

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 3
By: Burrows (Birdwell)
State Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The COVID-19 pandemic and the actions taken by state and local government to respond to and attempt to mitigate the disaster have impacted almost every aspect of Texans' lives. H.B. 3 addresses executive and legislative response to certain disasters. The purpose of this legislation is to provide checks and balances to government when dealing with extraordinary circumstances.

(Original Author's/Sponsor's Statement of Intent)

C.S.H.B. 3 amends current law relating to the authority of the legislature, governor, and certain political subdivisions with respect to disasters, including pandemic disasters, and emergencies.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 418.002, Government Code, to provide that the purposes of Chapter 418 (Emergency Management) include reducing vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or man-made disasters, rather than man-made catastrophes, riots, or hostile military or paramilitary action.

SECTION 2. Amends Section 418.004(1), Government Code, as follows:

(1) Redefines "disaster," for purposes of Chapter 418, to mean the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause not related to the use of force or violence such as civil unrest, riots, or insurrection. Provides that the term includes certain disasters, including pandemic. Makes conforming and nonsubstantive changes.

SECTION 3. Amends Subchapter B, Chapter 418, Government Code, by adding Section 418.0125, as follows:

Sec. 418.0125. CERTAIN POWER RELATED TO BUSINESSES RESERVED TO LEGISLATURE. (a) Provides that, notwithstanding any other law, during a declared state of disaster, only the legislature has the authority to restrict or impair the operation or occupancy of businesses in this state by category or region to appropriately respond to the disaster. Authorizes the legislature to only exercise the authority granted by this subsection in a county after consulting with the county judge of each county impacted by the disaster.

(b) Requires the governor by proclamation to convene the legislature in special session to respond to a declared state of disaster if the governor finds that the authority of the legislature under Subsection (a) should be exercised and the legislature is not convened in regular or special session.

SECTION 4. Amends Section 418.014, Government Code, by amending Subsections (b) and (c) and adding Subsection (c-1), as follows:

(b) Creates an exception under Subsection (c-1) and makes a nonsubstantive change to this subsection.

(c) Prohibits a state of disaster from continuing for more than 30 days unless renewed by the governor, subject to Subsection (c-1).

(c-1) Prohibits the governor, unless authorized by the legislature while convened in a regular or special session, from renewing a state of disaster to continue for more than 60 days or declaring a new state of disaster based on the same or substantially similar findings as a prior state of disaster that:

(1) exists in at least two-fifths of the counties in this state; or

(2) affects at least half of the population of this state, according to the most recent federal decennial census.

SECTION 5. Amends Section 418.0155, Government Code, by adding Subsections (c) and (d), as follows:

(c) Requires the governor's office to publish the list compiled under Subsection (a) (relating to requiring the governor's office to compile and maintain a comprehensive list of regulatory statutes and rules that may require suspension during a disaster) on the office's Internet website.

(d) Requires each state agency impacted by the suspension of a statute or rule on the list compiled under Subsection (a) to publish on the agency's Internet website a list of those statutes and rules. Requires that the agency's list be:

(1) posted or updated within 24 hours of any suspension; and

(2) accessible by selecting or viewing not more than two Internet web pages after accessing the agency's Internet home page.

SECTION 6. Amends Section 418.016(a), Government Code, to authorize the governor, subject to Sections 418.0125 and 418.0156, to suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster. Makes a nonsubstantive change.

SECTION 7. Amends Subchapter B, Chapter 418, Government Code, by adding Section 418.0165, as follows:

Sec. 418.0165. LIMITATION ON POWER TO SUSPEND LAWS OR RULES. (a) Prohibits the governor, notwithstanding any provision of Chapter 418, from suspending:

(1) a provision of Chapter 418 or Chapter 433 (State of Emergency); or

(2) a law or rule related to the application of Chapter 325 (Texas Sunset Act), the suspension of which results in the continuation of a state agency beyond the date prescribed in statute for the abolishment of the agency.

(b) Authorizes the governor, except as provided by Subsection (d), to suspend a provision of the Code of Criminal Procedure, Election Code, or Penal Code only during the first 30 days of a declared state of disaster.

(c) Requires the governor by proclamation, if the governor finds that a suspension authorized by Subsection (b) should be continued for more than 30

days and the legislature is not convened in regular or special session, to convene the legislature in special session to respond to a state of disaster.

(d) Prohibits the governor, except as provided by this subsection, from suspending a provision of the Election Code related to the qualifications or procedures for early voting by mail or to the procedures for accepting a vote during any voting period, including procedures related to voter identification, residency, and signature requirements, except that the governor is authorized to suspend Section 86.006(a-1) (relating to authorizing a voter to deliver a marked ballot in person to the early voting clerk's office only while the polls are open on election day), Election Code, only for the purpose of allowing a voter registered to vote at an address located in a disaster are to deliver a marked ballot under Section 86.006(a-1) to the early voting clerk's office on or before election day. Provides that this subsection does not prohibit the governor from suspending a provision of the Election Code to extend the voting period for early voting by mail as necessary to address the declared disaster.

SECTION 8. Amends Subchapter B, Chapter 418, Government Code, by adding Section 418.027, as follows:

Sec. 418.027. PREEMPTION OF DECLARATION OF LOCAL DISASTER. Prohibits a declaration of local disaster issued under Subchapter E (Local and Interjurisdictional Emergency Management) from conflicting with, or expanding or limiting the scope of, a declaration of disaster issued under Subchapter B (Powers and Duties of Governor) unless expressly authorized by a proclamation or executive order issued by the governor under Chapter 418.

SECTION 9. Amends Section 433.001, Government Code, to provide that for the purposes of Section 433.001 (Proclamation of State of Emergency) an emergency exists in certain situations, including if a clear and present danger of the use of force or violence exists or a natural or man-made disaster related to the use of force or violence such as civil unrest or insurrection.

SECTION 10. Amends Section 433.002, Government Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Authorizes a reasonable directive issued by the governor, subject to Section 433.0025, to provide for certain measures. Makes a nonsubstantive change.

(d) Provides that a directive issued under Section 433.002 (Issuance of Directives) applies only within the jurisdictional boundaries of the county or municipality for which an application was made under Section 433.001.

SECTION 11. Amends Chapter 433, Government Code, by adding Section 433.0025, as follows:

Sec. 433.0025. CERTAIN POWER RELATED TO BUSINESSES RESERVED TO LEGISLATURE. (a) Provides that, during a state of emergency, only the legislature has the authority to restrict or impair the operation or occupancy of businesses in this state by category or region to appropriately respond to the emergency.

(b) Requires the governor by proclamation to convene the legislature in special session to respond to a state of emergency if the governor finds that the authority of the legislature under Subsection (a) should be exercised and the legislature is not convened in regular or special session.

SECTION 12. Amends Section 433.003, Government Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Creates an exception under Subsection (c) and makes a nonsubstantive change to this subsection.

(c) Prohibits the governor, unless authorized by the legislature while convened in a regular or special session, from proclaiming successive states of emergency to continue for more than 60 days or a new state of emergency based on the same or substantially similar findings as a prior state of emergency that:

(1) exists in at least two-fifths of the counties in this state; or

(2) affects at least half of the population of this state, according to the most recent federal decennial census.

SECTION 13. Repealer: Section 418.019 (Restricted Sale and Transportation of Materials), Government Code.

SECTION 14. Makes application of this Act prospective.

SECTION 15. Effective date: September 1, 2021.