

SUBJECT: Disaster preparedness and emergency management

COMMITTEE: Defense and Veterans' Affairs — committee substitute recommended

VOTE: 5 ayes — Corte, Chavez, Farias, Maldonado, C. Turner
0 nays
4 absent — Vaught, Edwards, Ortiz, Pickett

SENATE VOTE: On final passage, April 24 — 30-0

WITNESSES: For — (*Registered, but did not testify:* Kathy Barber, Texas Retailers Association; Emily Shelton, Texas Impact)
Against — None
On — Ronald Hufford, Texas Forestry Association; Russell Lecklider, DPS Emergency Management Division; Rick Levy, Texas State Association of Electrical Workers - IBEW; John Slanina, Center Point Energy Houston Electric

BACKGROUND: In January 2009 the House Select Committee on Hurricane Ike Devastation to the Texas Gulf Coast submitted its interim report to the Legislature. The committee found that the state's disaster response needed improvement in a variety of areas, including communications, debris clearance, evacuation and sheltering, and coordination among state and federal agencies and local government entities.
The Governor's Division of Emergency Management (GDEM) is charged with coordinating the state's disaster planning and response efforts, and is required to develop a state emergency management plan that includes provisions for disaster mitigation and response, the identification of particularly vulnerable areas, and the coordination of federal, state, and local emergency management activities.

DIGEST: CSSB 12 would amend the Government, Health and Safety, Education, Transportation, and Utilities Codes to modify and delete various

provisions related to emergency management and disaster mitigation and response, along with other issues.

Emergency management plan and annex. CSSB 12 would require the GDEM to develop an annex to the state emergency management plan that addressed initial response planning for providing services and supplies during the first five days immediately following a disaster.

The emergency management plan annex would include provisions for interagency coordination of response efforts; assessment of population support needs; plans for debris clearance and the distribution or delivery of essential supplies and equipment; methods for obtaining food, water, and ice through prearranged contracts, stockpiled supplies, or requests for federal assistance; methods for providing basic medical support for disaster victims; provisions for continued operation of service stations to provide fuel to disaster victims and emergency responders; and plans to make fuel available to hospitals, prisons, assisted living facilities, and nursing or convalescent homes.

The annex would include provisions for emergency power to restore or continue operations at critical water and wastewater facilities, including establishing an online database of available emergency generators configured for transport and capable of providing back-up power for the facilities; procedures for the maintenance, activation, transportation, and redeployment of available emergency generators; and procedures for water and wastewater utility providers to maintain a current list of generators available in surrounding areas.

The annex would be developed in cooperation with the emergency management council, local governments, regional entities, health and medical facilities, volunteer groups, the Federal Emergency Management Agency (FEMA) and other federal agencies, and private sector partners.

The Department of State Health Services would develop an annex to the state emergency management plan that provided for developing medical special needs categories and the requirements of individuals within each category, as well as establishing minimum health-related standards for the short- and long-term operations of shelters that received state funding. The GDEM would issue a report to the Legislature within 90 days of the bill taking effect regarding the implementation of medical special needs plans in connection with Hurricane Ike. The requirement for a report

would take immediate effect if the bill finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

The Texas Department of Agriculture would develop an annex to the state emergency management plan that included recovery and relief information, training and assistance requirements, or other information related to agricultural disaster management, including biological and radiological response, and any information the Texas Animal Health Commission thought relevant.

The GDEM also would include a database of public facilities that could be used to shelter individuals during a disaster, including air-conditioned facilities during an extreme heat disaster and fortified shelters during a wind disaster, in its state emergency management plan.

Emergency Management Council. Representatives of state agencies, boards, commissions, and organized volunteer groups could serve on the governor's Emergency Management Council, rather than only the heads of those groups, as currently. The Emergency Management Council would be responsible for identifying, mobilizing, and deploying state resources in response to disasters and other emergencies and for informing local officials on activation of the Emergency Alert System. The bill would remove the council's responsibility for coordinating emergency management service divisions organized by political subdivisions.

