

BILL ANALYSIS

C.S.H.B. 3
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The COVID-19 pandemic and the actions taken by state and local government to respond to and attempt to mitigate the disaster have impacted almost every aspect of Texans' lives. Pandemic disasters and their impacts are different from other types of disasters in terms of geographic scope, duration, and appropriate response methods. As such, there have been calls to establish a separate structure in state law governing the state and local response to a pandemic disaster that is outside the scope of the Texas Disaster Act of 1975, which provides for the response to other types of disasters such as hurricanes, fires, and tornados. C.S.H.B. 3 seeks to answer those calls by establishing the Texas Pandemic Response Act.

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 rulemaking authority is expressly granted to the governor in SECTION 2 of this bill.

ANALYSIS

C.S.H.B. 3 amends the Government Code to set out provisions relating to state and local government responses to a pandemic disaster, which the bill defines as the occurrence or imminent threat of an outbreak of an infectious disease that spreads to a significant portion of the state population and that threatens widespread or severe damage, injury, or loss of life or property in more than one-fourth of the counties in Texas resulting from any natural or man-made cause related to the outbreak.

Pandemic Disaster Legislative Oversight Committee

C.S.H.B. 3 establishes the Pandemic Disaster Legislative Oversight Committee to consider the impact on Texas and its residents of a state of pandemic disaster declared by the governor and to provide legislative oversight of pandemic disaster declarations. The committee is composed of the following 10 members:

- the lieutenant governor;
- the speaker of the house of representatives;
- the chairs of the Senate Committees on Finance, State Affairs, Health and Human Services, and Education or their successors; and
- the chairs of the House Committees on Appropriations, State Affairs, Public Health, and Public Education or their successors.

The bill designates the lieutenant governor and the speaker as joint chairs.

C.S.H.B. 3 authorizes the committee to take the following actions but provides that the committee may only act when the legislature is not convened in regular or special session:

- review any state of pandemic disaster declaration issued by the governor that is in effect for more than 30 days following the governor's renewal of the declaration;
- review proclamations, orders, or rules issued or adopted by the governor and any orders issued by a county or municipality for the pandemic disaster declaration; and
- terminate the state of pandemic disaster or provisions of proclamations, orders, or rules issued or adopted by the governor or orders issued by a county or municipality for the pandemic disaster declaration.

The bill grants the committee all other powers and duties provided to a special committee by the Legislative Reorganization Act of 1961, the rules of the senate and house of representatives, and policies of the senate and house committees on administration.

C.S.H.B. 3 provides the following with respect to meetings of the committee:

- the committee meets at the call of the joint chairs;
- the joint chairs must convene the committee on or as soon as practicable after the date a state of pandemic disaster is first renewed by the governor, unless the legislature is convened in regular or special session;
- a majority of the committee members from each house constitutes a quorum to transact business;
- termination of a state of pandemic disaster requires a majority vote of the committee's membership but if a quorum is present, the committee may act on any other matter within its jurisdiction by a majority vote; and
- notice of a committee meeting must be posted at least five calendar days before the date of the meeting, in the same manner that meeting notices are posted for standing committees of the senate and house of representatives.

As an exception to state open meetings law and other law, C.S.H.B. 3 authorizes the committee to meet by use of video conference call. This authorization applies for purposes of constituting a quorum, for purposes of voting, and for any other purpose allowing a member of the committee to fully participate in a meeting of the committee. A meeting held by use of video conference call must be open to the public, including by video broadcasting the meeting in real time through the website of the senate or house of representatives, and must specify in the meeting notice the link to the video broadcast. The meeting must provide for the entire meeting two-way video communication between all committee members attending the meeting and if, at any time, the two-way video communication link with a member attending the meeting is disrupted, the meeting may not continue until that link is reestablished.

Texas Pandemic Response Act

C.S.H.B. 3 enacts the Texas Pandemic Response Act, which, with respect to a pandemic disaster, prohibits certain local actions that impact business operations, establishes certain civil liability protections, sets out and clarifies the governor's powers and duties, provides for local and interjurisdictional pandemic emergency management, and sets out certain other related provisions.

