



## **Senator Birdwell's 'Capitol Update'** **— SINE DIE EDITION —**

Greetings from your Texas Capitol! Or, in this case, from Senate District 22! Yes, the 87<sup>th</sup> legislative session has officially adjourned *sine die*, and I am back in the district at home with Mel. As always, my team and I are hard at work on our post-session newsletter that is mailed to all registered voters in the district. This multi-page document will cover all the major activities that took place during the session, what legislative issues we tackled, and much more. It's impossible to communicate in person with each one of the 900,000+ constituents I serve, so our newsletter serves as an excellent tool to help us reach the overwhelming majority of you. Look for the newsletter in late summer/early fall!

### **The Biennial Texas Budget**

Of all the actions taken by the Texas Legislature in any given session, the most critical is the crafting of the biennial state budget. Indeed, our state constitution mandates the passage of a budget as the sole requirement of the legislature at its regular convening every other year. Though many people were involved in the extremely rigorous budget-writing process, I applaud my friend and colleague, Senate Finance Chair Jane Nelson (R-Flower Mound), for her steady leadership in her fourth session as chair. Working with the House Appropriations Committee, we passed a responsible budget (SB 1) for FY 2022-23 and made appropriations to the key functions and needs of our state—transportation, public education, health care, public safety, and more. SB 1 was ultimately passed by a 31-0 vote in the Senate and is well within the population and inflation metric for a fiscally responsible budget for our state. Of note, SB 1 does the following:

- Funding for the full Foundation School Program entitlement, reflecting changes made the last session to the school finance formula, including:
  - \$3.1 billion to fund enrollment growth for public education; and
  - \$1.1 billion in additional state aid related to property tax compression in the 2022-23 biennium;
- Continued reforms to the Teacher Retirement System passed the last session through SB 12 to ensure the retirement fund remains actuarially sound for current and future retirees;
- \$8.5 billion for higher education institution formulas, an increase of \$486 million from the previous biennium, including fully funding Texas State Technical Colleges (TSTC) outcomes-based formula funding.
- Combined projected funding of \$8.4 billion for mental health across 25 state agencies, including:
  - \$86 million to bring additional state hospital beds online;
  - \$30 million for new rural and urban community mental health beds;
  - an increase of \$19.5 million to maintain operations for the Texas Child Mental Health Care Consortium;
  - over \$1 million in new funding for Senator Nelson's SB 64 from the 86th legislative session, to create a peer-to-peer counseling network and increase access to licensed mental health providers for Texas Law Enforcement Officers;
- \$352.6 million, an increase of \$10.2 million, for women's health programs, including the continuation of the Healthy Texas Women program's enhanced post-partum care services implemented by the legislature last session;
- \$7 million to maintain funding for Maternal Mortality and Morbidity safety initiatives as well as public awareness and prevention activities;
- \$123.5 million for increased reimbursement rates for uncompensated care in rural hospitals;
- Over \$40 million increase to lower target caseloads for conservatorship workers at Child Protective Services;
- \$44.2 million to expand Community Based Foster Care into new geographic areas to expand on this public-private partnership to protect children who have to enter the foster care system;
- An additional \$21.9 million for Children's Advocacy Centers and \$13 million for family violence shelters that have been significantly impacted by COVID-19;
- \$57.6 million to combat human trafficking;
- \$34.4 million to support Rape Crisis Centers, an increase of \$4.7 million from the budget as filed, to provide mental health counseling and to address reducing waitlists for those seeking counseling;
- \$34 million to provide a 3-percent pay increase to Department of Criminal Justice correctional officers working in maximum security units;
- Full restoration of state funding to Texas food banks and home-delivered meal programs;
- 100 percent appropriation of estimated available Sporting Goods Sales Tax, totaling over \$400 million, to support state parks and historic sites;
- Additional staff resources to strengthen the Public Utility Commission's oversight of ERCOT activities;
- Over \$30 billion to address the state's transportation needs, including \$26.5 billion dedicated for highway planning, design, construction, and maintenance.

### **House Bill 3 - Balancing Executive Authority (Burrows | Birdwell)**

During the COVID-19 pandemic, many Texans grew concerned with what they perceived as government overreach by way of the Governor's and local governments' pandemic-related restrictions. What few Texans know is that the unchecked "emergency powers" in the Texas Disaster Act are available to the Governor and county judges in any disaster—not just during a pandemic. The past year's events brought to light several institutional inadequacies related to our state's statutorily prescribed disaster and emergency response.

