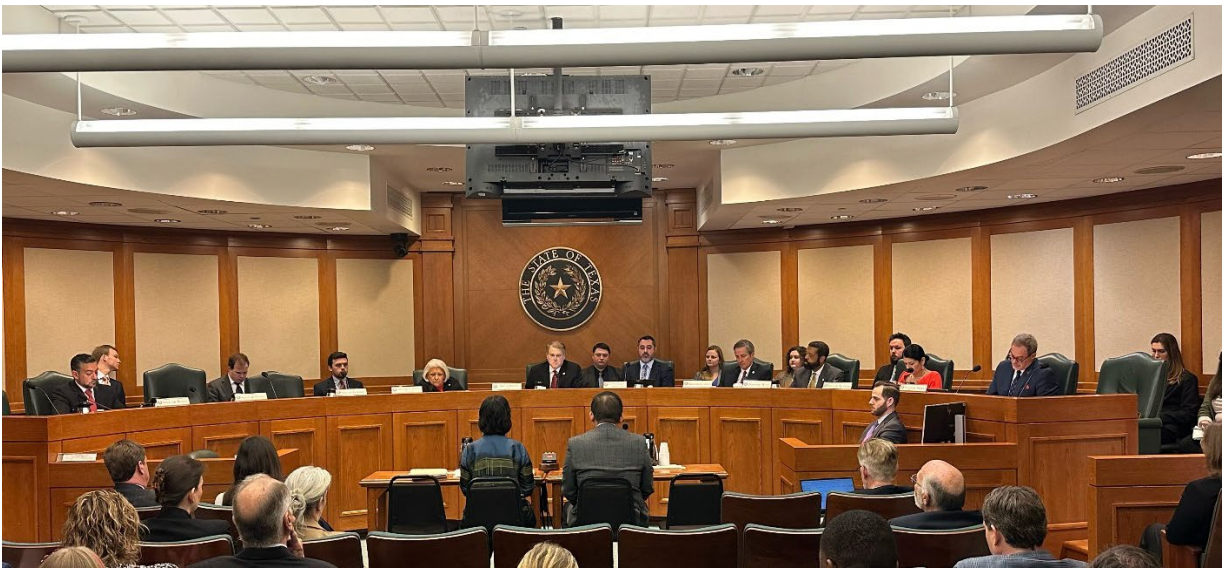


Capitol Update 3-6-23

Greetings from your Texas Capitol! It's a busy time for us here at the statehouse in Austin. My staff and I are hard at work with committees starting to actively hear bills and the bill filing deadline rapidly approaching on this Friday, March 10th. I have lots to share in this edition of the Capitol Update, so let's dive right in.



Chairing my first Natural Resources and Economic Development committee hearing for the session on 3/1/23.

Senate Joint Resolution 58 and Senate Bill 1104 (Rebalancing Powers in Times of Disaster)

In recent weeks, I re-filed two of my priority bills for this legislative session, [SJR 58](#) and [SB 1104](#). This constitutional amendment will rebalance the legislative and executive responsibilities in times of disaster and emergency. These two bills passed the Senate 30-1 last session. 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 58 and SB 1104 include:

- SJR 58, in conjunction with SB 1104, 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 58 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 1104 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 thirteen joint authors on my legislation, which includes four of my Democrat colleagues. I am also proud to announce that Representative Shelby Slawson has filed companions for both SJR 58 and SB 1104 in the House of Representatives. 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 this coming November.

Newly Authored Legislation

In the last Capitol Update, I wrote about the twelve pieces of legislation I had filed at that time. Since then, I have filed an additional nineteen, including my priority bills mentioned above. As we approach the March 10th bill-filing deadline, my team and I are still working on some final pieces of important legislation and I will update you on those in the next edition. Here are breakdowns of the legislation I have filed since the last update and all can be found online [here](#):

Legislation Related to Giving the People's Representatives a Larger Voice

SJR 59: SJR 59 would propose a constitutional amendment to eliminate the 60 day preclusionary period at the start of every legislative session allowing the Legislature to consider and act on legislation when first convened. Additionally, this amendment would repeal Section 5(c), Article III that would require an affirmative four-fifths vote to take up legislation in the first 60 days.

The Texas Legislature has a constitutional time stipulation of convening 140 days every odd year. Additionally, the first 60 days is currently limited to specific items, further constraining the Legislature's time and ability to consider important legislation. The first 30 days are devoted to emergency appropriations, confirming Governor appointees, and emergency items submitted by the Governor. The remaining 30 days the various committees may hold hearings for pending business and the Governor's emergency items. Either chamber can determine its order of business and forgo the 60 day stipulation with an affirmative four-fifths vote of its membership.

With Texas being a part time legislature, convening only 140 days every other year, the Legislature already faces a major time constraint to consider and pass legislation. The 60 day preclusionary period further limits the period of time in which legislation may be considered. Realistically, the legislature has 80 days to act on

legislation every other year. Eliminating this provision would allow the legislature more time to consider and act upon legislation for the citizens of Texas within the entire 140 day session.

SJR 60 & SB 1105: The Texas Legislature currently has the power under the constitution to impeach, remove, and suspend public officers without the need to call a special session. However, the part time nature of the Texas Legislature impedes their ability to hold public officers accountable year round.

The State's inability to ensure state, county, local officials, and those appointed at those levels enforce the laws of this state became apparent when Florida Governor Ron DeSantis exercised his Florida constitutional authority to remove public officials from office when a state attorney publicly committed to refuse to enforce the state's abortion laws. Texas has seen a rise in various judicial and local officials who have public stated, declared, or voted in favor of resolutions pledging to vacate their oaths of office to "preserve, protect, and defend" by refusing to enforce a set or subset of the laws of Texas. By authorizing the Governor to suspend public officers and adding legislative checks and/or oversight of the suspension, the Legislature and Texas voters can further ensure that their elected officials do not vacate or disavow their oath of office.

