

BILL ANALYSIS

C.S.S.B. 12
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Defense & Veterans' Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Texas' ability to detect, deter, and respond to manmade and natural disasters is essential to the safety and security of Texans. The state's emergency management plan seeks to reduce vulnerability, prepare for a prompt and efficient response, and authorize and provide for cooperation and mutual aid in disaster mitigation, preparedness, response, and recovery.

Emergency management is a dynamic field. Fortunately, Texas has experienced, dedicated emergency professionals and plans that allow for the flexibility to address lessons learned after previous disaster situations.

C.S.S.B. 12 addresses numerous issues relating to disaster preparedness and emergency management.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 2.02 of this bill and to the Texas Funeral Service Commission in SECTION 3.02 of this bill.

ANALYSIS

C.S.S.B. 12 amends the Education Code to establish that any document or information collected during a school district security audit is not subject to disclosure under provisions relating to public information. The bill establishes that a document relating to a school district's multihazard emergency operation plan is subject to disclosure if the document enables a person to verify that the district has established a plan and certain other information related to the plan.

C.S.S.B. 12 amends the Government Code to include the occurrence or imminent threat of extreme heat in the definition of "disaster." The bill specifies that provisions relating to emergency management training apply to an elected law enforcement officer or county judge or an appointed public officer of Texas or a political subdivision who has management or supervisory responsibilities, rather than an appointed public officer, in addition to other existing criteria. The bill requires the Texas Engineering Extension Service of The Texas A&M University System, with the direction, oversight, and approval of the division of emergency management in the office of the governor, to implement online courses and secure continuing education credits for elected or appointed officials, volunteers, or employees requested or required to attend emergency management training, and establishes that such training is optional for volunteers.

C.S.S.B. 12 specifies that the emergency management council is composed of representatives, rather than the heads, of state agencies, boards, and commissions, as well as representatives of organized volunteer groups, and that all representatives are designated by the head of each entity. The bill requires the council to assist the division of emergency management in identifying,

mobilizing, and deploying state resources to respond to major emergencies and disasters throughout Texas. The bill authorizes the inclusion of a database of public facilities that may be used under state law to shelter individuals during a disaster, including air-conditioned facilities for shelter during an extreme heat disaster and fortified structures for shelter during a wind disaster, in the comprehensive state emergency management plan.

C.S.S.B. 12 requires the division, in cooperation with the emergency management council, local governments, regional entities, health and medical facilities, volunteer groups, private sector partners, the Federal Emergency Management Agency (FEMA), and other federal agencies, to develop an annex to the state emergency management plan that addresses initial response planning for providing essential population support supplies, equipment, and services during the first five days immediately following a disaster, and requires such an annex to include certain plans, provisions, and guidelines. The bill requires the division, in coordination with the Texas Commission on Environmental Quality and electric, gas, water, and wastewater utility providers, to develop for inclusion in the annex to the emergency management plan provisions to provide emergency or backup power to restore or continue the operation of critical water or wastewater facilities following a disaster and sets forth requirements for the annex provisions. The bill defines "critical water or wastewater facility."

C.S.S.B. 12 includes in the required duties of the division the development of a plan to raise public awareness and expand the capability of the information and referral network under state law; the improvement of the integration of volunteer groups into emergency management plans; cooperation with FEMA to create uniform guidelines for acceptable home repairs following disasters and the promotion of public awareness of the guidelines; cooperation with state agencies to encourage the public to participate in volunteer emergency response teams and organizations that respond to disasters and to provide information on those programs in state disaster preparedness and educational materials and on Internet websites; and the establishment of a liability awareness program for volunteers.