For background, there are two separate laws relevant to these discussions. The Texas Emergency Act, created first, provided the chapter of law for responding to emergencies such as violence, insurrection, and acts of terrorism. Next, the Disaster Act provided guidelines on how to respond to weather-related incidents and other acts of God. The need for two separate statutory frameworks arose because the strategic response to emergencies varies greatly from that of disasters. Unfortunately, since their original adoption in the 70's, as they have been amended since that time, the distinction between emergencies and disasters statutes has all but dissolved, and the executive branch may functionally coningle these respective powers under a single, unified gubernatorial authority.

The Texas Legislature meets every other year for only 140 days, creating situations whereby during an emergency or disaster, duly elected senators and state representatives are not convened and able to represent the views of those they represent. In fact, the Texas Legislature was the very last legislative body in the country to convene once COVID-19 reached our nation. This means that a future governor could leverage the interim between legislative sessions against the legislature, and effectively the citizens, by not calling a special session to address the issues that are ongoing due to a disaster or emergency that effect a significant amount of Texas citizens. This potential overreach of a future executive may not be isolated to pandemics. In fact, Texas' current disaster and emergency laws delegate wide-ranging and unspecified suspension authorities of law to the Governor regardless of the type, size, or scope of the underlying disaster.

That is why, working with other 16 senator who signed on as co—authors, I introduced SB 1025 and SJR 45 in order to rebalance the branches of government during disasters and emergencies. In fact, on April 8, this legislation passed the Senate 30-1.

However, this effort was met with resistance in the House of Representatives. The House's proposal to address this issue was HB 3, authored by Rep. Dustin Burrows. As passed by the House, HB 3 did not reform the Texas Disaster Act. Instead, it created a new section of law in Ch. 418 of the Government Code that would have applied only to future pandemics. I cannot overstate that the problems with our disaster and emergency laws **are not** confined to pandemics that may occur once in a generation. The inherent imbalances codified in the Texas Disaster Act warrant a comprehensive reform from our state legislature.

When the House version dealing with executive overreach arrived in the Senate, two very different approaches were on a collision course. I felt obligated to rein in the Texas Disaster Act's sweeping delegation of legislative authority by engaging the legislature in the decision-making process during large-scale disasters and emergencies and to give the legislature the ability to check the executive, which it currently does not have when not in regular session. The legislature is the sovereign embodiment of the people, and the pre-dominant branch of government. It cannot--nor should it--delegate this representative duty at any time, much less during a time of disaster or emergency. For these reasons, I was compelled to remove the narrowly-crafted provisions of HB 3 and replace them with my originally filed legislation, SB 1025 and SJR 45, which the Senate passed to the House on April 8, but never received a hearing in the House. As substituted into HB 3, my legislation took an integrated approach to reforming and synchronizing the Texas Disaster Act and the Emergency Declaration Act.

I was grateful that 30 of 31 senators supported the comprehensive approach to fixing HB 3, and they joined me in sending a much-improved version to the House. The House responded by taking HB 3 to a conference committee where we discussed each chamber's proposal for addressing the Disaster Act. Despite the best efforts of myself and HB 3's original author, Rep. Burrows, the conference committee was unable to resolve our differences. Some may believe that the decision to substitute the House's version of HB 3 with the Senate's version may have been an exercise in allowing a perfect solution to become the enemy of a good-enough solution. This opinion assumes that the House's version of HB 3 was, in fact, a good-enough solution. In reality, because emergencies and disasters are not constrained to pandemics, the House's approach would not have addressed the overly broad delegation of legislative authority found in the Texas Disaster Act.

The House's version of HB 3 was not harmful on its face; nonetheless, only addressing a pandemic would have had a chilling effect on any meaningful Disaster Act reforms in the future. By passing the House's version of HB 3, which I view as a 5% or less portion of the solution to the larger issue, the legislature would have signaled to voters that the foundational problems in the Texas Disaster Act had been adequately addressed. Members of the next and future legislative sessions would be enabled to argue we addressed it last session, no matter how inadequate. Instead of allowing this institutional inertia to settle in upon the passage of a pandemic-only approach to the Disaster Act in the current session, I believe it serves Texans better if their legislators give their full attention to this problem next session rather than acquiescing to a minimal "solution" this session. In any case, I am determined to restore our state's constitutional separation of powers by overhauling the Texas Disaster Act in the 88th Legislative Session. Should you return me to the Senate in 2023, I'll be right back to work on this issue.

You can read more about the originally filed version of SJR 45 and SB 1025 and the greater granularity of the structural issue [HERE](#) and [HERE](#).

### **Permitless Carry is awaiting Governor's Signature (HB 1927)**

House Bill 1927 by Rep. Matt Shaefer (R-Tyler) and sponsored by Senator Charles Schwertner (R-Georgetown) is now on the governor's desk awaiting his signature! Once signed, this bill will go into effect on September 1, 2021.

