



## **Capitol Update 3-15-21**

Greetings from your Texas Capitol! Things have been busy in Austin these past two weeks with committee hearings starting and bill filing deadline, so I have much to share. Let's dive right in.

### **Senate Joint Resolution 45 and Senate Bill 1025 (Rebalancing Powers in Times of Disaster)**

This past week, I filed two of my priority bills for this legislative session, SJR 45 and SB 1025. These bills will rebalance the legislative and executive responsibilities in times of disaster and emergency.

Current disaster law, which is based on the Texas Disaster Act of 1975, was designed to empower the executive branch to oversee an unencumbered, uniform response to potential threats facing Texas. However, the Act was also intended to engage the legislative branch as a check to this power—a check of power that is conspicuously unavailable outside of the regular session, which lasts for 140 days every two years.

Over the past several months, my team and I have undertaken an in-depth analysis of the state's current disaster laws. The COVID-19 pandemic and its attendant disaster declaration in Texas have led many to question what role the Texas Legislature plays in assessing and addressing large-scale disasters. When out of session, the legislature's prerogative factors into disaster planning only to the extent permitted by the governor. These pieces of legislation institute the legislative check originally contemplated by the disaster act without unnecessarily encumbering the governor's response to more routinely recurring disasters that do not affect a substantial number of citizens of the state.

Some of the major functions of SJR 45 and SB 1025 include:

- SJR 45, in conjunction with SB 1025, would install the legislative check originally contemplated in the Texas Disaster Act of 1975. Specifically, the legislation would require the governor to call a special session if he or she desires to continue a declaration past thirty days when any one of the following three conditions are met:
  - the declaration affects half of the state's population;
  - the declaration affects 2/5 (102 or more) of the counties; or
  - the declaration affects 2/3 of the counties in 3 or more trauma service regions
- SJR 45 provides an enforcement mechanism for ensuring that the special session occurs when appropriate. As proposed, it grants any sitting legislator at the time of the disaster with standing to challenge the executive branch at the Supreme Court of Texas (by giving them original jurisdiction in the case) if the governor fails to convene the legislature after a qualifying disaster or emergency declaration.
- Once convened, the governor then has the opportunity to receive advice and consent from the legislature on his current disaster waivers and actions. The legislature also has the authority to terminate or renew the order subject to constraints as it deems fit. This may be effectuated by a concurrent resolution or another legislative enactment that is not subject to veto.
- SB 1025 clarifies that only the legislature may suspend a provision of the Penal, Criminal Procedure, or Election codes during any disaster declaration.
- The bill also makes it clear that only the legislature may order the closure of specific classes of businesses or houses of worship during any disaster declaration.

I'm honored to have a bipartisan coalition of fourteen joint authors on my legislation, which includes three of my Democrat colleagues. In the weeks ahead, I look forward to working with my Senate and House colleagues to get this legislation passed and to put the constitutional amendment in front of you in November.

### **Newly Authored Legislation**

Due to the March 12<sup>th</sup> bill-filing deadline, my team and I have filed some final pieces of important legislation. Here are a few examples of bills I filed in the past two weeks:

***SB 13 - Oil and Gas Protection Act.*** SB 13 prohibits Texas state agencies that invest or manage funds from investing in companies that boycott energy companies. More specifically, it requires the Comptroller to prepare and maintain a list of all companies that refuse to deal with, or otherwise penalize another company because the company invests in or assists in the exploration, production, utilization, transportation, sale, or

manufacturing of fossil fuel-based energy. This list is then provided to the state agencies that invest funds, who in turn send a letter to the listed companies informing them that they are subject to divestment if they do not stop boycotting energy companies within 90 days. If the company does not stop boycotting energy companies, the state agency must sell, redeem, divest, or withdraw all publicly traded securities of the company unless the holdings are indirect holdings managed by investment funds or private equity funds. SB 13 further states that a governmental entity may not enter into a contract with a company for goods or services unless the contract contains written verification from the company that it does not boycott energy companies and will not boycott energy companies during the term of the contract. Investment and pension managers who invest based on political trends undermine their fiduciary duty and threaten our workers' and retirees' futures. This bill sends a strong message - if you boycott Texas energy, Texas will boycott you.

