

BILL ANALYSIS

S.B. 871
By: Birdwell
State Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The bill sponsor has informed the committee of the history of the Texas statutes that currently guide the governor's and legislature's responses to states of disaster and states of emergency, relating to the committee that the Texas Disaster Act of 1975 was derived from model legislation and that the statutes regarding states of emergency predate that act. According to the bill sponsor, while the two areas of law have some provisions that are parallel, others are misaligned and the act misstates the governor's ability to suspend what the act calls "regulatory statutes," even though in Texas regulations and statutes are distinct provisions, and the statute regarding states of emergency references the legislature's authority to terminate an emergency "at any time" even though the legislature can only apply this power when it is in session. The bill sponsor has additionally informed the committee that recent disasters, including the COVID-19 pandemic, have raised questions regarding the legislature's role in addressing large-scale disasters and regarding its ability to address disaster planning when it can only act to the extent permitted by the governor when it is not in session and cannot call itself into session. The bill sponsor has further told the committee that the disaster act was designed to empower the executive branch to oversee a uniform response to threats facing Texas but also was meant to engage the legislative branch as a check to this power. S.B. 871, along with C.S.S.J.R. 40, seeks to rebalance the legislative and executive powers during states of emergency and states of disaster while acknowledging the governor's role as primary emergency management director for the state. The bill accomplishes this by clarifying the roles of the governor and the legislature during emergencies and disasters while enhancing transparency and accountability in government during those periods.

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. 871 sets out and revises provisions relating to the authority of the legislature, the governor, and certain political subdivisions with respect to emergency management under the Texas Disaster Act of 1975 and provisions governing a state of emergency under applicable state law.

Emergency Management

S.B. 871 amends the Government Code to revise the provision establishing the purposes of the Texas Disaster Act of 1975, with respect to the purpose of reducing the vulnerability of people

and communities of Texas to damage, injury, and loss of life and property resulting from certain events by changing the applicable events from natural or man-made catastrophes, riots, or hostile military or paramilitary action to events that are natural or man-made disasters. The bill accordingly revises the definition of "disaster" for purposes of that act as follows:

- establishes that, with respect to the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, such a cause is unrelated to the use of force or violence such as civil unrest, riots, or insurrection; and
- removes riot and hostile military or paramilitary action as events included in the meaning of the term.

S.B. 871 establishes that, during a declared state of disaster, only the legislature has the authority to restrict or impair the operation or occupancy of businesses in Texas by category or region to appropriately respond to the disaster. The bill requires the legislature to consult with the county judge of each county impacted by the disaster before exercising such authority in an applicable county. The bill 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 should be exercised and the legislature is not convened in regular or special session.

S.B. 871 requires the governor by proclamation to convene the legislature in special session to renew, extend, or otherwise respond to a state of disaster if the governor finds that an applicable state of disaster requires renewal and the legislature is not convened in regular or special session. 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 subject to the bill's provisions that was terminated or not renewed by the legislature.

S.B. 871, with respect to the suspension list that must be compiled and maintained by the governor's office containing a list of regulatory statutes and rules that may require suspension during a disaster, requires the governor's office to publish that list on the office's website. The bill 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 bill requires the agency's list to be posted or updated within 24 hours of any suspension and accessible by selecting or viewing not more than two web pages after accessing the agency's home page.

S.B. 871 prohibits the governor from suspending a provision of the Texas Disaster Act of 1975, statutory provisions governing states of emergency, or a law or rule related to the application of the Texas Sunset Act, the suspension of which results in the continuation of a state agency beyond the date prescribed in statute for the abolishment of the agency. The bill authorizes the governor, except as otherwise provided by the bill, 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. The bill requires the governor by proclamation to convene the legislature in special session to respond to a state of disaster if the governor finds that such a suspension 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.

S.B. 871 prohibits the governor 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 may suspend the provisions authorizing a voter to deliver a marked ballot in person to the early voting clerk's office while the polls are open on election day, only for the purpose of allowing a voter registered to vote at an address located in a disaster area to deliver such a marked ballot to the early voting clerk's office on or before election day. These provisions do 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.

S.B. 871 repeals provisions authorizing the governor to suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles, other than explosives or combustibles that are components of firearm ammunition.

S.B. 871 prohibits a declaration of local disaster issued under applicable provisions of the Texas Disaster Act of 1975 regarding local and interjurisdictional emergency management 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 under the act.

States of Emergency

S.B. 871 revises the provision establishing the circumstances under which the governor, on application of the chief executive officer or governing body of a county or municipality during an emergency may proclaim a state of emergency and designate the area involved. With respect to the emergency that exists in the following situations that constitute an emergency, the bill, as follows:

- includes a clear and present danger of the use of force, with respect to the situation where a clear and present danger of the use of violence exists; and
- specifies that the situation of a natural or man made disaster is a disaster related to the use of force or violence such as civil unrest or insurrection.

The bill limits the applicability of a directive issued by the governor in response to an application by the chief executive officer or governing body of a county or municipality during an emergency to the area within the jurisdictional boundaries of the county or municipality for which the application was made.

S.B. 871 establishes that, during a state of emergency, only the legislature has the authority to restrict or impair the operation or occupancy of businesses in Texas by category or region to appropriately respond to the emergency. The bill 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 should be exercised and the legislature is not convened in regular or special session.

Repealed Provision and Applicability

S.B. 871 repeals Section 418.019, Government Code.

S.B. 871 applies only to an order, proclamation, regulation, or directive issued on or after the bill's effective date.

EFFECTIVE DATE

January 1, 2027, 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.