Prohibited Local Actions Impacting Business Operations

C.S.H.B. 3 prohibits the presiding officer of a political subdivision's governing body from issuing an order during a declared state of pandemic disaster or local state of pandemic disaster that requires specific businesses or industries to close or that distinguishes between types of businesses or industries in limiting operation capacities.

Civil Liability Protections During a Pandemic Disaster

C.S.H.B. 3 provides certain civil liability protections by doing the following:

- specifying that provisions of the Texas Disaster Act of 1975 relating to civil liability for an officer or employee of a state or local agency, or a volunteer acting at the direction of such an officer or employee, who is performing an activity related to sheltering or housing individuals in connection with the evacuation of an area stricken or threatened by disaster applies during a declared state of pandemic disaster;
- granting a business or an entity operating during a pandemic disaster in Texas immunity from liability for an injury caused by exposing or potentially exposing an individual to a disease if, on the date of the exposure or potential exposure, the following conditions are met:
 - the business or entity is authorized to conduct business in Texas;
 - the business or entity made a reasonable effort to comply with applicable and controlling state and local laws, rules, ordinances, declarations, and proclamations related to the pandemic disaster; and
 - the act or omission giving rise to the exposure or potential exposure was not wilful, reckless, or grossly negligent; and
- granting a person who provides goods or renders services during a pandemic disaster in support of disaster response efforts and at the request of the governor or the governor's designee immunity from liability for an injury caused by the goods or services, regardless of the circumstances, provided the act or omission giving rise to the injury was not wilful, reckless, grossly negligent, or inconsistent with a limit specified in the governor's request.

The bill clarifies that the immunity provided by these provisions of the bill is in addition to the immunity and liability limitations provided by other law. These provisions expressly do not create a civil cause of action and apply only to a cause of action that accrued on or after March 13, 2020.

Governor's Powers and Duties

C.S.H.B. 3 authorizes the governor by executive order or proclamation to declare a state of pandemic disaster on determining that such a disaster is occurring in Texas or that the occurrence or threat of such a disaster is imminent. The bill provides for the duration of a state of pandemic disaster, which may not continue for more than 30 days unless renewed by the governor. The bill authorizes the legislature by law to terminate a state of pandemic disaster at any time if convened in regular or special session. If the legislature is not convened in session, the Pandemic Disaster Legislative Oversight Committee may exercise its authority to terminate a state of pandemic disaster or provisions of proclamations, orders, or rules issued or adopted for the pandemic disaster declaration as provided by the bill. The bill requires the governor, on termination of a declared state of pandemic disaster or a provision of a proclamation, order, or rule by the legislature or the committee, to issue an executive order ending the declared state of pandemic disaster or rescinding those provisions, as applicable. The bill prohibits the governor from declaring a new state of pandemic disaster based on the same or a substantially similar finding as a prior state of pandemic disaster that was terminated or not renewed by the legislature or to circumvent a meeting of the committee convened to review a state of pandemic disaster declaration.

C.S.H.B. 3 sets out requirements for the content of an executive order or proclamation issued with respect to the declaration of a state of pandemic disaster, requires the order or proclamation to be posted on the website of the governor and of any affected state agency, and provides for its dissemination to the public and filing with certain appropriate state and local entities and officials.

C.S.H.B. 3 authorizes the governor to issue, amend, or rescind an executive order, proclamation, or rule to further the purposes of the act and provides that such an order, proclamation, or rule has the force and effect of law. The bill provides that an executive order, proclamation, or rule that has the effect of closing or limiting the operating capacity of a business or other entity, mandating the wearing of a face covering, or limiting surgeries or other procedures that a

licensed health care professional or health care facility may perform may continue for more than 30 days only if the governor, during that period, issues either of the following:

- a proclamation convening the legislature in special session that begins during that period to consider whether to modify or terminate the order, proclamation, or rule; or
- if the legislature is already convened in regular or special session, issues a message to the legislature requesting the legislature's consideration of whether to modify or terminate the order, proclamation, or rule.

