

BILL ANALYSIS

S.B. 1104
By: Birdwell
State Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

In 1975, Texas adopted the Example State Disaster Act as proposed by the Council of State Governments. The Texas Disaster Act of 1975, as it came to be known, is currently located in Chapter 418, Government Code. Chapter 433 predates that act and provides a body of law designed for emergencies.

The governor is currently allowed to exercise exclusive and absolute discretion on convening the legislature outside of its regular session. In addition, the governor opted to direct the COVID-19 response within the executive branch, rather than convening a special session of the legislature to provide for a legislative response. The Texas Disaster Act of 1975 was designed to empower the executive branch to oversee an unencumbered, uniform response to potential threats facing Texas. However, that law was also intended to engage the legislative branch as a check to this power—a check that has been underused.

S.B. 1104 seeks to revise Texas statutes to rebalance the legislative and executive roles in times of disaster and emergency.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 1104 amends the Government Code to establish provisions relating to the authority of the legislature, governor, and certain political subdivisions with respect to disasters and emergencies. The bill grants the legislature, during a declared state of disaster or a state of emergency, the sole authority to restrict or impair the operation or occupancy of businesses in Texas by category or region to appropriately respond to the disaster or emergency. The bill requires the governor, on finding that this legislative authority should be exercised and the legislature is not convened in regular or special session, to convene the legislature in special session by proclamation to respond to the state of disaster or emergency. The bill requires the legislature, before exercising this authority with regard to a declared disaster, to consult with the county judge of each county impacted by the disaster.

S.B. 1104 specifies that the natural or man-made caused occurrences or imminent threats of widespread or severe damage, injury, or loss of life or property that qualify as a disaster under the Texas Disaster Act of 1975 are those that are unrelated to the use of force or violence such

as civil unrest, riots, or insurrection and accordingly removes riot, hostile military, and paramilitary action as examples of such a disaster. The bill specifies instead that the natural or man-made disasters that constitute an emergency for which the governor may proclaim a state of emergency are those that are related to the use of force or violence such as civil unrest or insurrection and includes a situation in which a clear and present danger of the use of force exists as such an emergency.

S.B. 1104 requires the governor, on finding that a declared state of disaster requires renewal when the legislature is not convened in regular or special session, to convene the legislature in special session by proclamation to renew, extend, or otherwise respond to the state of disaster. The bill prohibits the governor from declaring a new state of disaster based on the same or a substantially similar finding as a prior state of disaster that was terminated or not renewed by the legislature.

S.B. 1104 requires the governor's office to publish on its website the list it maintains of regulatory statutes and rules that may require suspension during a disaster and requires each state agency impacted by the suspension of a statute or rule on the list to publish on the agency's website a list of those statutes and rules. The agency's list must be posted or updated within 24 hours of any suspension and must be accessible by selecting or viewing not more than two web pages after accessing the agency's home page.

S.B. 1104 provides for limitations on the governor's authority to suspend laws or rules as follows:

- prohibits the governor from suspending a provision of the Texas Disaster Act of 1975 or of state law governing states of emergency or a law or rule related to the application of the Texas Sunset Act that would result in the continuation of a state agency beyond the date prescribed in statute for the agency's abolishment;
- repeals the provision of the Texas Disaster Act of 1975 authorizing the governor to suspend or limit the sale, dispensing, or transportation of alcoholic beverages and certain explosives and combustibles;
- limits the period within which the governor may suspend a provision of the Code of Criminal Procedure, Election Code, or Penal Code to the first 30 days of a declared state of disaster and requires the governor by proclamation to convene the legislature in special session to respond to a state of disaster on finding that a suspension of any such provision should be continued beyond those first 30 days, and the legislature is not convened in regular or special session; and
- prohibits the governor from suspending an Election Code provision related to the qualifications or procedures for early voting by mail or to the procedures for accepting a voter during any voting period, except the provision relating to the method of returning a marked mail-in ballot in person only for the purpose of allowing a voter registered to vote at an address located in a disaster area to deliver the marked ballot to the early voting clerk's office on or before election day.

The bill expressly does not prohibit the governor from suspending an Election Code provision to extend the voting period for early voting by mail as necessary to address the declared disaster.

S.B. 1104 prohibits a declaration of local disaster from conflicting with, or expanding or limiting the scope of, a declaration of disaster issued by the governor unless expressly authorized by a proclamation or executive order issued by the governor. The bill establishes that a directive issued by the governor during a state of emergency applies only within the jurisdictional boundaries of the county or municipality for which an application for a proclamation of a state of emergency was made.

S.B. 1104 applies only to an order, proclamation, regulation, or directive issued on or after the bill's effective date.

S.B. 1104 repeals Section 418.019, Government Code.

EFFECTIVE DATE

December 1, 2023, if the constitutional amendment regarding the powers of the governor, the legislature, and the supreme court following certain disaster or emergency declarations is approved by the voters.