

- SUBJECT:** Governor retaining authority when outside of state
- COMMITTEE:** State Affairs — favorable, without amendment
- VOTE:** 10 ayes — Cook, Giddings, Craddick, Farrar, Frullo, Geren, Harless, Huberty, Menéndez, Oliveira
- 0 nays
- 3 absent — Hilderbran, Smithee, Sylvester Turner
- WITNESSES:** For — Tom Smith, Public Citizen
- Against — None
- On — (*Registered, but did not testify*: Christopher Burnett, Office of the Governor; Nim Kidd, Department of Public Safety)
- BACKGROUND:** The Emergency Interim Executive Succession Act sets out the line of succession, whether temporary or permanent, for the exercise of the powers and duties of the office of the governor. Under this law, the next in the line of succession may exercise the governor's powers only if the preceding officer is "unavailable." Government Code, sec. 401.022 defines "unavailable" as unable to exercise the governor's powers and duties for any reason specified in the Texas Constitution.
- DIGEST:** HB 829 would add to the definition of "unavailable" three situations when the governor or a person authorized to act as governor was no longer able to exercise the powers and duties of the office, including:
- being located outside of the territorial boundaries of the contiguous 48 states of the continental United States;
  - providing notice that he or she would not rely on electronic communication while out of the state but within the continental United States; or
  - being outside of the state for more than seven consecutive days.

The bill would add Government Code, sec. 401.0225 to require the governor or person authorized to act as governor to reasonably notify the

person next in the line of succession if he or she were unavailable as defined in HB 829.

The bill would amend Government Code, sec. 401.025 to remove the requirement that, in order to act as governor, the president pro tempore of the Senate have held the office at the time the governor or lieutenant governor first became unavailable.

This bill would take effect on the date HJR 71 was approved by voters. If the constitutional amendment were not enacted, the bill would have no effect.

**SUPPORTERS  
SAY:**

HB 829 would clarify succession of power in statute, as well as in the Constitution, by defining the circumstances under which the governor was "unavailable." Today, with the instantaneous ability to communicate, the governor should be able to take advantage of these technologies and exercise elected authority while outside the state. The governor would be able to exercise the authority of the office for seven days while outside of Texas as long as the governor notified the lieutenant governor and stayed within the contiguous United States.

HB 829 would reduce confusion if succession should have to occur. Some statutes are written to effectively require the governor's presence in the state to be able to issue certain orders. For example, the bill would allow the governor to call on the Federal Emergency Management Authority in the event of a natural disaster even if the governor were out of the state.

The bill also would improve the notification process by requiring the governor to notify the lieutenant governor if the governor became unavailable.

The bill would not reduce transparency in the order of succession. The author plans to offer an amendment that would strike the provision in the bill removing the requirement in current law that, in order to act as governor, the president pro tempore of the Senate be in office at the time the governor or lieutenant governor first became unavailable.

**OPPONENTS  
SAY:**

HB 829 inappropriately would allow the governor to exercise authority while outside of the state. Despite the widespread availability of new communications technologies, there are times when the governor is more effective when physically in Texas and needs to be in the state to execute

the duties of the office.

OTHER  
OPPONENTS  
SAY:

HB 829 would reduce the transparency of succession by removing the requirement in current law that, in order to act as governor, the Senate president pro tempore be in that office at the time the governor or lieutenant governor first became unavailable.

NOTES:

The companion bill, SB 292 by Huffman, was reported favorably by the Senate Committee on State Affairs on March 26. SB 292 differs from HB 829 in that it does not include the provision that removes the requirement in current law that, in order to act as governor, the president pro tempore of the Senate have held the office at the time the governor or lieutenant governor first became unavailable.