The bill prohibits the governor from issuing a new executive order, proclamation, or rule based on the same or a substantially similar finding as a prior executive order, proclamation, or rule that was terminated by the legislature.

C.S.H.B. 3 authorizes the governor to exercise the same authority to address a declared state of pandemic disaster as is granted to the governor under the Texas Disaster Act of 1975 to address another type of disaster but lists certain provisions of that act that do not apply with respect to a pandemic disaster, including the provision authorizing the governor to suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles.

C.S.H.B. 3 requires actions taken under a declared state of pandemic disaster to satisfy the religious freedom protections under applicable state law and the federal Religious Freedom Restoration Act of 1993.

C.S.H.B. 3 prohibits the sale, dispensing, or transportation of firearms and ammunition from being suspended or limited in response to a declared state of pandemic disaster.

Local and Interjurisdictional Pandemic Emergency Management

C.S.H.B. 3 designates the presiding officer of a political subdivision's governing body as that subdivision's pandemic emergency management director and establishes that the director serves as the governor's designated agent in the administration and supervision of duties under the act. The bill requires the director to perform the duties prescribed by the applicable emergency management plan and implement the state of pandemic proclamation and each executive order issued under the act. The bill authorizes the director to designate a person to serve as pandemic emergency management coordinator and provides that the coordinator serves as an assistant to the director for pandemic emergency management purposes. The bill prohibits a person, other than the director, from seizing state or federal resources without prior authorization from the Texas Division of Emergency Management (TDEM) or the state or federal agency responsible for those resources.

C.S.H.B. 3 establishes that any local order or rule issued in response to a state or local state of pandemic disaster is superseded and void to the extent that it is inconsistent with proclamations, orders, or rules issued by the governor or the Department of State Health Services and that any order issued by a municipality in response to a state or local state of pandemic disaster is superseded and void to the extent that it is inconsistent with orders issued by the county judge of the county in which the municipality is located.

C.S.H.B. 3 prohibits the governing body of a political subdivision whose presiding officer issues an order requiring the closure of a private business in response to a pandemic disaster and for which the governor issues a written determination finding that the presiding officer has done so from adopting a property tax rate for the current tax year that exceeds the lesser of the political subdivision's no-new-revenue tax rate or voter-approval tax rate for that tax year. The bill requires the governor to adopt rules and procedures necessary to determine whether a presiding officer has issued such an order. For purposes of calculating the political subdivision's unused increment rate in a tax year that it is subject to that limitation, the difference between the political subdivision's actual tax rate and voter-approval tax rate is considered to be zero. The limitation no longer applies in the first tax year following the governor's rescission of the written determination.

Miscellaneous Provision

C.S.H.B. 3 requires personnel surge capacity planning conducted under the act for declared states of pandemic disaster to include plans for providing personal protective equipment to physicians, other health care professionals, and pandemic disaster relief workers and volunteers.

General Provisions

C.S.H.B. 3 sets out the purposes of the act and specifies that the act does not do the following:

- grant the governor authority to enact law;
- expand the authority granted to the governor under the Texas Disaster Act of 1975;
- limit the governor's authority to apply for, administer, or spend a grant, gift, or payment in aid of pandemic disaster mitigation, preparedness, response, or recovery;
- interfere with the course or conduct of a labor dispute, with certain exceptions;
- interfere with dissemination of news or comment on public affairs, with certain exceptions related to requests for the transmission or printing of public service messages providing information or instructions in connection with a pandemic disaster or potential pandemic disaster;
- affect the jurisdiction or responsibilities of a law enforcement agency, fire department, or unit of the U.S. armed forces, or any of their personnel when on active duty, if state, local, or interjurisdictional emergency management plans rely on the agencies, departments, or units to perform duties related to pandemic disasters;
- limit, modify, or abridge the governor's authority to exercise any other power vested in the governor under the Texas Constitution or state law independent of or in conjunction with any provision of the act;
- authorize the seizure or confiscation of any firearm or ammunition from an individual who is lawfully carrying or possessing the firearm or ammunition;
- authorize any person to prohibit or restrict the business operations of a sport shooting range or a firearms or ammunition manufacturer, distributor, wholesaler, supplier, or retailer;
- affect the level of scrutiny for judicial review of constitutional violations;
- delegate to any governmental official the authority to modify election procedures; or
- authorize any governmental official to mandate that an individual obtain a vaccination.