**SB 1178 - Family Unity Act.** All too often, district—and even appellate—courts in our state get it wrong when it comes to protecting parental rights regarding a third party trying to impose itself between a parent and a child. Currently, the underlying assumption of these courts when the parties in the case come before the judge is that the party suing the parent is as fit to parent or guardian as the parent. Our judicial system requires that citizens are innocent until proven guilty. The same standard should apply in family cases. The Supreme Court of the United States has emphasized parents' rights in common law, but these precedents sometimes fail to translate into lower court decisions. Senate Bill 1178 statutorily codifies Supreme Court of the United States jurisprudence regarding parental rights to prevent a third party from wrongfully interfering with the rights that a mother or father have to parent their own child and requires the court to presume that the parent is fit, and the third party must prove them unfit to parent. This standard of evidence in a civil proceeding is long overdue to ensure a parent is not separated from a child because a third party might be a better parent, but rather because the third party proves in court the parent has failed to meet the assumed standard of fitness to parent.

**SB 1261 - State Primacy on Environmental Permitting.** The bill provides that, to the extent not preempted by federal law, the state has exclusive jurisdiction over the regulation of greenhouse gas emissions in the State of Texas. The bill also clarifies that a municipality or other political subdivision may not enact or enforce an ordinance or other measure that directly or indirectly regulates greenhouse gas emissions. SB 1261 seeks to prevent local geopolitical subdivisions from regulating greenhouse gas emissions through their own climate plans. Texas businesses need regulatory certainty from the state and the appropriate regulator - the Texas Commission on Environmental Quality.

**SB 1262 - Texas Energy Choice Act.** SB 1262 will prevent cities and counties in Texas from banning natural gas as a fuel choice for residents. The bill preserves Texans' rights to have access to energy choices and prevents political subdivisions from discriminating against different utilities in issuing building permits and making zoning decisions. SB 1262 will not allow political subdivisions to pass codes, impose fines, or create ordinances that could have the effect of restricting a person or property owner's ability to use the services of a utility provider. The goal is simple - to ensure homeowners, builders, or business owners have access to balanced energy solutions that are efficient, affordable, and clean. Some urban cities in Texas are currently working on ordinances or issuing permits that would make certain utilities more expensive or outright looking to ban different energy sources like natural gas. This approach is politically motivated and deeply flawed. Natural gas fuels manufacturing and helps create jobs, and the natural gas industry is a significant contributor to expanding our local and national economy in a clean and sustainable way. Natural gas use helps meet our state's growing energy needs while ensuring that we don't overburden consumers and do not harm low and fixed-income Texans.

**SB 1586 - Appraisal District Reform.** Our current appraisal structure does not afford voter's concerns with appraisal districts to be heard on election day. In fact, most appraisal district boards are entirely appointed entities. Senate Bill 1586 would structure the membership of County Appraisal District Boards similarly to Gubernatorial appointments, where the governor makes a nomination, and then the Senate confirms the nominee. This bill would afford all the county's taxing entities to nominate candidates for the board, then the County Commissioners Court would be responsible for confirming sufficient nominees to the board of directors. The bill requires that of the five-member board, one member must be a resident from each of the Commissioners Court precincts and one board member being at large. This reform creates more direct accountability in our appraisal process by allowing directly-elected Commissioners to select the membership of the County Appraisal District's board from qualifies nominees on behalf of the county taxpayer.