C.S.S.B. 12 authorizes the division to enroll, organize, train, and equip a cadre of disaster reservists with specialized skills in disaster recovery, hazard mitigation, community outreach, and public information to temporarily augment its permanent staff; to activate these reservists to support recovery operations in the aftermath of a disaster or major emergency; and to pay them at a daily rate commensurate with their qualifications and experience. The bill makes the State Purchasing and General Services Act, the Professional Services Procurement Act, and the Position Classification Act inapplicable in relation to a disaster reservist. The bill removes a provision relating to the suspension of the issuance of weather modification permits if the division determines such operations would create or contribute to the severity of a disaster.

C.S.S.B. 12 requires the division to develop a phased reentry plan to govern the order in which particular groups of people are allowed to reenter areas previously evacuated because of a disaster or threat of disaster, authorizes the plan to provide different reentry procedures for different types of disasters, and sets forth requirements for the plan and for the division in relation to the plan. The bill requires the communications coordination group to facilitate interagency coordination and collaboration to provide efficient and effective planning and execution of communications support to joint, interagency, and intergovernmental task forces, and, at the direction of the division, to assist with coordination and collaboration during an emergency and sets forth the composition of the group as selected by the division. The bill prohibits a person, other than an emergency management director exercising a power granted to the governor, from seizing state or federal resources without prior authorization from the division or the state or federal agency having responsibility for those resources and removes a requirement that the emergency management council coordinate the functioning of emergency management service division units.

C.S.S.B. 12 establishes that a person who holds a license, certificate, permit, or other document evidencing qualification in a professional, mechanical, or other skill is considered licensed,

certified, permitted, or otherwise documented in a political subdivision in which the service is provided as long as the service is required, if the assistance of the person is requested by either a state agency or a local government entity, under the Texas statewide mutual aid system subject to any limitations imposed by the requesting entity. The bill authorizes an agency, if sufficient funds are not available for the required property damage insurance as it relates to emergency management, to request funding from the disaster contingency fund to purchase the insurance, rather than petition the disaster emergency funding board to purchase the insurance on the agency's behalf. The bill removes the authority of the board to spend money from the fund for that purpose.

C.S.S.B. 12 authorizes a county judge or mayor of a municipality who orders the evacuation of an area stricken or threatened by a disaster by order to compel unauthorized persons who remain in the evacuated area to leave and authorize the use of reasonable force to remove persons from the area. The bill authorizes the governor and a county judge or mayor of a municipality who orders the evacuation of such an area by a concurrent order to compel unauthorized persons who remain to leave and establishes that such a person is civilly liable to a governmental entity or a nonprofit agency cooperating with a governmental entity that conducts a rescue on the person's behalf for the cost of rescue, under certain conditions. The bill grants an officer or employee of the state or a political subdivision working under an evacuation order immunity from civil liability for any act or omission within the course and scope of the person's authority under the order. The bill sets forth provisions for a postdisaster evaluation of an entity's response, personnel surge capacity planning, and medical special needs volunteers. The bill requires the Department of State Health Services (DSHS) to develop an annex to the state emergency management plan that includes provisions for developing medical special needs categories, categorizing the requirements of special needs individuals, and establishing minimum health-related standards for short and long-term shelter operations for shelters operated with state funds or receiving state assistance. The bill requires the Department of Agriculture (TDA), in coordination with the division and the Texas Animal Health Commission, to prepare and keep current an agriculture emergency response plan as an annex to the state emergency management plan and requires TDA and the Texas Animal Health Commission to include the plan in an annual report to the legislature.

C.S.S.B. 12 amends the Health and Safety Code to require licensed convalescent and nursing homes, related institutions, and licensed assisted living facilities to register the facility with the Texas Information and Referral Network to assist the state in identifying persons needing assistance if an area is evacuated because of a disaster or other emergency. The bill requires the home, institution, or facility to notify each resident and the resident's next of kin or guardian regarding how to register for evacuation assistance with the network.

C.S.S.B. 12 amends the Transportation Code to expand the definitions of "authorized emergency vehicle" and "police vehicle." The bill requires the vehicle of a police officer signaling an operator of a motor vehicle to bring the vehicle to a stop to bear the insignia of a law enforcement agency, regardless of whether the vehicle displays an emergency light, rather than to be appropriately marked as an official police vehicle.

