

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 — (*Registered, but did not testify:* Guy Herman)
Against — None

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 Texas Supreme Court of Texas issued an order appointing the Task Force to Ensure Judicial Readiness in Times of Emergency, 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 4068 would authorize the Texas Supreme Court to suspend temporarily 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 or modify filing and service deadlines;
- provide for hearings or trials at locations other than the municipality or county where the proceeding was commenced;
- provide for courts of appeal to accept filings and hear arguments in remote courthouses; and
- provide alternative notice requirements.

CSHB 4068 also would allow district and statutory county court judges, by majority vote, to adopt rules providing a coordinated response for the continued operation of essential judicial functions.

The bill would amend the TDA to include a provision that one of the TDA's purposes would be 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 4068 would authorize the chief justice of the Supreme Court to act on the court's behalf. In the event that the chief justice could not act on the Supreme Court's behalf, the Court of Criminal Appeals could act on behalf of the Supreme Court. If a disaster prevented the Court of Criminal Appeals from acting, the bill would authorize the presiding judge of the Court of Criminal Appeals to act on behalf of the Supreme Court.

The bill would take effect September 1, 2009.

NOTES:

A related bill, HB 1861 by Eiland, which would grant the Texas Supreme Court similar authority to continue essential judicial functions in the event of disaster, except that HB 1861 would grant the Supreme Court the additional authority to suspend the running of a statute of limitations,

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passed the House by 138-0 on April 24 and has been referred to the Senate Jurisprudence Committee.