

RESOLUTION ANALYSIS

C.S.S.J.R. 40
By: Birdwell
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The resolution 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 resolution 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 resolution 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 resolution 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. C.S.S.J.R. 40, along with S.B. 871, 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 resolution 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 resolution 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 resolution does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.J.R. 40 proposes an amendment to the Texas Constitution to require the governor to convene the legislature in special session for the purposes specified by the resolution when the governor proposes to renew an order or proclamation declaring a state of disaster or emergency or issue a new order or proclamation regarding the same state of disaster or emergency that meets the following criteria:

- exists in at least three-fifths of the counties in Texas;
- affects at least half of Texas' population according to the most recent federal decennial census; or

- for a public health emergency or disaster, affects at least two-thirds of the counties in each of three or more trauma service areas in Texas, as designated by the appropriate state agency.

The resolution authorizes the legislature to take the following actions in such a special session:

- renew or extend the declared state of disaster or emergency;
- respond to the state of disaster or emergency, including by enacting laws and adopting resolutions the legislature determines are related to the state of disaster or emergency and exercising the powers reserved to the legislature to suspend laws; and
- consider any other subject stated in the governor's proclamation convening the legislature.

C.S.S.J.R. 40 prohibits a state of disaster or emergency declared by the governor that is subject to the resolution's provisions from continuing for more than 30 days unless the legislature renews or extends the declared state of disaster or emergency. The resolution prohibits an applicable state of disaster or emergency declared by the governor that is related to a nuclear or radiological event recognized by the federal agency with primary authority for federal response to that event from continuing for more than 90 days unless the legislature renews or extends the declared state of disaster or emergency. The resolution establishes that a vote to modify or terminate a proclamation or order the governor issues declaring a state of disaster or emergency is not subject to approval or veto by the governor.

C.S.S.J.R. 40 establishes that a member of the legislature has standing to participate as a party in a suit against the governor for a violation of the resolution's requirement for the governor to convene the legislature in special session under the specified circumstances. The Supreme Court has original jurisdiction in such a suit.

ELECTION DATE

The constitutional amendment proposed by this joint resolution will be submitted to the voters at an election to be held November 3, 2026.

COMPARISON OF SENATE ENGRAVED AND SUBSTITUTE

While C.S.S.J.R. 40 may differ from the engraved in minor or nonsubstantive ways, the following summarizes the substantial differences between the engraved and committee substitute versions of the resolution.

Both the engraved and the substitute require the governor to convene the legislature in special session for the purposes specified by the resolution when the governor proposes to renew an order or proclamation declaring a state of disaster or emergency or issue a new order or proclamation regarding the same state of disaster or emergency that meets one of a list of specified conditions. However, those provisions differ as follows:

- whereas the engraved included as a condition that the state of disaster or emergency exist in at least two-fifths of the counties in Texas, the substitute increases the threshold for this condition to at least three-fifths of the counties in Texas; and
- with respect to the condition that a state of disaster or emergency affect at least two-thirds of the counties in each of three or more trauma service areas in Texas, as designated by the appropriate state agency, the substitute includes a specification not in the engraved that such condition is for a public health emergency or disaster.