C.S.S.B. 12 repeals Section 418.072, Government Code, which sets forth the composition of the disaster emergency funding board and abolishes the disaster emergency funding board on September 1, 2009. The bill requires the division of emergency management, with the cooperation of DSHS, to issue a report to the legislature regarding the implementation of medical special needs plans in connection with Hurricane Ike not later than the 30th day after the effective date of this provision, which occurs on passage if bill receives the required two-thirds vote, or September 1, 2009, otherwise.

C.S.S.B. 12 amends the Utilities Code to require each electric utility, not later than May 1 of each year, to submit to the Public Utility Commission of Texas a report describing the utility's activities relating to identifying areas that are susceptible to damage during severe weather and

hardening transmission and distribution facilities in those areas, to vegetation management, and to inspecting distribution poles. The bill requires each utility to include in the report a summary of the utility's activities related to preparing for emergency operations. The bill requires the Public Utility Commission of Texas to adopt rules consistent with these requirements not later than October 1, 2009.

C.S.S.B. 12 amends the Health and Safety Code to extend the existing exemption from licensing requirements under provisions relating to end state renal disease facilities for a hospital licensed under the Texas Hospital Licensing law that provides dialysis only to individuals receiving inpatient services from the hospital to include a hospital providing dialysis only to individuals receiving outpatient services due to a disaster declared by the governor or a federal disaster declared by the president occurring in Texas or another term of the disaster declaration.

C.S.S.B. 12 requires the Texas Funeral Service Commission to ensure a casket contains identification of the deceased person and authorizes the commission to adopt rules to enforce provisions relating to in-casket identification. The bill defines "casket" and "commission."

C.S.S.B. 12 authorizes an employee to whom provisions relating to the use of compensatory time by emergency services personnel apply to be allowed to take compensatory time off during the 18-month period following the end of the workweek in which the compensatory time was accrued, authorizes payment of overtime at the employee's regular hourly rate in lieu of such compensatory time, and entitles a state employee who is emergency services personnel and who is deployed to a temporary duty station to conduct emergency or disaster response activities to reimbursement for the actual expense of lodging when there is no room available at the state rate within reasonable proximity to the employee's temporary duty station. The bill defines "emergency services personnel."

C.S.S.B. 12 amends the Health and Safety Code to provide a definition of "first responder" rather than defining the term by reference.

C.S.S.B. 12 amends the Government Code to authorize the supreme court to modify or suspend procedures for the conduct of any court proceeding affected by a disaster during the pendency of a disaster declared by the governor and to prohibit an order from extending for more than 30 days from the date the order was signed unless renewed by the supreme court. The bill authorizes the chief justice of the supreme court to act on behalf of the supreme court if a disaster prevents the supreme court from acting to modify or suspend procedures, authorizes the court of criminal appeals to act on behalf of the supreme court if a disaster prevents the chief justice from acting, and authorizes the presiding judge of the court of criminal appeals to act on behalf of the supreme court if a disaster prevents the court of criminal appeals from acting. The bill defines "disaster."

C.S.S.B. 12 authorizes local rules of administration under the Court Administration Act to provide for a coordinated response for the transaction of essential judicial functions in the event of a disaster. The bill includes in the purposes of provisions relating to emergency management the clarification and strengthening of the role of the judicial branch of state government in prevention of, preparation for, response to, and recovery from disaster. The bill makes provisions relating to judicial preparedness effective immediately if the bill receives the two-thirds vote, or, if the bill does not receive the necessary vote, September 1, 2009.

