

BILL ANALYSIS

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S.B. 871
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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 situated in Chapter 418 of the Government Code. Chapter 433 of the same code predates the Disaster Act with a parallel body of law designed for emergencies. In most respects, the Texas Disaster Act was a verbatim codification of its model legislation. Consequently, the Act—in certain places—awkwardly fits into Texas' statutory landscape.

For example, the Act alludes to the governor's ability to suspend "regulatory statutes," a seemingly oxymoronic concept in Texas, where regulations and statutes are distinct. Elsewhere, the Act provides that the legislature may terminate an emergency or disaster declaration "at any time." As Texas' Legislature can only apply this power while it is in session, and it has no way of convening itself, this safeguard cannot be given its full effect as originally envisioned.

The Disaster Act was designed to empower the executive branch to oversee an unencumbered, uniform response to potential threats facing Texas. However, the Act was also intended to engage the legislative branch as a check to this power--a check of power that is conspicuously unavailable outside of the regular session.

S.J.R. 40 in conjunction with S.B. 871 amend Article IV of the Constitution and Chapters 418 and 433 of the Government Code, respectively, to rebalance the legislative and executive purviews in times of disaster and emergency. The legislation acknowledges and retains the governor's role as primary emergency management director during a state of disaster by preserving most of the governor's current powers under Chapters 418 and 433. To that end, the governor's response capabilities are left largely untouched for the first 30 days of a disaster/emergency declaration. This senate joint resolution and bill would install the legislative check originally contemplated in the Texas Disaster Act of 1975.

As proposed, S.B. 871 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, to provide that the purposes of Chapter 418 (Emergency Management) include reducing 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.

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, notwithstanding any other law, during a declared state of disaster, only the legislature has the authority to restrict or impair the operation or occupancy of businesses in this state by category or region to appropriately respond to the disaster. Provides that the legislature is authorized only to 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) Creates an exception under Subsection (c-1).

(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 Office of the Governor (governor's office) to publish the list compiled under Subsection (a) (relating to requiring the governor's office to compile and maintain a comprehensive list of regulatory 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 posted or updated within 24 hours of any suspension and 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, 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 (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.

(b) Provides that the governor, except as provided by Subsection (d), is authorized 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 requiring that a marked ballot inside an official carrier envelope be transported and delivered only by certain means, including mail), 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, to provide that for the purposes of Section 433.001 (Proclamation of State of Emergency) an emergency exists in certain situations, including if a clear and present danger of the use of force or violence exists or 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 a directive issued by the governor after a state of emergency is proclaimed, subject to Section 433.0025, to provide for certain measures.

(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, during a state of emergency, only the legislature has the authority 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, 2025, contingent upon approval by the voters of the constitutional amendment proposed by the 89th Legislature, Regular Session, 2025, regarding the powers of the governor, the legislature, and the supreme court following certain disaster or emergency declarations.