

- SUBJECT:** Authorizing the governor to order evacuations during disasters
- COMMITTEE:** State Affairs — favorable, without amendment
- VOTE:** 7 ayes — Swinford, Miller, B. Cook, Farrar, J. Keffer, Martinez Fischer, Wong
0 nays
2 absent — Gattis, Villarreal
- WITNESSES:** No public hearing
- BACKGROUND:** Government Code, sec. 418.018, allows the governor to recommend the evacuation of any residents from a “stricken or threatened area” if such an action were necessary for response and recovery efforts or disaster mitigation.

During its regular session, the 79th Legislature enacted HB 3111 by Corte, which amended Government Code, sec. 418.108 to authorize county judges and mayors to order evacuation of any residents in their jurisdiction under the circumstances described above.
- DIGEST:** HB 147 would amend Government Code, sec. 418.018 to authorize the governor to order, instead of recommend, an evacuation.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect on the 91st day after the last day of the third called session (August 15, 2006, if the special session lasts the full 30 days).
- SUPPORTERS SAY:** HB 147 would grant the governor essential powers recommended by a task force that recently examined the evacuation prior to Hurricane Rita in September 2005. The bill would ensure that the state had one central authority to coordinate the timing of evacuation orders and subsequent traffic flow of evacuating residents, aspects of the Hurricane Rita evacuation that were rife with problems and contributed to many deaths.

Because disasters know no jurisdictional boundaries, it is essential to have an overarching authority that can implement a unified plan.

HB 147 would implement a key recommendation of the Task Force on Evacuation, Transportation, and Logistics, a body charged with recommending policy changes to improve the state's evacuation readiness in future emergencies. In March 2006, the governor issued an executive order that implemented many of the task force's recommendations, including the establishment of a regional command structure and a statewide evacuation and shelter plan. However, authorizing the governor to order evacuations is one of the few recommendations that cannot be implemented without legislative action.

The task force concluded that the unpredictability of impending storms posed such a challenge to local officials in determining when to order an evacuation that "a central authority must coordinate the many jurisdictions involved." Days of advanced planning are necessary to achieve an orderly evacuation, and the governor would be best equipped to make such an important decision. Armed with the most accurate, updated, and comprehensive weather and logistical information, the governor also has the advantage of being in constant communication with emergency management officials and the Texas Department of Public Safety. Such authority also would allow the governor and state officials to coordinate the timing of an evacuation, allowing for those in at-risk areas to get on the roads first without getting stuck behind those who were in less danger. A disaster usually affects more than just one county or municipality, and a uniform response is crucial so that resources can be efficiently allocated.

The bill would give the governor more flexibility in an emergency and purposely was crafted not to usurp the authority of local officials by removing their power to order evacuations. In Florida, the governor has the same authority but rarely uses it because he defers to local officials. Similarly, the governor of Texas likely would use the authority in HB 147 only if a local official failed to order an evacuation when such action was required. Although this did not happen in Texas during the Hurricane Rita evacuation, the evacuation of New Orleans prior to Hurricane Katrina highlights the disaster that could have been mitigated had the mayor there acted more quickly to order an evacuation. The governor would not make such a decision in a vacuum — he would be in touch with federal officials as well as disaster district coordinators, regional liaison officers, and the

newly created Regional Unified Command structures that provide input from the local level.

HB 147 would allow the governor to head off legal concerns if an area's residents needed to be evacuated but a local official could not or would not issue the order. If some unforeseen circumstance prevented a county judge or mayor from making or communicating the evacuation announcement, the governor would be able to fill that void.

**OPPONENTS
SAY:**

Local leaders are better informed about what is happening on the ground in their counties and cities than the governor and state officials in Austin and should have exclusive authority to order an evacuation. Local officials know the nuances of local evacuation routes and ultimately bear the costs associated with mandatory evacuations. The 79th Legislature was wise to allow county judges and mayors to order evacuations and should take no action to compromise this authority. No one is more concerned about the safety of a community's residents than a local leader.

The biggest problems highlighted during the evacuation of Hurricane Rita were not associated with who had authority to order evacuations. Instead, the major trouble centered around traffic control and fuel availability, among other problems. Although a central command structure theoretically would be able to coordinate evacuations so that residents at the greatest risk could leave first, history has shown that people will take to the roads even if they have not been called to evacuate. When this happens, there is little that leaders at any level — state or local — can do to prevent citizens from fleeing without diverting needed resources from the evacuation effort and possibly compounding the problem.

County judges and mayors are more attuned to their residents and inherent local concerns when ordering an evacuation. A local leader would be better placed than officials in Austin to evaluate factors that should weigh in the decision to evacuate, such as a large population of convention visitors or mobile-home dwellers in a given area. While local leaders might not have access to technology at the same level as the state uses, they do have access to weather forecasts and would be in touch with state officials just as they were during the Hurricane Rita evacuation.

Local governments bear the cost of mandatory evacuations, and they should be the ones to decide whether such an order is worth it. Paying for additional manpower and overtime costs is a burden to a county or city

budget that never is reimbursed fully by the state or federal government. No local official would risk endangering the lives of friends or family by opting not to order an evacuation merely to save money, but it is conceivable that state officials could decide to evacuate communities based on a very minimal risk that a storm would affect them.

**OTHER
OPPONENTS
SAY:**

This bill potentially could lead to conflict between state and local entities or cause them to work at cross purposes in ordering evacuations by not clearly establishing whose evacuation order would have priority. If, for example, the governor wanted to evacuate coastal communities and low-lying areas first but a local official of an inland county nevertheless ordered local residents to leave at the same time, the evacuation effort would be compromised. In enacting HB 3111, the Legislature anticipated potential conflicts between the evacuation authority granted to county judges and to mayors by specifying that the decision of the county judge prevails in the event of conflict. HB 147 also should delineate a clear hierarchy of authority if a conflict arose between state and local authorities.

NOTES:

The identical Senate companion, SB 33 by Williams, has been referred to the Senate Transportation and Homeland Security Committee.

Another evacuation-related proposal, SB 36 by Nelson, would require the Division of Emergency Management to create plans to allocate health care resources and volunteers and develop a statewide emergency management tracking system to keep tabs on patients, sex offenders, and the special-needs population. It has been referred to the Senate Health and Human Services Committee.