

By: Birdwell, et al.

S.B. No. 1104

A BILL TO BE ENTITLED

AN ACT

relating to the authority of the legislature, governor, and certain political subdivisions with respect to disasters and emergencies.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 418.002, Government Code, is amended to read as follows:

Sec. 418.002. PURPOSES. The purposes of this chapter 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 ~~[catastrophes, riots, or hostile military or paramilitary action]~~;

(2) prepare for prompt and efficient rescue, care, and treatment of persons victimized or threatened by disaster;

(3) provide a setting conducive to the rapid and orderly restoration and rehabilitation of persons and property affected by disasters;

(4) clarify and strengthen the roles of the governor, state agencies, the judicial branch of state government, and local governments in prevention of, preparation for, response to, and recovery from disasters;

(5) authorize and provide for cooperation in disaster mitigation, preparedness, response, and recovery;

(6) authorize and provide for coordination of

1 activities relating to disaster mitigation, preparedness,
2 response, and recovery by agencies and officers of this state, and
3 similar state-local, interstate, federal-state, and foreign
4 activities in which the state and its political subdivisions may
5 participate;

6 (7) provide an emergency management system embodying
7 all aspects of predisaster preparedness and postdisaster response;

8 (8) assist in mitigation of disasters caused or
9 aggravated by inadequate planning for and regulation of public and
10 private facilities and land use;

11 (9) encourage state agencies, local governments,
12 nongovernmental organizations, private entities, and individuals
13 to adopt the goals of the strategic plan of the Federal Emergency
14 Management Agency for preparing for, responding to, and recovering
15 from a disaster that emphasize cooperation among federal agencies,
16 state agencies, local governments, nongovernmental organizations,
17 private entities, and individuals in each activity or project
18 undertaken to ensure that this state is prepared to effectively
19 respond to and recover from a disaster; and

20 (10) provide the authority and mechanism to respond to
21 an energy emergency.

22 SECTION 2. Section 418.004(1), Government Code, is amended
23 to read as follows:

24 (1) "Disaster" means the occurrence or imminent threat
25 of widespread or severe damage, injury, or loss of life or property
26 resulting from any natural or man-made cause unrelated to the use of
27 force or violence such as civil unrest, riots, or insurrection. The

1 term includes~~[, including]~~ fire, flood, earthquake, wind, storm,
2 wave action, oil spill or other water contamination, volcanic
3 activity, epidemic, air contamination, blight, drought,
4 infestation, explosion, ~~[riot, hostile military or paramilitary~~
5 ~~action,~~] extreme heat, cybersecurity event, other public calamity
6 requiring emergency action, or energy emergency.

7 SECTION 3. Subchapter B, Chapter 418, Government Code, is
8 amended by adding Section 418.0126 to read as follows:

9 Sec. 418.0126. CERTAIN POWER RELATED TO BUSINESSES RESERVED
10 TO LEGISLATURE. (a) Notwithstanding any other law, during a
11 declared state of disaster, only the legislature has the authority
12 to restrict or impair the operation or occupancy of businesses in
13 this state by category or region to appropriately respond to the
14 disaster. The legislature may only exercise the authority granted
15 by this subsection in a county after consulting with the county
16 judge of each county impacted by the disaster.

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

22 SECTION 4. Section 418.014, Government Code, is amended by
23 amending Subsections (b) and (c) and adding Subsection (c-1) to
24 read as follows:

25 (b) Except as provided by Subsection (c) or (c-1), the state
26 of disaster continues until the governor:

27 (1) finds that:

1 (A) the threat or danger has passed; or

2 (B) the disaster has been dealt with to the
3 extent that emergency conditions no longer exist; and

4 (2) terminates the state of disaster by executive
5 order.

6 (c) A state of disaster may not continue for more than 30
7 days unless renewed by the governor, subject to Subsection (c-1).
8 The legislature by law may terminate a state of disaster at any
9 time. On termination by the legislature, the governor shall issue
10 an executive order ending the state of disaster.

11 (c-1) If the governor finds that a state of disaster
12 described by Section 8(c), Article IV, Texas Constitution, requires
13 renewal and the legislature is not convened in regular or special
14 session, the governor by proclamation shall convene the legislature
15 in special session to renew, extend, or otherwise respond to the
16 state of disaster. The governor may not declare a new state of
17 disaster based on the same or a substantially similar finding as a
18 prior state of disaster subject to this subsection that was
19 terminated or not renewed by the legislature.

20 SECTION 5. Section 418.0155, Government Code, is amended by
21 adding Subsections (c) and (d) to read as follows:

22 (c) The governor's office shall publish the list compiled
23 under Subsection (a) on the office's Internet website.

