other laws similar to SB 4 come into effect.

The graph below outlines a typical sequence of events for the newly created offenses, as described in SB 4 (may differ from real-world practice).

<p>SB 4</p> <p>By: Perry</p> <p>Sponsor: Spiller Hefner Bell, Keith Hunter Geren</p>	<p>Relating to prohibitions on the illegal entry into or illegal presence in this state by a person who is an alien, the enforcement of those prohibitions and certain related orders, including immunity from liability and indemnification for enforcement actions, and authorizing or requiring under certain circumstances the removal of persons who violate those prohibitions; creating criminal offenses.</p>	<p>State Affairs</p> <p>7 Ayes, 3 Nays, 0 PNV, 3 Absent</p>	<p>SB 4 expands the authority of Operation Lone Star (OLS), enabling state and local officers to enforce immigration laws by creating state offenses for already-established federal immigration violations. SB 4 penalizes improper entry by aliens, an existing federal offense outlined in the U.S. Code Title 8, Section 1325. Under SB 4, law enforcement would be empowered to detain and arrest individuals for immigration-related offenses without the need for an underlying offense, such as trespassing, which currently makes up the largest share of the OLS arrests.</p> <p><i>Illegal Entry Offense</i> Under SB 4, it is a Class B misdemeanor for an "alien," or non-citizen, to enter or attempt to enter the state from a foreign nation from anywhere other than a lawful port of entry. The bill does not outline what would constitute probable cause and prevents courts from abating prosecution for improper entry due to pending immigration status, making individuals in such status liable for the offense.</p> <p>It is an affirmative defense to prosecution for:</p> <ul style="list-style-type: none"> ● Persons granted lawful presence in the U.S. or asylum; ● Persons whose actions do not violate federal law for improper entry by an alien (8U.S.C. Section 1325(a)); <p style="text-align: center;">or</p> <ul style="list-style-type: none"> ● Persons approved for the Deferred Action for Childhood Arrivals (DACA) program when it was in effect. <p><i>Illegal Reentry Offense</i> SB 4 also makes it a Class A misdemeanor for illegal reentry by an "alien," or non-citizen, who was denied admission to or deported from the U.S. or departed from the U.S. while an order of exclusion, deportation, or removal is outstanding. Penalties for illegal reentry are enhanced in the following circumstances:</p> <ul style="list-style-type: none"> ● Third-degree felony if the defendant: <ul style="list-style-type: none"> ○ was removed after prior convictions of two or more misdemeanors involving drugs or crimes against a person; ○ was excluded from U.S. admission due to a terrorist activity conviction under 8 U.S. Code § 1182; ○ was removed due to terroristic activity or affiliation with a terrorist organization; ○ was removed due to a determination by the chief state official with authority over the incarcerated "alien" in state custody after a written request to the Attorney General. ● Second-degree felony if the defendant: <ul style="list-style-type: none"> ○ was removed after a felony conviction. <p><i>Order to Return to Foreign Nation</i> SB 4 allows a magistrate or judge, in lieu of continuing prosecution or entering an adjudication for the illegal entry or reentry offenses, to dismiss the charge and order the person to go back to the foreign nation in which the</p>	<p><u>Unfavorable</u></p>
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person entered. This can only be done after a determination that probable cause exists for an arrest and if the following conditions are met:

- the defendant agrees with the order;
- the defendant has not been previously convicted of the offenses created under the bill;
- the defendant is not charged with another offense punishable by a class A misdemeanor or higher; and
- before discharging the defendant, the arresting law enforcement agency collects all identifying information and cross-references it with relevant local, state, and federal criminal databases to check for potential threats.

If these conditions are not met, the person would be prosecuted and, if charged, serve their sentence. Once their sentence is completed, they would be ordered to return to the foreign nation they entered from. The judge's order must be filed with the county clerk or clerk of the court and include which law enforcement officer or state agency would be responsible for transporting the individual. The responsible entity must inform DPS of the order within 7 days for inclusion in the criminal history system.

Not complying with the order would be a second-degree felony. It is unclear what happens in circumstances in Mexico does not accept an individual ordered to return.

The graph on the last page outlines a typical sequence of events for the newly created offenses, as described in SB 4 (may differ from real-world practice).

Ineligibility for Parole or Mandatory Supervision

SB 4 establishes that persons convicted of the improper entry offense established in the bill are not eligible for parole, mandatory supervision, or community supervision, including deferred adjudication community supervision.