House Bill 1927 is a permitless carry proposal that allows law-abiding citizens to carry a handgun without a state-issued License To Carry (LTC). The function of House Bill 1927 is to ensure that Texans who are lawfully able to carry a handgun can do so for personal protection and the protection of their family.

This bill asserts the right of all law-abiding citizens age 21-and-older to carry a handgun. With the passage of HB 1927, you will be able to carry a handgun in a holster in public places where it is not otherwise prohibited. Below is a more detailed breakdown of what the bill does.

#### **Upholds Current Prohibitions on Purchasing and Carrying**

- People who are prohibited from possessing a handgun will still be prohibited from possessing a handgun.
- Sensitive places where the unlicensed carry of a handgun is prohibited will still be prohibited.
- The prohibitions for places like public schools or bars will not be changed, and carrying on public college campuses will remain the same as current law, where you must have an LTC and you must carry concealed if you want to go into a building on a public university campus.
- HB 1927 has no impact on the purchase or transfer of a firearm.
- Background checks will still be required when you purchase a gun at a retailer.

#### **Enhances Penalties for Unlawful Carrying of a Handgun**

- It will now be a 2nd-degree felony with a five-year minimum in prison if a felon is caught carrying a handgun, elevated from a 3rd-degree felony.
- Enhances penalty for family violence offenders from a class A misdemeanor to a 3rd-degree felony
- Reinstates the criminal offense to carry your weapon while intoxicated, which is a Class A Misdemeanor under current law, and will remain the same under HB 1927. [I offered the amendment on the Senate Floor].
- Provides a defense to prosecution for accidentally carrying a handgun in a prohibited location. The defense does not apply if there is signage posted prohibiting entry with a firearm.

#### **Protecting the Rights of Business owners**

- Most business owners and private property owners will still have the right to exclude handguns on their property in the same manner they do today.

In addition to these changes, the bill also requires the Texas Department of Public Safety (DPS) to create a free, online training course that is available on their website for anyone interested in taking the training. A responsible citizen and gun owner must understand how to operate a handgun and the laws that regulate the carrying of a handgun, which is why I highly recommend taking an LTC course. I have always been an ardent supporter of the 2nd amendment. I believe HB 1927 ensures all law-abiding citizens can keep and bear arms without a state-issued License To Carry (LTC), which further guarantees a citizen's 2nd amendment rights.

#### **Quick Updates on Senator Birdwell's Key Bills**

- **HB 885 - Navarro College Nursing Program (Harris | Birdwell)** During this legislative session I helped to pass HB 885, an important piece of legislation that I had the privilege of working with Rep. Cody Harris since last session. The passage of HB 885 gives Navarro College the opportunity to offer a 4-year bachelor's degree program in nursing. With the growing need for health care in our district, and across the state, HB 885 puts Navarro College in the right position to start producing BSN-degree holding nurses to meet the Ellis County medical sector's growing demand.
- **SB 741 - Increasing Local Discretion to Improve School Safety (Birdwell | Sanford)** This session, I am very proud to say, the legislature passed Senate Bill 741 giving school districts the option of allowing qualified school marshals to conceal carry a firearm on their campus. The time it takes for a marshal to access their firearm, should they need to, is critical for ensuring the safety and well-being of Texas students. Carrying a firearm allows marshals to cut down on that time. In giving school districts the discretion to allow their marshals to conceal carry, Senate Bill 741 enhances the security measures available for Texas schools.
- **SB 742 - Installment Payments (Birdwell | Anderson).** During the pandemic, I heard from dozens of business owners who were forced to shutter their businesses but, nonetheless, expected to pay their property taxes in a lump sum. SB 742 acknowledges these hardships by authorizing taxing units to grant adversely-impacted businesses the ability to pay property taxes in installments. Prior to this legislation, only physically damaged property qualified for installment payments. After this legislation goes into effect, a business located in an emergency or disaster area that suffers purely economic damages, will be able to pay its property taxes in four equal installments. I want to specifically thank Kari Lalani of Waco, for bringing this issue to me and working to help get the bill passed.
- **HB 2675 - Protecting Victims of Violence (Guillen | Birdwell)** Texans who face an increased risk of violence should not have to endure a prolonged period of waiting to receive a license to carry. With this goal in mind, HB 2675 allows those under an "increased risk designation" to receive a handgun license through an expedited process. Those granted this designation include victims of sexual

assault, stalking, domestic violence, as well as family members of these victims. HB 2675 aims to protect Texans who find themselves in more vulnerable situations by offering a quicker path to self-protection.

