

BILL ANALYSIS

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S.B. 1104
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1104 rebalances the legislative and executive purviews during a state of emergency or disaster. The legislation outlines the distinction between an emergency and a disaster; the former being reserved for the use of coordinated violence or force and the latter being reserved for acts of God and nonviolent manmade catastrophes.

Current law permits the executive branch to suspend an unspecified number of statutes and rules during a disaster declaration. Under S.B. 1104, the governor would no longer be able to do the following: (1) suspend provisions in Chapter 418 (Disasters) or Chapter 433 (Emergencies) of the Government Code, (2) suspend Sunset-related statutes, and (3) suspend certain provisions of the Election Code relating to the qualifications or procedures for accepting a voter. Recognizing the need for some degree of quick and unilateral action during a disaster, S.B. 1104 still allows the executive branch to suspend provisions in the Election, Penal, and Criminal Procedure codes for the first 30 days of a disaster.

In order to guarantee a minimum degree of uniformity, S.B. 1104 affords the governor discretion to qualify whether or not the executive's disaster orders should preempt local disaster orders. Lastly, S.B. 1104 stipulates that only the legislature may restrict or impair the operation or occupancy of businesses in response to a disaster or emergency.

As proposed, S.B. 1104 amends current law relating to the authority of the legislature, governor, and certain political subdivisions with respect to 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, as follows:

Sec. 418.002. PURPOSES. Provides that the purposes of Chapter 418 (Emergency Management) are to:

(1) reduce 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 catastrophes, riots, or hostile military or paramilitary action;

(2)-(10) makes no changes to these subdivisions.

SECTION 2. Amends Section 418.004(1), Government Code, to redefine "disaster."

SECTION 3. Amends Subchapter B, Chapter 418, Government Code, by adding Section 418.0126, as follows:

Sec. 418.0126. CERTAIN POWER RELATED TO BUSINESSES RESERVED TO LEGISLATURE. (a) Provides that only the legislature has the authority, notwithstanding

any other law, during a declared state of disaster, 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) Provides that the state of disaster continues, except as provided by Subsection (c) or (c-1), until the governor takes certain actions.

(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) Requires the governor, if the governor finds that a state of disaster described by Section 8(c), Article IV (Executive Department), Texas Constitution, requires renewal and the legislature is not convened in regular or special session, by proclamation to convene the legislature in special session to renew, extend, or otherwise respond to the state of disaster. 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 subject to this subsection that was terminated or not renewed by the legislature.

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 a list of 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, as follows:

(a) Authorizes the governor, subject to Sections 418.0126 and 418.0165, 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.

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 this chapter, from suspending:

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

(2) a law or rule related to the application of Chapter 325 (Sunset Law), 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, if the governor finds that a suspension authorized by Subsection (b) should be continued beyond the first 30 days of a declared state of disaster and the legislature is not convened in regular or special session, by proclamation 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 voter 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 to the early voting clerk's office on election day and requirements of the delivery process), Election Code, only for the purpose of allowing a voter registered to vote at an address located in a disaster area to deliver a marked ballot voted 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 this chapter.

SECTION 9. Amends Section 433.001, Government Code, as follows:

Sec. 433.001. PROCLAMATION OF STATE OF EMERGENCY. Authorizes the governor, on application of the chief executive officer or governing body of a county or municipality during an emergency, to proclaim a state of emergency and designate the area involved. Provides that an emergency exists, for the purposes of this section, in the following situations:

(1) makes no changes to this subdivision;

(2) if a clear and present danger of the use of force or violence exists; or

(3) 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 the directive, subject to Section 433.0025, to provide for:

(1)-(7) makes no changes to these subdivisions.

(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 only the legislature has the authority during a state of emergency 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. Repealer: Section 418.019 (Restricted Sale and Transportation of Materials), Government Code.

SECTION 13. Makes application of this Act prospective.

SECTION 14. Effective date: December 1, 2023, contingent upon approval by the voters of the constitutional amendment proposed by the 88th Legislature, Regular Session, 2023, relating to the powers of the governor, the legislature, and the Supreme Court of Texas following certain disaster or emergency declarations.