

1-1 By: Birdwell, et al. S.B. No. 1104
 1-2 (In the Senate - Filed February 22, 2023; March 9, 2023,
 1-3 read first time and referred to Committee on State Affairs;
 1-4 March 23, 2023, reported favorably by the following vote: Yeas 11,
 1-5 Nays 0; March 23, 2023, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			
1-18	X			

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the authority of the legislature, governor, and certain
 1-22 political subdivisions with respect to disasters and emergencies.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 418.002, Government Code, is amended to
 1-25 read as follows:

1-26 Sec. 418.002. PURPOSES. The purposes of this chapter are
 1-27 to:

1-28 (1) reduce vulnerability of people and communities of
 1-29 this state to damage, injury, and loss of life and property
 1-30 resulting from natural or man-made disasters [~~catastrophes, riots,~~
 1-31 ~~or hostile military or paramilitary action~~];

1-32 (2) prepare for prompt and efficient rescue, care, and
 1-33 treatment of persons victimized or threatened by disaster;

1-34 (3) provide a setting conducive to the rapid and
 1-35 orderly restoration and rehabilitation of persons and property
 1-36 affected by disasters;

1-37 (4) clarify and strengthen the roles of the governor,
 1-38 state agencies, the judicial branch of state government, and local
 1-39 governments in prevention of, preparation for, response to, and
 1-40 recovery from disasters;

1-41 (5) authorize and provide for cooperation in disaster
 1-42 mitigation, preparedness, response, and recovery;

1-43 (6) authorize and provide for coordination of
 1-44 activities relating to disaster mitigation, preparedness,
 1-45 response, and recovery by agencies and officers of this state, and
 1-46 similar state-local, interstate, federal-state, and foreign
 1-47 activities in which the state and its political subdivisions may
 1-48 participate;

1-49 (7) provide an emergency management system embodying
 1-50 all aspects of predisaster preparedness and postdisaster response;

1-51 (8) assist in mitigation of disasters caused or
 1-52 aggravated by inadequate planning for and regulation of public and
 1-53 private facilities and land use;

1-54 (9) encourage state agencies, local governments,
 1-55 nongovernmental organizations, private entities, and individuals
 1-56 to adopt the goals of the strategic plan of the Federal Emergency
 1-57 Management Agency for preparing for, responding to, and recovering
 1-58 from a disaster that emphasize cooperation among federal agencies,
 1-59 state agencies, local governments, nongovernmental organizations,
 1-60 private entities, and individuals in each activity or project
 1-61 undertaken to ensure that this state is prepared to effectively

2-1 respond to and recover from a disaster; and
2-2 (10) provide the authority and mechanism to respond to
2-3 an energy emergency.

2-4 SECTION 2. Section 418.004(1), Government Code, is amended
2-5 to read as follows:

2-6 (1) "Disaster" means the occurrence or imminent threat
2-7 of widespread or severe damage, injury, or loss of life or property
2-8 resulting from any natural or man-made cause unrelated to the use of
2-9 force or violence such as civil unrest, riots, or insurrection. The
2-10 term includes~~[, including]~~ fire, flood, earthquake, wind, storm,
2-11 wave action, oil spill or other water contamination, volcanic
2-12 activity, epidemic, air contamination, blight, drought,
2-13 infestation, explosion, [~~riot, hostile military or paramilitary~~
2-14 action,] extreme heat, cybersecurity event, other public calamity
2-15 requiring emergency action, or energy emergency.

2-16 SECTION 3. Subchapter B, Chapter 418, Government Code, is
2-17 amended by adding Section 418.0126 to read as follows:

2-18 Sec. 418.0126. CERTAIN POWER RELATED TO BUSINESSES RESERVED
2-19 TO LEGISLATURE. (a) Notwithstanding any other law, during a
2-20 declared state of disaster, only the legislature has the authority
2-21 to restrict or impair the operation or occupancy of businesses in
2-22 this state by category or region to appropriately respond to the
2-23 disaster. The legislature may only exercise the authority granted
2-24 by this subsection in a county after consulting with the county
2-25 judge of each county impacted by the disaster.