C.S.H.B. 3 makes the following provisions of the Texas Disaster Act of 1975 relating to the following subjects applicable to a declared state of pandemic disaster:

- the disaster recovery loan program;
- finance, including local finance;
- suspension of deadlines imposed by local law;
- qualifications for rendering aid;
- shelter operations;
- personnel surge capacity planning;
- medical special needs volunteers; and
- the role of the attorney general as legal advisor on issues related to a declared disaster.

The bill provides that the Texas Pandemic Response Act controls over the Texas Disaster Act of 1975 to the extent of any conflict.

For purposes of the Texas Pandemic Response Act, "political subdivision" means a county or municipality.

Other Government Code Provisions

C.S.H.B. 3 excludes a pandemic disaster from what constitutes a disaster under the Texas Disaster Act of 1975. The bill revises emergency management training requirements for certain

officials under that act to include instruction on the responsibilities of state and local governments under the Texas Pandemic Response Act.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The original and substitute differ in their definition of "pandemic disaster." The original defined the term as the occurrence or imminent threat of an outbreak of an infectious disease that spreads to a significant portion of the population of multiple countries or the world and that threatens widespread or severe damage, injury, or loss of life or property in Texas resulting from any natural or man-made cause related to the outbreak. The substitute defines the term as the occurrence or imminent threat of an outbreak of an infectious disease that spreads to a significant portion of the state population and that threatens widespread or severe damage, injury, or loss of life or property in more than one-fourth of the counties in Texas resulting from any natural or man-made cause related to the outbreak.

Whereas the original authorized the legislature to terminate a state of pandemic disaster at any time, the substitute limits that authorization to times when the legislature is convened in regular or special session. The substitute instead establishes the Pandemic Disaster Legislative Oversight Committee to act on a declaration of a state of pandemic disaster when the legislature is not convened in session. The substitute authorizes the committee, if applicable, to terminate at any time a state of pandemic disaster that is in effect for more than 30 days following the governor's renewal of the declaration or provisions of proclamations, orders, or rules issued or adopted by the governor or of orders issued by a political subdivision for the pandemic disaster declaration. Accounting for this additional authority to terminate provisions of an applicable proclamation, order, or rule, the substitute requires the governor, on termination of such a provision by the committee, to issue an executive order rescinding those provisions.

The substitute includes a provision not in the original prohibiting the governor from declaring a new state of pandemic disaster based on the same or a substantially similar finding as a prior state of pandemic disaster that was terminated or not renewed by the legislature or to circumvent a meeting of the committee convened to review a state of pandemic disaster declaration.

The substitute includes a provision not in the original requiring that an executive proclamation or order issued with respect to the declaration of a state of pandemic disaster be posted on the website of the governor and of any state agency affected by the proclamation or order.

The substitute includes a provision absent from the original prohibiting the presiding officer of the governing body of a political subdivision from issuing an order during a declared state of pandemic disaster or local state of pandemic disaster that requires specific businesses or industries to close or distinguishes between types of businesses or industries in limiting operation capacities.

The substitute revises the original's provisions granting immunity from civil liability to a business or an entity operating during a pandemic disaster in Texas with regard to an injury caused by exposing or potentially exposing an individual to a disease in the following ways:

- removes as a requisite condition for triggering the immunity that, on the date of the exposure or potential exposure, the business or entity knew of the risk of exposure or potential exposure; and

- changes the condition that the business or entity made a reasonable effort to comply with applicable federal, state, and local laws, rules, ordinances, declarations, and proclamations related to the pandemic disaster as follows:
 - removes the requirement that the business or entity made a reasonable effort to comply with federal laws, rules, ordinances, declarations, and proclamations; and
 - clarifies that the state and local laws, rules, ordinances, declarations, and proclamations with which the business or entity must have made a reasonable effort to comply are those that are controlling.

