

BILL ANALYSIS

Senate Research Center
87R16281 JRJ-F

C.S.S.J.R. 45
By: Birdwell et al.
State Affairs
4/1/2021
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.J.R. 45 would install the legislative check originally contemplated in the Texas Disaster Act of 1975. Specifically, the legislation would require the governor to call a special session if he or she desires to continue a declaration past thirty (30) days when any one of the following three conditions are met:

- the declaration affects half of the state's population;
- the declaration affects two-fifths (102 or more) of the counties; or
- the declaration affects two-thirds of the counties in three (3) or more trauma service regions.

S.J.R. 45 provides an enforcement mechanism for ensuring that the special session occurs when appropriate. As proposed, it grants any sitting legislator at the time of the disaster the standing to challenge the executive branch at the Supreme Court of Texas (by giving them original jurisdiction in the case) if the governor fails to convene the legislature after a qualifying disaster or emergency declaration.

Once convened, the governor then has the opportunity to receive advice and consent from the legislature on his current disaster waivers and actions. The legislature also has the authority to terminate or renew the order subject to constraints as it deems fit. This may be effectuated by a concurrent resolution or another legislative enactment that is not subject to veto.

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

C.S.S.J.R. 45 proposes a constitutional amendment regarding the powers of the governor, the legislature, and the supreme court following certain disaster or emergency declarations.

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 8, Article IV, Texas Constitution, by adding Subsections (c), (d), (e), (f), and (g), as follows:

(c) Requires the governor to convene the legislature in special session for the purposes described by Subsection (d) of Section 8 (Convening Legislature on Extraordinary Occasions) when the governor proposes to renew an order or proclamation declaring a state of disaster or emergency or issue a new order or proclamation regarding the same state of disaster or emergency that:

(1) exists in at least two-fifths of the counties in Texas;

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

(3) affects at least two-thirds of the counties in each of three or more trauma service areas in Texas, as designated by the appropriate state agency.

(d) Authorizes the legislature, in a special session convened under Subsection (c) of Section 8, to:

(1) renew or extend the state of disaster or emergency;

(2) respond to the state of disaster or emergency, including by passing laws and resolutions the legislature determines are related to the state of disaster or emergency and by exercising the powers reserved to the legislature under Section 28 (Suspension of Laws), Article I (Bill of Rights), of this constitution; and

(3) consider any other subject stated in the governor's proclamation convening the legislature.

(e) Prohibits a state of disaster or emergency declared by the governor, except as provided by Subsection (f) of Section 8, from continuing for more than 30 days unless it is renewed or extended by the legislature under Subsection (d) of Section 8 if the declared state of disaster or emergency:

(1) exists in at least two-fifths of the counties in Texas;

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

(3) affects at least two-thirds of the counties in each of three or more trauma service areas in Texas, as designated by the appropriate state agency.

(f) Prohibits a state of disaster or emergency declared by the governor and related to a nuclear or radiological event recognized by the federal agency with primary authority for federal response to that event from continuing for more than 90 days unless it is renewed or extended by the legislature under Subsection (d) of Section 8 if the declared state of disaster or emergency:

(1) exists in at least two-fifths of the counties in Texas;

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

(3) affects at least two-thirds of the counties in each of three or more trauma service areas in Texas, as designated by the appropriate state agency.

(g) Provides that a vote under Subsection (d) of this section to modify or terminate a proclamation or order issued by the governor declaring a state of disaster or emergency is not subject to Section 15 (Approval or Veto of Orders, Resolutions, or Votes) of Article IV (Executive Department).

SECTION 2. Amends Section 3, Article V, Texas Constitution, by amending Subsection (a) and adding Subsections (a-1) and (a-2), as follows:

(a) Creates Subsection (a-1) from existing text and makes a nonsubstantive change to this subsection.

(a-1) Creates this subsection from existing text. Creates an exception under Subsection (a-2) to the legislature's authorization to confer original jurisdiction on the Supreme

Court to issue writs of quo warranto and mandamus in such cases as may be specified except as against the governor. Makes nonsubstantive changes.

(a-2) Provides that a member of the legislature has standing to participate as a party in a suit against the governor for a violation of the duty imposed by Section 8(c), Article IV, of this constitution. Provides that the Supreme Court of Texas has original jurisdiction of a suit brought under this subsection.

SECTION 3. Requires that the proposed constitutional amendment be submitted to the voters at an election to be held November 2, 2021. Sets forth the required language of the ballot.