2-26 (b) The governor by proclamation shall convene the
2-27 legislature in special session to respond to a declared state of
2-28 disaster if the governor finds that the authority of the
2-29 legislature under Subsection (a) should be exercised and the
2-30 legislature is not convened in regular or special session.

2-31 SECTION 4. Section 418.014, Government Code, is amended by
2-32 amending Subsections (b) and (c) and adding Subsection (c-1) to
2-33 read as follows:

2-34 (b) Except as provided by Subsection (c) or (c-1), the state
2-35 of disaster continues until the governor:

- 2-36 (1) finds that:
2-37 (A) the threat or danger has passed; or
2-38 (B) the disaster has been dealt with to the
2-39 extent that emergency conditions no longer exist; and
2-40 (2) terminates the state of disaster by executive
2-41 order.

2-42 (c) A state of disaster may not continue for more than 30
2-43 days unless renewed by the governor, subject to Subsection (c-1).
2-44 The legislature by law may terminate a state of disaster at any
2-45 time. On termination by the legislature, the governor shall issue
2-46 an executive order ending the state of disaster.

2-47 (c-1) If the governor finds that a state of disaster
2-48 described by Section 8(c), Article IV, Texas Constitution, requires
2-49 renewal and the legislature is not convened in regular or special
2-50 session, the governor by proclamation shall convene the legislature
2-51 in special session to renew, extend, or otherwise respond to the
2-52 state of disaster. The governor may not declare a new state of
2-53 disaster based on the same or a substantially similar finding as a
2-54 prior state of disaster subject to this subsection that was
2-55 terminated or not renewed by the legislature.

2-56 SECTION 5. Section 418.0155, Government Code, is amended by
2-57 adding Subsections (c) and (d) to read as follows:

2-58 (c) The governor's office shall publish the list compiled
2-59 under Subsection (a) on the office's Internet website.

2-60 (d) Each state agency impacted by the suspension of a
2-61 statute or rule on the list compiled under Subsection (a) shall
2-62 publish on the agency's Internet website a list of those statutes
2-63 and rules. The agency's list must be:

2-64 (1) posted or updated within 24 hours of any
2-65 suspension; and

2-66 (2) accessible by selecting or viewing not more than
2-67 two Internet web pages after accessing the agency's Internet home
2-68 page.

2-69 SECTION 6. Section 418.016(a), Government Code, is amended

3-1 to read as follows:

3-2 (a) Subject to Sections 418.0126 and 418.0165, the [The]
 3-3 governor may suspend the provisions of any regulatory statute
 3-4 prescribing the procedures for conduct of state business or the
 3-5 orders or rules of a state agency if strict compliance with the
 3-6 provisions, orders, or rules would in any way prevent, hinder, or
 3-7 delay necessary action in coping with a disaster.

3-8 SECTION 7. Subchapter B, Chapter 418, Government Code, is
 3-9 amended by adding Section 418.0165 to read as follows:

3-10 Sec. 418.0165. LIMITATION ON POWER TO SUSPEND LAWS OR
 3-11 RULES. (a) Notwithstanding any provision of this chapter, the
 3-12 governor may not suspend:

3-13 (1) a provision of this chapter or Chapter 433; or

3-14 (2) a law or rule related to the application of Chapter
 3-15 325 (Texas Sunset Act), the suspension of which results in the
 3-16 continuation of a state agency beyond the date prescribed in
 3-17 statute for the abolishment of the agency.

3-18 (b) Except as provided by Subsection (d), the governor may
 3-19 suspend a provision of the Code of Criminal Procedure, Election
 3-20 Code, or Penal Code only during the first 30 days of a declared
 3-21 state of disaster.

3-22 (c) If the governor finds that a suspension authorized by
 3-23 Subsection (b) should be continued beyond the first 30 days of a
 3-24 declared state of disaster and the legislature is not convened in
 3-25 regular or special session, the governor by proclamation shall
 3-26 convene the legislature in special session to respond to a state of
 3-27 disaster.