Emergency management training. CSSB 12 would extend the current emergency management training course requirement to elected law enforcement officers or county judges who had supervisory or managerial responsibilities and whose job descriptions or duties included emergency management or who played a role in emergency preparedness, response, or recovery. The Texas A&M University Engineering Extension Service could implement an on-line training course and offer continuing education credits for elected and appointed officials, volunteers, or employees required or requested to attend emergency management training. The training requirement would apply only to officials elected or appointed after the bill's effective date, and would be optional for volunteers.

Definition of a first responder. CSSB 12 would define a first responder to include public health and public safety personnel, commissioned law enforcement personnel, paid and volunteer firefighters, emergency

medical services personnel, members of the National Guard or Texas State Guard, and any related personnel providing support services during disaster prevention, response, or recovery activities.

Personnel compensation and reimbursement. A state employee who was a firefighter, police officer, emergency medical technician, emergency management personnel or other emergency services personnel, and who was not subject to federal overtime compensation laws or an employee of the Legislature, could take compensatory time off within 18 months of the end of the work week in which the compensatory time was accrued. The administrative head of the state agency at which the employee worked could pay the employee overtime at the employee's regular hourly salary rate for all or part of the compensatory time the employee accrued during a declared disaster and could reduce the employee's compensatory time balance in proportion to the overtime compensation paid to the employee. A state employee serving as emergency services personnel who was deployed to a temporary duty station to conduct emergency or disaster response activities would be entitled to reimbursement for lodging expenses if no room was available at the state rate within a reasonable distance from the station.

Judicial preparedness. CSSB 12 would allow the Texas Supreme Court to modify or suspend procedures temporarily for the conduct of a court proceeding affected by a disaster. If a disaster prevented the Supreme Court from acting in response, the chief justice of the Supreme Court would be authorized to act on the court's behalf. If the chief justice could not act on the Supreme Court's behalf, the Court of Criminal Appeals would be authorized to act. If a disaster prevented the Court of Criminal Appeals from acting, the presiding judge of the Court of Criminal Appeals would be authorized to act on the Supreme Court's behalf. Local rules of administration for each county would have to provide for the transaction of essential judicial functions in the event of a disaster. The judicial preparedness provisions would take immediate effect if the bill was finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

Reservists and volunteers. The GDEM could enroll, organize, train, and equip a cadre of disaster reservists to augment its staff temporarily. The reservists would have specialized skills in disaster recovery, hazard mitigation, community outreach, and public information, and on activation

would be paid at a daily rate commensurate with their qualifications and experience.

The division would have to cooperate with state agencies to encourage the public to participate in volunteer emergency response teams and provide information on those groups in disaster preparedness and educational materials and on websites. It would have to integrate volunteer groups, including faith-based organizations, into emergency management plans. The GDEM also would establish a liability awareness program for volunteers, including volunteer medical professionals.

An entity responsible for caring for individuals with medical special needs would develop and distribute information on volunteering during a disaster. The GDEM would provide information to the public on training volunteers to assist those with medical special needs and residents of assisted living facilities.

Councils of government, regional planning commissions, and other regional planning agencies would have to develop regional plans for handling an increase in personnel during a disaster, including plans for providing lodging and meals to relief workers and volunteers. Entities developing regional plans would have to consult with a variety of groups, including representatives from emergency responders, utilities, health care facilities, and local government officials.

Disaster funding. The disaster emergency funding board would be abolished. The bill would make a conforming change to allow state agencies to request funding from the disaster contingency fund for purchasing property damage insurance.