- **HB 1758 - Establishing Policy for the Use of Autonomous, Deadly Drones by Police (Krause | Birdwell)** HB 1758 requires law enforcement agencies that plan to deploy drones in the field, to draft a written drone policy which they must submit to the Texas Commission on Law Enforcement. This legislation also prohibits the use of deadly force with autonomous drones, or—put another way—any drone that is not remote-controlled by a human operator. HB 1758 provides foundational due-process protections while still allowing law enforcement agencies the flexibility to adopt their own policies with drones.
- **HB 1387 - Protecting Foster Parents' 2nd Amendment Rights (Harris | Birdwell)** HB 1387 extends the existing rights of most Texans to foster parents by allowing them to safely store their firearm, with its ammunition, in their own private residence. This legislation removes the current restrictions placed on foster parents which require them to store their firearm and ammunition in separate locations or store them together with a trigger guard on the firearm. HB 1387 removes these separate storage requirements, ensuring all qualified individuals who wish to become foster parents do not have to choose between helping children and fully exercising their Second Amendment rights to home defense or carrying on their person while performing foster parent duties.

#### **Updates on other Key Bills:**

- **SB 3 - Protecting the Electric Grid (Schwertner)** Winter Storm Uri revealed crippling and unacceptable deficiencies in our state's electricity infrastructure and oversight. The most consequential and repeatedly mentioned problems include a lack of weatherization, a lack of oversight by the PUC and ERCOT, a breakdown of communication, and failures of coordination within and between state regulatory agencies. SB 3, which awaits the Governor's signature, will enact provisions aimed at addressing these issues with the goals of ensuring the State of Texas has a reliable electricity grid and strengthening the state's prevention of and preparation for emergencies that may impact energy availability.
- **SB 8 - The Heartbeat Act (Hughes, Birdwell, et al.)** I am pleased to announce that SB 8 has been signed by the Governor. When the Texas Heartbeat Act takes effect on September 1, all elective abortions after the pre-born child's heartbeat is detectable will be prohibited. Without a doubt the Heartbeat Act stands as the most significant pro-life legislation ever passed in the State of Texas. I consider it a blessing to have been a joint author of this new law which will save countless, innocent lives.
- **SB 1239 & SJR 27 - Religious Rights (Sanford | Paxton).** I am pleased to announce that SB 1239 has been signed by the Governor and it's corresponding constitutional amendment has been approved for submission to the voters at the November 2, 2021 election. This major piece of legislation protects the freedom of religion by preventing the future closure of places of worship through the use of emergency powers. From today moving forward, a government entity or public official will no longer have the power to issue an order to close a place of worship in the State of Texas. If a church and the surrounding community faces imminent danger or destruction from an impending natural disaster, local authorities will still have the ability to execute mandatory evacuation orders.
- **HB 1280 - The Human Protection Act (Capriglione, et al.)** The legislature also created a legal framework to abolish abortion that would only go into effect if the current constitutional impediments (i.e., Roe v. Wade) are removed. Under this legislation, Texas law would automatically "trigger" a ban on abortion and return our laws to pre-Roe as they were in 1973 once such a prohibition becomes constitutionally permissible. If not for this legislation, current Texas law would continue to implicitly recognize lawful abortions even after Roe v. Wade is overturned. HB 1280 will ensure that Texas doesn't waste a day protecting the value and dignity of human life.

#### **Senate Committee on Natural Resources and Economic Development**

During the 87<sup>th</sup> Legislative Session, I again had the pleasure of serving as Chairman of the Senate Committee on Natural Resources and Economic Development. This is the Committee of jurisdiction for issues pertaining to the oil and gas industry; air quality; environmental permitting relating to landfill, concrete and aggregate, and petrochemical operations; economic development incentives and programs; and any legislation that might impact or change Texas Labor Code. This session the Committee heard 92 pieces of legislation and had the opportunity to consider a number of high-priority bills, a number of which I authored or sponsored.

- **Senate Bill 13 - Oil and Gas Investment Protection Act (Birdwell/P. King).** Some investment and pension managers have chosen to invest based on political trends which undermine their fiduciary duty and threaten our workers' and retirees' futures. Wealthy investment managers are denying capital to energy companies, wielding their money and power with one goal in mind: destroying the oil and gas industry. SB 13 prohibits Texas state agencies from investing in companies that boycott energy companies. Specifically, it requires the Comptroller to prepare and maintain a list of all publicly traded financial services, banking, or investment companies refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, harm, or limit commercial relations with a company because the company engages 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 for the state, 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. If the financial company does not stop boycotting energy companies the state agency is required to sell, redeem, divest, or withdraw all publically traded securities of the financial company unless the holdings are indirect holdings, akin to a mutual fund or hedge fund, that are managed by investment funds or private equity funds. The bill does include provisions to ensure that state agencies can cease divesting to the extent necessary to ensure that the agency does not suffer a financial loss or deviate from its investing guidelines. The bill also addresses state contracting by prohibiting governmental entities from entering 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. SB 13 sends a strong message to both Washington and Wall Street - if you boycott Texas energy, Texas will boycott you.