**SB 1741 - Back the Blue Act.** During the past year, our nation witnessed a widespread erosion in the rule of law. In many places, protests turned into riots, and riots resulted in the destruction of property and the loss of life. In our state, businesses were damaged, and blood was shed. Senate Bill 1741 seeks to bolster our justice system with the tools necessary to deter and rein in rioting if or when it occurs. This bill creates an enhancement for certain criminal offenses commonly committed over the course of a riot. A riot is punishable as a Class B misdemeanor, and there is no enhancement for an additional criminal offense committed as a result of or in furtherance of a riot. The bill creates an enhancement penalty to the next higher category if the offense is committed during a riot. In addition, SB 1741 enhances the penalty for obstructing a highway or roadway to a state jail felony if the actor is knowingly preventing the passage of an authorized emergency vehicle that is operating its siren or emergency lighting system and enhances the penalty of blocking a hospital entrance to a state jail felony if the actor knowingly obstructs access to a hospital or a health care facility that offers emergency services. Overall, this legislation helps Texas remain a law-in-order state and provide needed protection for law enforcement.

#### **Joint-Authored & Co-Authored Bills**

As always, I welcome the opportunity to lend my signature and support to colleagues who are filing quality legislation, such as:

- **SB 16** (Nelson) – Over the last few years, certain state agencies have released many Texans' personal data without consent. These troubling revelations came to light after a slew of high-profile data hacks that exposed data held by third parties. This legislation requires any state agency to procure an individual's written consent prior to releasing any of their personal data.
- **SB 25** (Kolkhorst) – Throughout the COVID-19 pandemic, many Texans with loved ones in long-term care facilities were not allowed to see their family or friends. The heart-wrenching truth is that some of these individuals lost their loved ones without ever getting to say goodbye. Senate Bill 25 allows long-term care residents to designate up to two essential caregivers who cannot be refused visitation abilities.
- **SB 29** (Perry) – Recently, girls and women's sport have been subjected to the unfair intrusion of transgender athletes. Senate Bill 29 protects our female students' sports by requiring student-athletes to participate in the gendered sports team according to their sex at birth.

In addition to the bills listed above, I signed on to a slate of election integrity bills filed by Senator Paul Bettencourt (R-Houston). The purpose of these bills is to ensure qualified, legal voters can vote without concern about the efficacy of the election results. Below is a brief explanation:

- **SB 1110** — When a provision of the Election Code is being violated during an election, it is often necessary to immediately address the violation to avoid irreparable harm and uphold the integrity of our elections. The judicial system currently is not agile enough to address the urgent nature of election violations. Senate Bill 1110 creates a system of emergency review of election activity that would provide complainants immediate access to the court system for election violations alleged to be occurring during the election period.
- **SB 1111** — In the past election cycle, numerous individuals claimed residences at motels, post office boxes, and the like. Subsequent investigations found that many of these addresses were given fraudulently because of how difficult they are to verify when registering to vote. Senate Bill 1111 states that a person may not establish a residence for the purpose of influencing the outcome of a certain election and creates procedures to prevent the certification of fraudulent registrants. It allows lawful citizens via sworn affidavit to register themselves as voters if they are in a non-traditional residence such as a boat, RV, extended-stay hotel situation.
- **SB 1112** — Current state law requires election officials to verify voter signatures on mail-in ballots. During our last elections, many election officials failed to observe this requirement. SB 1112 provides criminal penalties for an official who suspends or fails the verification requirement in statute.
- **SB 1114** — Currently, the Secretary of State may use the Department of Public Safety (DPS) data to identify ineligible voters who are deceased or disqualified from jury duty. However, there is no such authorization to use this data in identifying individuals who are ineligible because of their citizenship status. SB 1114 allows the Secretary of State to use this same data from DPS to identify individuals who aren't citizens of our country and remove them from the voter rolls.
- **SB 1116** — While high profile offices, candidates, or propositions during elections garner much attention and their results are easy to find, many citizens have observed that "down-the-ballot" propositions are not widely reported and thus more challenging for the average citizen to find the final results of these elections. Senate Bill 1116 requires cities, counties, and school districts that maintain websites to publish election results no more than two clicks away from the governmental entity's homepage.

As always, I want to thank you again for reading this update from 'Team Birdwell.' I hope you found it informative and that you'll share it with your friends, family, and colleagues in Senate District 22, who may subscribe to the Capitol Update [by clicking here](#).

God bless,



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