24 (d) Each state agency impacted by the suspension of a
25 statute or rule on the list compiled under Subsection (a) shall
26 publish on the agency's Internet website a list of those statutes
27 and rules. The agency's list must be:

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

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

6 SECTION 6. Section 418.016(a), Government Code, is amended
7 to read as follows:

8 (a) Subject to Sections 418.0126 and 418.0165, the [The]
9 governor may suspend the provisions of any regulatory statute
10 prescribing the procedures for conduct of state business or the
11 orders or rules of a state agency if strict compliance with the
12 provisions, orders, or rules would in any way prevent, hinder, or
13 delay necessary action in coping with a disaster.

14 SECTION 7. Subchapter B, Chapter 418, Government Code, is
15 amended by adding Section 418.0165 to read as follows:

16 Sec. 418.0165. LIMITATION ON POWER TO SUSPEND LAWS OR
17 RULES. (a) Notwithstanding any provision of this chapter, the
18 governor may not suspend:

19 (1) a provision of this chapter or Chapter 433; or
20 (2) a law or rule related to the application of Chapter
21 325 (Texas Sunset Act), the suspension of which results in the
22 continuation of a state agency beyond the date prescribed in
23 statute for the abolishment of the agency.

24 (b) Except as provided by Subsection (d), the governor may
25 suspend a provision of the Code of Criminal Procedure, Election
26 Code, or Penal Code only during the first 30 days of a declared
27 state of disaster.

1 (c) If the governor finds that a suspension authorized by
2 Subsection (b) should be continued beyond the first 30 days of a
3 declared state of disaster and the legislature is not convened in
4 regular or special session, the governor by proclamation shall
5 convene the legislature in special session to respond to a state of
6 disaster.

7 (d) Except as provided by this subsection, the governor may
8 not suspend a provision of the Election Code related to the
9 qualifications or procedures for early voting by mail or to the
10 procedures for accepting a voter during any voting period,
11 including procedures related to voter identification, residency,
12 and signature requirements, except that the governor may suspend
13 Section 86.006(a-1), Election Code, only for the purpose of
14 allowing a voter registered to vote at an address located in a
15 disaster area to deliver a marked ballot voted under Section
16 86.006(a-1) to the early voting clerk's office on or before
17 election day. This subsection does not prohibit the governor from
18 suspending a provision of the Election Code to extend the voting
19 period for early voting by mail as necessary to address the declared
20 disaster.

21 SECTION 8. Subchapter B, Chapter 418, Government Code, is
22 amended by adding Section 418.027 to read as follows:

23 Sec. 418.027. PREEMPTION OF DECLARATION OF LOCAL DISASTER.
24 A declaration of local disaster issued under Subchapter E may not
25 conflict with, or expand or limit the scope of, a declaration of
26 disaster issued under this subchapter unless expressly authorized
27 by a proclamation or executive order issued by the governor under

1 this chapter.

2 SECTION 9. Section 433.001, Government Code, is amended to
3 read as follows:

4 Sec. 433.001. PROCLAMATION OF STATE OF EMERGENCY. On
5 application of the chief executive officer or governing body of a
6 county or municipality during an emergency, the governor may
7 proclaim a state of emergency and designate the area involved. For
8 the purposes of this section an emergency exists in the following
9 situations:

10 (1) a riot or unlawful assembly by three or more
11 persons acting together by use of force or violence;

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

14 (3) a natural or man-made disaster related to the use
15 of force or violence such as civil unrest or insurrection.

16 SECTION 10. Section 433.002, Government Code, is amended by
17 amending Subsection (b) and adding Subsection (d) to read as
18 follows:

19 (b) Subject to Section 433.0025, the ~~[The]~~ directive may
20 provide for:

21 (1) control of public and private transportation in
22 the affected area;

23 (2) designation of specific zones in the affected area
24 in which, if necessary, the use and occupancy of buildings and
25 vehicles may be controlled;

26 (3) control of the movement of persons;

27 (4) control of places of amusement or assembly;

1 (5) establishment of curfews;

2 (6) control of the sale, transportation, and use of
3 alcoholic beverages; and

4 (7) control of the storage, use, and transportation of
5 explosives or flammable materials considered dangerous to public
6 safety, other than explosives or flammable materials that are
7 components of firearm ammunition.

8 (d) A directive issued under this section applies only
9 within the jurisdictional boundaries of the county or municipality
10 for which an application was made under Section 433.001.

11 SECTION 11. Chapter 433, Government Code, is amended by
12 adding Section 433.0025 to read as follows:

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

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

23 SECTION 12. Section 418.019, Government Code, is repealed.

24 SECTION 13. The changes in law made by this Act apply only
25 to an order, proclamation, regulation, or directive issued on or
26 after the effective date of this Act.

27 SECTION 14. This Act takes effect December 1, 2023, but only

1 if the constitutional amendment proposed by the 88th Legislature,
2 Regular Session, 2023, regarding the powers of the governor, the
3 legislature, and the supreme court following certain disaster or
4 emergency declarations is approved by the voters. If that
5 amendment is not approved by the voters, this Act has no effect.