C.S.S.B. 12 repeals Section 418.072, Government Code.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 12 adds a provision not in the original defining "critical water or wastewater facility." The substitute differs from the original by requiring the annex to the state emergency management plan to include plans to make fuel available to, maintain continuing operations of, and assess the backup power available for all hospitals, prisons, licensed assisted living facilities, licensed convalescent and nursing homes and related institutions, and other critical facilities determined by the division of emergency management, whereas the original requires the annex to include plans to maintain fuel availability and continuity of operations of all water, wastewater, hospital, and other critical facilities as determined by the division and to include provisions for providing backup power to restore or continue operation of key water and wastewater facilities and for assessing the backup power availability of hospitals and prisons and plans to ensure those facilities have the fuel and supplies necessary to continue operations.

C.S.S.B. 12 adds provisions not in the original requiring the division, in coordination with the Texas Commission on Environmental Quality and electric, gas, water, and wastewater utility providers, to develop for inclusion in the annex to the state emergency management plan provisions to provide emergency or backup power to restore or continue the operation of critical water or wastewater facilities following a disaster and setting forth requirements for the annex provisions. The substitute removes provisions in the original requiring the phased reentry plan to provide political subdivisions with the authority to adopt, as a part of a local plan, phased reentry provisions to govern the order in which particular groups of people are allowed to reenter areas of the political subdivision previously evacuated; establishing that the local phased reentry provisions prevail over any conflicting provision of the state phased reentry plan; and requiring the division to consider giving priority under the phased reentry plan to certain individuals and to consider preauthorizing insurance claims adjusters to reenter evacuated areas as soon as practicable to begin processing claims.

C.S.S.B. 12 removes a provision in the original authorizing a public or not-for-profit hospital to request funding from the disaster contingency fund or through a mutual aid agreement with a political subdivision for deployment of hospital services, treatment of evacuees, and nonlocal emergency medical services in the event of a disaster and adds a provision not in the original prohibiting a person, other than an emergency management director exercising a power granted to the governor, from seizing state or federal resources without prior authorization from the division or the state or federal agency having responsibility for those resources. The substitute adds a provision not in the original clarifying that the recovery and rehabilitation aspects of all applicable local or interjurisdictional emergency management plans activated by a declaration of local disaster be the appropriate aspects of such plans.

C.S.S.B. 12 removes a provision in the original requiring a state agency involved in disaster management to conduct outreach and disseminate information regarding disaster preparedness and recovery to the general public, including residents of affected areas, and to issue an annual report to the legislature regarding those activities. The substitute removes a provision in the original including within the expanded definition of "authorized emergency vehicle" a vehicle operated by an employee of a district attorney's office, county attorney's office, or medical examiner's office that is registered to the appropriate office and authorized by that office for use in performing the official duties of the office or that is a private vehicle of an employee of the appropriate office for which the person has received written authority from that office to use the vehicle in performing official duties.

C.S.S.B. 12 removes provisions in the original relating to energy security technologies for critical governmental facilities and to combined heating and power systems. The substitute removes a provision in the original repealing provisions in the Government Code relating to state agency cogeneration projects. The substitute removes provisions in the original designating a member of the Texas State Guard called to state active duty as a temporary employee of the state while on state active duty, requiring the adjutant general to pay such members according to the

General Appropriations Act, and authorizing the adjutant general to pay members up to 140 percent of the amount authorized in the General Appropriations Act if the length of state active duty exceeds 45 consecutive days.

C.S.S.B. 12 adds provisions not in the original relating to the modification or suspension of procedures for the conduct of any court proceeding affected by a disaster during the pendency of a disaster declared by the governor. The substitute removes provisions in the original authorizing the supreme court to suspend procedures for the conduct of any court proceeding affected by a disaster. The substitute removes a provision in the original including the judicial branch of state government among the entities whose advice and assistance the division of emergency management is required to seek in preparing and revising the state emergency management plan. The substitute adds a provision not in the original making the bill's provisions relating to judicial preparedness effective immediately if the bill receives the two-thirds vote, or September 1, 2009, otherwise.