3-28 (d) Except as provided by this subsection, the governor may
 3-29 not suspend a provision of the Election Code related to the
 3-30 qualifications or procedures for early voting by mail or to the
 3-31 procedures for accepting a voter during any voting period,
 3-32 including procedures related to voter identification, residency,
 3-33 and signature requirements, except that the governor may suspend
 3-34 Section 86.006(a-1), Election Code, only for the purpose of
 3-35 allowing a voter registered to vote at an address located in a
 3-36 disaster area to deliver a marked ballot voted under Section
 3-37 86.006(a-1) to the early voting clerk's office on or before
 3-38 election day. This subsection does not prohibit the governor from
 3-39 suspending a provision of the Election Code to extend the voting
 3-40 period for early voting by mail as necessary to address the declared
 3-41 disaster.

3-42 SECTION 8. Subchapter B, Chapter 418, Government Code, is
 3-43 amended by adding Section 418.027 to read as follows:

3-44 Sec. 418.027. PREEMPTION OF DECLARATION OF LOCAL DISASTER.
 3-45 A declaration of local disaster issued under Subchapter E may not
 3-46 conflict with, or expand or limit the scope of, a declaration of
 3-47 disaster issued under this subchapter unless expressly authorized
 3-48 by a proclamation or executive order issued by the governor under
 3-49 this chapter.

3-50 SECTION 9. Section 433.001, Government Code, is amended to
 3-51 read as follows:

3-52 Sec. 433.001. PROCLAMATION OF STATE OF EMERGENCY. On
 3-53 application of the chief executive officer or governing body of a
 3-54 county or municipality during an emergency, the governor may
 3-55 proclaim a state of emergency and designate the area involved. For
 3-56 the purposes of this section an emergency exists in the following
 3-57 situations:

3-58 (1) a riot or unlawful assembly by three or more
 3-59 persons acting together by use of force or violence;

3-60 (2) if a clear and present danger of the use of force
 3-61 or violence exists; or

3-62 (3) a natural or man-made disaster related to the use
 3-63 of force or violence such as civil unrest or insurrection.

3-64 SECTION 10. Section 433.002, Government Code, is amended by
 3-65 amending Subsection (b) and adding Subsection (d) to read as
 3-66 follows:

3-67 (b) Subject to Section 433.0025, the [The] directive may
 3-68 provide for:

3-69 (1) control of public and private transportation in

- 4-1 the affected area;
- 4-2 (2) designation of specific zones in the affected area
- 4-3 in which, if necessary, the use and occupancy of buildings and
- 4-4 vehicles may be controlled;
- 4-5 (3) control of the movement of persons;
- 4-6 (4) control of places of amusement or assembly;
- 4-7 (5) establishment of curfews;
- 4-8 (6) control of the sale, transportation, and use of
- 4-9 alcoholic beverages; and
- 4-10 (7) control of the storage, use, and transportation of
- 4-11 explosives or flammable materials considered dangerous to public
- 4-12 safety, other than explosives or flammable materials that are
- 4-13 components of firearm ammunition.

4-14 (d) A directive issued under this section applies only
 4-15 within the jurisdictional boundaries of the county or municipality
 4-16 for which an application was made under Section 433.001.

4-17 SECTION 11. Chapter 433, Government Code, is amended by
 4-18 adding Section 433.0025 to read as follows:

4-19 Sec. 433.0025. CERTAIN POWER RELATED TO BUSINESSES RESERVED
 4-20 TO LEGISLATURE. (a) During a state of emergency, only the
 4-21 legislature has the authority to restrict or impair the operation
 4-22 or occupancy of businesses in this state by category or region to
 4-23 appropriately respond to the emergency.

4-24 (b) The governor by proclamation shall convene the
 4-25 legislature in special session to respond to a state of emergency if
 4-26 the governor finds that the authority of the legislature under
 4-27 Subsection (a) should be exercised and the legislature is not
 4-28 convened in regular or special session.

4-29 SECTION 12. Section 418.019, Government Code, is repealed.

4-30 SECTION 13. The changes in law made by this Act apply only
 4-31 to an order, proclamation, regulation, or directive issued on or
 4-32 after the effective date of this Act.

4-33 SECTION 14. This Act takes effect December 1, 2023, but only
 4-34 if the constitutional amendment proposed by the 88th Legislature,
 4-35 Regular Session, 2023, regarding the powers of the governor, the
 4-36 legislature, and the supreme court following certain disaster or
 4-37 emergency declarations is approved by the voters. If that
 4-38 amendment is not approved by the voters, this Act has no effect.

4-39 * * * * *