Liability Immunity and Indemnification

Under SB 4, state and local government officials are immune from liability from civil lawsuits arising from enforcing the bill's provisions (similar to qualified immunity). Additionally, SB 4 directs state and local governments to indemnify, or pay damages, for officials enforcing the bill's provisions in good faith. Indemnification by local governments are capped at \$100,000 for any one person or \$300,000 in the case of personal injury or death, and \$10,000 for property damage. There is no limit for the indemnification of state officials and employees for damages arising from a cause of action. State officials are also entitled to representation by the Attorney General.

The graph below outlines a typical sequence of events for the newly created offenses, as described in SB 4 (may differ from real-world practice).

		<p>Other Provisions</p> <p>Enforcement of SB 4 is prohibited in public and private schools, places of religious worship, health facilities, and SAFE-ready facilities (facilities that provide forensic medical examinations for sexual assault survivors).</p> <p>SB 4 mandates that any appeals in an action brought against a person enforcing the bill must be taken directly to the State Supreme Court.</p> <p>Lastly, SB 4 states that the bill’s provisions are severable so that if a court strikes down any portion of the bill, the rest of the bill is still enforceable.</p> <p>Concerns</p> <p>The U.S. Constitution's supremacy clause and Supreme Court precedent has firmly established immigration policy as the responsibility of the federal government, not state legislatures. It is clear that SB 4 is the state’s attempt to enforce federal immigration law; the author’s stated goal of SB 4 is to “combat illegal crossings.”</p> <p>Experts contend that SB 4 was drafted with the goal of challenging <i>Arizona v. United States</i> (at the taxpayers' expense). In 2012, the United States Supreme Court ruled that Arizona did not have the authority to enact a state statute, SB 1070, that empowered state law enforcement officials to enforce federal immigration law. The Court struck down provisions of SB 1070 that required state and local law enforcement officials to determine immigration status of individuals without cause other than suspicion. In doing so, the Court held that most of the provisions of SB 1070 were preempted by federal immigration law. <i>Arizona v. United States</i> set legal precedent that immigration policy and enforcement are matters of federal, and not state, policy – clearly establishing that states do not have the authority to implement their own immigration laws. SB 4 is a legislative effort meant to test this precedent given the significant changes to the Court’s composition from 2012 to now.</p> <p>SB 4 is an extension and codification of Operation Lone Star (OLS), which has been fraught with human rights violations, lack of due process, and mistreatment of state troopers. In the first 16 months of the operation, at least 30 people died and 71 others were injured in “high-speed vehicle pursuits” according to a report by the American Civil Liberties Union and Texas Civil Rights Project. In July, it was revealed that officers have been ordered to push small children and nursing babies back into the Rio Grande, and have been told not to give water to asylum seekers even in extreme heat. There have also been at least ten Texas Guard members connected with OLS that have died or committed suicide.</p>	
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Due process rights have been ignored with reports of migrants being kept in prison for weeks without being assigned attorneys and hundreds more spending over a month locked up without having any charges filed against them. These are just some of the atrocities surrounding OLS, which SB 4 strengthens.

SB 4 does not specify what constitutes probable cause for its created offenses, raising concerns about officers having broad discretion in detaining and arresting individuals for improper entry and reentry. If officers aren't present for a crime, they examine the totality of circumstances when determining whether to detain or arrest someone. For example, an officer may detain a person suspected of robbery because of evidence found on their person. However, in cases of illegal entry or reentry, suspicion is more subjective. Unless officers witness a non-citizen crossing in a restricted area, determining improper entry becomes challenging. This is especially troubling in instances where peace officers make their initial decision to detain someone.

Because SB 4 will empower local law enforcement to inquire about immigration status, the bill may increase law enforcement surveillance and unlawful racial profiling, disproportionately in border communities. We've already seen this under OLS. In 2021, many Starr County residents reported that increased DPS presence due to OLS led to more frivolous citations and drivers being pulled over for no apparent reason. An open records request revealed that citations for having anything on the car's windshield went up by 1,060% since OLS began. The next highest increase in citations was for having any transparent material on the windshield, which went up by over 840%. Not only does this create fear in border communities, it makes citizens and non-citizens alike less likely to report crimes for fear of repercussions.

SB 4 is a commitment without a true cost evaluation. Although the fiscal note shows that the bill's fiscal implications cannot be determined, increased costs for counties, sheriff's departments, the Office of Court Administration (OCA), indigent defense, interpreters, transportation, county courts-at-law, and visiting judges are anticipated. Whether these increased costs can be absorbed using existing state resources is unknown.

The Texas Association of Counties estimates that costs to counties will be significant due to the increased utilization of county jails and indigent defense. Additionally, if an individual detained in the county jail is in need of medical attention, the cost will increase again.

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