The substitute includes provisions not in the original establishing that the immunity from civil liability provided by the bill is in addition to the immunity and limitations of liability provided by other law and that the bill provisions do not create a civil cause of action.

The substitute includes a provision not in the original establishing that the governor may exercise the same authority to address a declared state of pandemic disaster as is granted to the governor under the Texas Disaster Act of 1975 to address another type of disaster, with certain specified exceptions. Accordingly, the substitute omits certain provisions of the original establishing powers and duties of the governor that are substantially similar to provisions that already exist in the Texas Disaster Act of 1975. The substitute and the original also differ in the following ways with respect to the governor's powers and duties under the Texas Pandemic Response Act:

- the substitute includes provisions not in the original establishing limitations on executive orders, proclamations, or rules that have the effect of closing or limiting the operating capacity of a business or other entity, mandating the wearing of a face covering, or limiting surgeries or other procedures that a licensed health care professional or health care facility may perform; and
- whereas the original authorized the governor to suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles in response to a pandemic disaster, the substitute does not do so and makes a similar authorization under the Texas Disaster Act of 1975 inapplicable during a declared state of pandemic disaster.

The substitute revises the provisions of the original regarding local and interjurisdictional pandemic emergency management under the Texas Pandemic Response Act as follows:

- omits provisions authorizing local election officials to propose, and the secretary of state to approve, certain alterations of voting procedures in response to a pandemic disaster;
- removes the original's provision authorizing a pandemic emergency management director to exercise the powers granted to the governor under the act on an appropriate local scale and instead requires each director to perform the duties prescribed by the applicable emergency management plan and implement the state of pandemic proclamation and each executive order issued under the act;
- provides for the preemption of municipal orders that are inconsistent with applicable county orders; and
- requires the governor to adopt rules and procedures necessary to determine whether a political subdivision's presiding officer has issued an order requiring the closure of a private business in response to a pandemic disaster for purposes of the limitation on property tax rates.

The substitute omits the following provisions of the original:

- provisions making it a criminal offense for a person to violate a provision of the pandemic components of a state, local, or interjurisdictional emergency management plan or a rule, order, or ordinance adopted thereunder; and
- provisions regarding off-campus programs approved for the purposes of determining average daily attendance during a pandemic disaster.

Whereas the original set out provisions relating to the following topics in the Texas Pandemic Response Act, the substitute provides instead that provisions in the Texas Disaster Act of 1975 that do substantially the same things apply to a state of pandemic disaster:

- civil liability protections for certain persons performing an activity relating to sheltering or housing individuals in connection with an evacuation;
- suspension of deadlines imposed by local law;
- qualifications for rendering aid;
- shelter operations;
- personnel surge capacity planning;
- medical special needs volunteers; and
- the role of the attorney general as legal advisor on issues related to a declared disaster.

The substitute includes a requirement not in the original for personnel surge capacity planning conducted under the Texas Pandemic Response Act for declared states of pandemic disaster to include plans for providing personal protective equipment to physicians, other health care professionals, and pandemic disaster relief workers and volunteers.

The substitute revises the prescribed purposes of the Texas Pandemic Response Act, as set out in the original, to remove as a purpose strengthening the role of the governor, state agencies, the judicial branch of state government, and local governments in the prevention of, preparation for, response to, and recovery from a pandemic disaster. The bill also revises the list of limitations regarding the effect of the act as set out in the original in the following ways:

- replaces the provision establishing that communications facilities and organizations may be required to transmit or print public service messages providing information or instructions in connection with a pandemic disaster or potential pandemic disaster with a provision establishing that those facilities and organizations may be requested to transmit or print such messages;
- removes the provision establishing that the act does not limit, modify, or abridge the governor's authority to proclaim martial law; and
- includes provisions clarifying that the act does not do any of the following:
 - expand the authority granted to the governor under the Texas Disaster Act of 1975;
 - affect the level of scrutiny for judicial review of constitutional violations;
 - delegate to any governmental official the authority to modify election procedures; or
 - authorize any governmental official to mandate that an individual obtain a vaccination.