Evacuation and reentry. The governor, a mayor, or a county judge who ordered the evacuation of an area stricken or threatened by a disaster could issue an order compelling people who remained in the evacuated area to leave and could authorize the use of reasonable force to remove people. A person authorized to be in the evacuated area or who had returned under a phased reentry plan would not be subject to the order. The GDEM would develop a phased re-entry plan to govern which groups would be allowed to enter previously evacuated areas and would develop a re-entry credentialing process with support from the Department of Public Safety. The plan would be required to allow local emergency management directors to make decisions regarding the timing and

implementation of reentry plans and provide them with flexibility to adjust a plan as needed.

A person who remained in an evacuated area and had a rescue effort conducted on that person's behalf by a governmental entity or nonprofit agency would be considered civilly liable to the entity or agency for the cost of the rescue effort if the person knowingly ignored a mandatory evacuation order and failed to act as a reasonable person would have acted. An officer or employee of the state or a political subdivision who issued or was carrying out a mandatory evacuation order would be granted immunity from civil liability for any act carried out within the scope of that person's authority under the evacuation order.

Communications coordination. The GDEM would create and select members for a communications coordination group to facilitate interagency coordination and provide communications support to joint, interagency, and intergovernmental task forces. The group would include representatives from the Texas military forces and the National Guard, FEMA and other federal agencies involved in communications support, the telecommunications industry and electric and gas utilities, the Department of Public Safety, Texas Department of Transportation, Texas Public Utility Commission, Department of State Health Services, and other state agencies involved in emergency management, the judicial branch of state government, and state agencies, counties, and municipalities affected by the emergency.

School district emergency operation plan. A school district's multi-hazard emergency operation plan would be subject to disclosure if the plan enabled a person to review the plan and verify that it met all requirements, including that the district had established a multi-hazard emergency operation plan; that the plan had been reviewed within the last 12 months; that district employees had been trained in emergency response procedures; that each school campus within the district had conducted mandatory emergency drills; that the school district had completed a security audit; and that the plan had addressed recommendations made by the school district's board of trustees. The disclosure requirement would apply only to a request received by a school district on or after the bill's effective date.

Authority granted to state officials. The bill would prohibit an emergency management director from exercising a power granted to the

governor by declaration of a state of disaster from seizing or otherwise using state or federal resources without prior authorization from the governor or the state or federal agency responsible for those resources.

2-1-1. A state-licensed nursing or convalescent home or assisted living facility would have to register with the 2-1-1 Texas Information and Referral Network and help the state in identifying people who would need assistance during an evacuation. Facilities would not have to identify individual residents who required assistance, but would have to notify each resident's next of kin or guardian about how to register for evacuation assistance with the 2-1-1 service. The GDEM would develop a plan for raising public awareness and expanding the capability of the information and referral network.

Post-disaster evaluation. The GDEM could request a state agency, political subdivision, or interjurisdictional agency to conduct an evaluation of the entity's disaster response and prepare a report identifying areas for improvement. The report would have to be submitted to the division within 90 days of its request.

Electric utility reports. Each electric utility would submit a report to the Public Utility Commission by May 1 of each year about the utility's identification of areas susceptible to severe weather damage, vegetation management, and the inspection of distribution poles. Each utility also would have to include a summary of the utility's activities related to emergency preparedness. The Public Utility Commission would have to adopt rules regarding the reports by October 1, 2009.

Other provisions. CSSB 12 would include circumstances of extreme heat in the definition of a disaster that caused or threatened to cause severe damage, injury, or loss of life or property for the purposes of emergency management. The bill also would consider a person who held a license, certificate, permit, or other documented evidence of qualification and was acting at the request of a state agency during an emergency to be licensed, certified, permitted, or otherwise qualified to act in the city or county in which the service was provided, in addition to those acting at the request of a local government entity.

The GDEM no longer would have to train local officials on activation of the Emergency Alert System, but would have to provide information on

the system's activation. The division would cooperate with FEMA on uniform guidelines for acceptable home repairs after a disaster.