- **Senate Bill 1257 - Property Redevelopment and Tax Abatement Transparency Act (Birdwell/Murphy).** SB 1257 increases transparency within the Property Redevelopment and Tax Abatement Act, which provides certain taxing units with the ability to provide tax abatement agreements to property owners. The bill requires chief appraisers to provide the Comptroller with a general description of any agreement reached under the Act, including the kind, number, and location of all proposed improvements to property that is the subject of an agreement. Requiring this information to be submitted separately to the Comptroller will serve to allow the Comptroller to more easily compile information related to property use for categorization and record keeping. Texans deserve to have local transparency by knowing into what agreements their local governments enter, and the legislature needs this information in order to provide proper oversight to tax incentives statewide.
- **House Bill 17 - Texas Energy Choice Act (Deshotel/Birdwell).** I sponsored HB 17, by Representative Deshotel, and filed the Senate companion, to prevent cities and counties from discriminating against energy providers. Certain urban cities want to limit or end the use of certain energy sources, such as natural gas. HB 17 prevents political subdivisions from passing codes, imposing fines, or creating ordinances that could restrict a person, or entity's, ability to use the services of the utility provider they wish to utilize. This serves to ensure that homeowners, builders, or business owners have access to energy choices that are efficient, affordable, and clean. Texans deserve energy options. Policies that mandate a single energy source for home and businesses takes away choices and raises prices for all customers. These discriminatory and costly policies must not be allowed in our state.
- **HB 4722 - Texas Emissions Reduction Plan (Landgraf/Birdwell)** The Texas Emissions Reduction Plan, or TERP for short, is a grant program that the state provides as a means to reduce mobile emissions in areas of the state that have elevated levels of air pollution. These areas are deemed non-attainment or near non-attainment because they are not in compliance with the federal National Ambient Air Quality Standards (NAAQS), or in jeopardy of not meeting the standards. TERP is the only tool available to the state to reduce mobile emissions, which if reduced, will help get the state in compliance with the Federal NAAQS. Not adequately addressing the NAAQS can result in what's called a Federal Implementation Plan (FIP), which entails a loss of state control over emissions reduction planning, and thus a total loss of state decision making over emissions reduction planning. Quite simply, TERP is necessary to retain the state's freedom of maneuver and self-determination as the NAAQS standard is being constantly lowered year after year. This session we ensured that TERP funding was placed outside of the state treasury so that funding for this important program is ensured year after year. HB 4472 also brought the Texas Department of Transportation (TxDOT) the table to work in tandem with the Texas Commission on Environmental Quality (TCEQ) to reduce Nitrogen Oxide (NOx) emissions. Specifically, the bill sends at least 35% of all TERP funds to a newly created program used for Congestion Mitigation and Air Quality (CMAQ) projects in nonattainment and near-nonattainment areas to be administered by TxDOT and verified by TCEQ. Moving traffic means less NOx. The bill also expands the New Technology Implementation Grant (NTIG) program, within TERP, to include more projects that reduce flaring emissions and other site emissions among the projects for which the TCEQ is required to give preference to in awarding grants under the program. The state developed the TERP program out of a need to meet federal emissions standards, and Texas has continued to develop the program to best meet the needs of Texans and Texas businesses.

Before we close out this *sine die* edition of the Capitol Update, I want to thank the members of my staff—"Team Birdwell"—who help me in serving the constituents of this district. I answer to the citizens of 10 counties and more than 100 communities, and doing so would be far more difficult without the dedicated team I have in place. I'm proud of the work they do for you each day.



*Pictured here for the annual session team photo. Proud of the work we've done the past 140 days. Pictured here from left to right (back row) myself, JW Galloway, Clint Harned, Tucker Royall, Carter Byrum, Garrett Taylor, Sam Johnson, Cole Nieman. (Front row) Shelly Verlander, Tori Villarreal, Anna Barnett, Kirstee Bock, Suzy DeArmond.*

As always, I hope our Capitol Update is informative and that you'll share it with your friends, family, and colleagues in Senate District 22. I look forward to seeing you all out and about in the district!

Thanks for your interest, and God bless,

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State Senator, District 22

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