

SUBJECT: Continuing the operation of the judiciary during a disaster

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Hunter, Alonzo, Branch, Hartnett, Madden, Martinez, Woolley
0 nays
4 absent — Hughes, Jackson, Leibowitz, Lewis

WITNESSES: For — None
Against — None
On — (*Registered, but did not testify*: Carl Reynolds, Office of Court Administration/Texas Judicial Council)

BACKGROUND: As a result of the hurricanes that hit the Texas coast in 2005, several courts sustained significant damage to their facilities and had to cease daily judicial operations until the damage could be repaired. In 2008, Hurricane Ike forced emergency evacuations of court personnel in many areas and knocked out power and basic communications in other locations. The effects of these storms made it difficult for some courts to meet statutory and filing deadlines.

On November 20, 2007, the Supreme Court of Texas issued an order appointing the Task Force to Ensure Judicial Readiness in Times of Emergency ("task force") and requiring it to design and implement an emergency program to prevent or manage disrupted court operations throughout the state in the event of emergencies. The task force has yet to issue a final report.

The Texas Disaster Act of 1975 (TDA) sets forth the powers and procedures of the governor, state agencies, and local governments in the event of a disaster. The Division of Emergency Management, a division within the Department of Public Safety, coordinates the resources and efforts of representatives from twenty-seven state agencies and the American Red Cross to manage and mitigate the effects of a disaster.

Under Government Code, sec. 74.093, district court and statutory county court judges must, by majority vote, adopt local rules of administration for the management and execution of judicial functions. Sec. 74.093 does not require the adoption of rules providing for a coordinated plan for the continued operation of judicial functions in the event of a disaster.

DIGEST:

CSHB 1861 would authorize the Texas Supreme Court to exercise its inherent authority to suspend procedures for the conduct of any court proceeding affected by a disaster without the consent of the parties. By rule or order, or on a case-by-case basis, the Supreme Court could:

- provide abatements and stays;
- suspend the running of the statute of limitations;
- suspend or modify other filings and service deadlines;
- provide for hearings or trials at locations other than the county of suit;
- provide for courts of appeal to accept filings and hear arguments in remote courthouses; and
- provide for alternative notice requirements.

CSHB 1861 also would allow district court and statutory county court judges, by majority vote, to adopt rules providing a coordinated response for the continued operation of essential judicial functions in the event of a disaster.

The bill would amend the TDA to add as one of its purposes to clarify and strengthen the role of the judicial branch of state government.

If a disaster prevented the Supreme Court from acting in response, CSHB 1861 would authorize the Court of Criminal Appeals to act on behalf of the Supreme Court. If a disaster prevented both the Supreme Court and the Court of Criminal Appeals from acting, the bill would authorize the chief justice of the Supreme Court and the presiding judge of the Court of Criminal Appeals to act on behalf of the entire state judiciary.

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 September 1, 2009.

**SUPPORTERS
SAY:**

CSHB 1861 would allow for the continued operation of essential judicial functions in the event of a disaster by encouraging greater coordination of emergency response efforts within the judiciary, and between the judicial branch and other branches of government. The disruptions caused by Hurricanes Rita and Ike revealed a lack of disaster contingency planning and flawed coordination and execution of emergency judicial measures in areas severely affected by the hurricanes. As result, the basic judicial functions of several courts ground to a halt, leaving parties without access to courts and struggling to meet statutory deadlines.

By including the judicial branch within the provisions of the TDA, CSHB 1861 would ensure that the judiciary would have the right to full and equal participation in any disaster contingency planning between the branches of government. Though the Supreme Court currently has inherent authority to promulgate disaster contingency rules for the judiciary, the bill would strengthen coordination efforts between the judiciary and the other branches by requiring each branch to tailor emergency response procedures to address the unique concerns and needs of the other branches.

CSHB 1861 would grant the Supreme Court the flexibility necessary to undertake emergency measures to prevent inadvertent prejudice of parties' legal rights. For example, in the event that a disaster made it impossible for a party to file an action in the proper county of venue, the Supreme Court could suspend the running of the statute of limitations in order to prevent the party's claim from being barred through no fault of the party. If a county courthouse became damaged or destroyed by a disaster, the Supreme Court could ensure the continued operation of the county court by allowing the court to meet in a different county.

The bill also would encourage, though not require, district and statutory county courts to adopt local rules for coordinated disaster response measures. As Hurricanes Rita and Ike demonstrated, local governmental entities often sustain the most damaging effects of a disaster and must act as “first responders” to assist residents and ensure the continued operation of critical governmental functions. With disaster response plans on hand, local district and statutory county courts could help ensure continued public access to the courts and prevent or minimize any interruption of essential judicial functions.

OPPONENTS
SAY:

While no one opposes the right of the judicial branch to prepare disaster contingency plans, CSHB 1861 would extend the authority of the Supreme Court too far by allowing it to suspend the running of a statute of limitations under emergency situations. A limitations period sets a maximum period of time, after the occurrence of certain events, for the wronged party to initiate a particular legal claim. The primary purpose of a statute of limitations is to balance a party's right to seek legal redress and a defendant's right not to be unfairly prejudiced by an undue delay in legal proceedings. There is no need to give the Supreme Court the power to suspend a statute of limitations, because CSHB 1861 would prescribe alternative means sufficient to protect the legal rights of a party.

NOTES:

The committee substitute differs from the original bill by authorizing the Supreme Court, by rule or order, or on a case-by-case basis, to exercise the court's inherent authority to suspend court proceedings in any court affected by a disaster. The original bill would have authorized the Supreme Court to have rulemaking power to extend a statute of limitations or other civil filing deadline by not more than 30 days after the date of the original limitations period expired or the date of the civil deadline in a civil matter, but not a criminal matter, in a county all or part of which was located in a disaster area designated by executive order or a proclamation by the governor. In the original bill, the Court of Criminal Appeals would have had rulemaking power to suspend a statute of limitations period or other criminal deadline in a criminal matter, but not a civil matter. The same time period provisions applicable to the Supreme Court in the original bill also applied to the Court of Criminal Appeals.

The committee substitute also added language authorizing district courts and statutory county courts to adopt local rules providing for a coordinated response for the continued operation of essential judicial functions in the event of a disaster.

A similar bill, HB 4068 by Gonzales, was reported favorably as substituted by the Judiciary and Civil Jurisprudence Committee on April 20. The bill would grant the Supreme Court and Court of Criminal Appeals the same authority to suspend court proceedings in any court affected by a disaster, except that it would not allow either court to suspend the running of the statute of limitations.