A hospital that provided outpatient dialysis services due to a federal- or state-declared disaster would be exempt from state end-stage renal disease facility licensing requirements. The exemption would be provided only for hospital outpatient dialysis services on or after the bill's effective date

Law enforcement vehicles leased by a federal government entity would be authorized emergency vehicles. A police vehicle would be a vehicle used by a peace officer that was owned or leased by a government entity or by a private college or university that commissioned peace officers, or a private vehicle owned or leased by a peace officer that was approved for law enforcement uses by the head of the agency that employed the officer. A police officer's vehicle would have to bear a law enforcement agency's insignia regardless of whether the vehicle displayed an emergency light.

The Texas Funeral Service Commission would be required to ensure that a casket contained the deceased person's name, date of birth, and date of death, along with other identification information, and would be allowed to adopt rules to enforce the requirement.

Effective date. Unless otherwise noted, the bill would take effect September 1, 2009.

**SUPPORTERS
SAY:**

CSSB 12 would provide a necessary update to poorly worded or outdated provisions of the emergency management section of the Government Code and would provide a comprehensive approach to state emergency management to ensure the state was better-prepared for future disasters.

The state emergency plan annex required by CSSB 12 would address those areas where improvement was needed following Hurricane Ike and would help the GDEM coordinate stakeholders to ensure an efficient and effective distribution of resources among those areas in critical need. By requiring the development of a post-disaster response plan before the disaster occurred, the bill would eliminate confusion that occurred in the past, such as after Hurricane Ike. It would give much-needed flexibility to critical water and wastewater facilities by allowing mutual aid agreements. It also would help state and local emergency planners to understand the needs of fuel stations and prevent public confusion about which stations were available for use.

The bill would strengthen coordination between the state's judiciary and the other branches of government, allow state employees to receive compensatory time for participating in disaster response activities, improve recruitment and training of emergency volunteers, improve disaster evacuation and reentry procedures, and provide a clear definition of a first responder.

CSSB 12 deals mainly with preparation and planning and would be an inappropriate vehicle for expanding the eligibility for state reimbursement for costs associated with a disaster. The bill would allow state agencies to petition the Disaster Contingency Fund for reimbursement for purchasing property damage insurance.

**OPPONENTS
SAY:**

While CSSB 12 would address many concerns with the state's emergency management and disaster response system, more could be done. Cities and counties should be eligible to receive state financial assistance or reimbursement for providing emergency shelters to those evacuated during a state-declared disaster. Inland cities have spent millions of dollars in providing temporary shelter and housing to evacuees at their own cost.

**OTHER
OPPONENTS
SAY:**

This bill would duplicate current efforts in many areas. The GDEM already does a good job of coordinating among hospitals and housing entities. The utility reporting requirements contained in CSSB 12 are already required by the Public Utility Commission, and the North American Electric Reliability Corporation and National Electric Safety Code currently provide guidance for vegetation management, assessment of the susceptibility of utility infrastructure, and infrastructure improvement processes.

NOTES:

The House companion bill, HB 1831 by Corte, passed the House by 140-0 on April 24 and passed the Senate, as amended, on May 23.

HB 1861 by Eiland, continuing the operation of the judiciary during a disaster, passed the House by 138-0 on April 24 and passed the Senate, as amended, by 31-0 on the Local and Uncontested Calendar on May 21. The House concurred with the Senate amendments on May 25.

HB 4068 by Gonzales, continuing the operation of the judiciary during a disaster, passed the House by 144-0 on May 6 and was reported favorably, without amendment, by the Senate Jurisprudence Committee on May 21 and set on the May 27 Local and Uncontested Calendar.

HB 1695 by S. Turner, requiring electric utilities to create hurricane damage mitigation plans, passed the House 140-6 on March 26 and was referred to the Senate Business and Commerce Committee on April 27.

SB 936 by Carona, establishing a communications coordination group for emergencies, passed the Senate 30-0 on the Local and Uncontested Calendar on April 23 and was reported favorably, as substituted, by the House Defense and Veterans' Affairs Committee on May 15 and set on the May 22 General State Calendar.