Some of the major functions of SJR 60 and SB 1105 include:

- SJR 60 , in conjunction with SB 1105, would bestow upon the Governor of Texas the ability to suspend a state, county, or municipal public officer or elected official from office for violating their oath to protect and defend the laws of this State. In order to be suspended, the officer must commit one of the following:
 - Publicly declare in writing or verbally that they will not follow or enforce the laws or subset of laws of this state; or
 - Be finally convicted of a felony.

After the Governor suspends the public officer and appointed a temporary replacement, the Senate must meet within a 30 day period to sit in judgement of the suspension and vote on the question of permanently removing the suspended officer. The Governor must present his reason for the suspension to the Senate and the suspended officer will have the opportunity to offer a defense as well. If the majority of the Senate present votes to uphold the Governor's suspension, then the suspended officer is removed from office and disqualified from holding public office again in Texas. The Governor will then appoint a replacement for the disqualified office holder until the next general election. However, if the Senate does not vote to uphold the suspension then the official is reinstated.

SJR 61: SJR 61 would propose a constitutional amendment establishing an automatic veto session if the Governor vetoes legislation that received at least a two-thirds vote in one of the two chambers. The veto session will convene 30 days after Sine Die to consider vetoed legislation that received a two-thirds affirmative vote and the veto session will last no longer than five days. The vetoed legislation will first be considered in the chamber that passed the bill by a two-thirds vote - regardless of which chamber originated the bill. This affords the legislature the opportunity to be heard after the Governor's decision and not have to wait two years to refile the legislation in the next regular session.

SJR 62: SJR 62 proposes a constitutional amendment that lowers Texas' quorum threshold from two-thirds to a simple majority. SJR 62 will also put Texas in line with 46 other states by making it more difficult for a few to dictate to the many.

Article III, Section 10 of the Texas Constitution established a quorum of two-thirds of each House to do business. Additionally, the Senate and House rules currently state "two-thirds of the House shall constitute a quorum to do business." Historically, a lack of quorum or "quorum busting" has been utilized by a minority party in attempts to hinder the Legislature from being able to convene or conduct regular business.

The intentional breaking of a legislative quorum is relatively rare across the country; however, it frequently occurs in the four states, including Texas, that maintain a supermajority quorum standard. In keeping with our nation's founding principles, it is imperative that Texas adopt a quorum standard that will prevent a minority from wielding a disproportionate power so as to render the Texas Legislature incapable of responding to the will of the majority of Texans. This item was on Governor Abbott's special session call in 2021 and I believe it is important enough to refile.

SJR 63: While the Texas Legislature can consider and act upon any legislative matter during a regular session, the Legislature may only act upon certain topics determined by the Governor during a special session. In other words, the Legislature has a "limited scope" during a special session. SJR 63 will allow the Legislature to consider legislation on any subject during a special session called by the Governor in addition to the subjects that the Governor has designated in the proclamation. If the Governor calls a special session and puts items A, B, and C on the call, the Legislature may also consider D or E at its discretion.

SB 1106: Under current statute, the Legislature can only terminate a Governor's disaster declaration through "law". By this definition, a bill must pass through both chambers of the Legislature and be signed by the Governor in order to terminate the Governor's disaster declaration. SB 1106 gives the Texas Legislature the ability to terminate the Governor's disaster declaration by concurrent resolution in lieu of a filed bill.

Legislation Related to Natural Resources and Economic Development Committee

SB 1017 – Texas Fuel Choice: "California style restrictions on engines or fuel sources that limit consumers and business owners from being able to access the energy sources they need have no place in Texas."

The proposed legislation will prevent political subdivisions in Texas from adopting or enforcing any regulation that prohibits or restricts the use, sale, or lease of an engine based on its fuel source. The bill would ensure that a political subdivision can still adopt or enforce regulations relating to an engine that does not effectively prohibit or restrict the engine and is not preempted by state or federal law. The bill would also prohibit political subdivisions from enacting regulations that would limit access to an energy source or that results in the effective prohibition of a wholesaler, retailer, energy producer, or related infrastructure that is necessary to provide access to a specific energy source. Pleased to file as a companion with Rep. Brooks Landgraf.

SB 1167: SB 1167 authorizes the city of Waco to receive a 10 year tax rebate related a new qualified hotel project (QHP). These qualified projects are individually authorized by the Texas Legislature, and promote the construction of large hotels designed to accommodate convention centers. The rebates associated with qualified hotel projects include state sales and use taxes as well as state hotel occupancy taxes. Following diligent work during the interim to ensure these projects are appropriate and generate a net positive for the state and its citizens, this legislation includes claw back protections. These protections include a provision that if the QHP has not generated enough new taxes to offset the rebated investment by the state, the city is required to remit the municipal Hotel Occupancy Taxes from the QHP back to the state until the amount remitted makes the state whole on its investment.

Legislation Related to Family and Parental Rights

SB 1163: Currently, the Department of Family and Protective Services (DFPS) has the unilateral authority to add the name of an individual they suspect of child abuse or neglect to the Central Registry List. This bill addresses the lack of due process with the DFPS Central Registry List. The claim of abuse or neglect that would add an individuals name on the central registry list would have to be adjudicated by a court of law before adding a name to the list. Currently, simply an accusation (substantiated or not) can have you placed on the registry affecting your employment or other impacts without a finding of guilt. The citizen has to apply for removal. That is the inverse of the principal of innocent till proven guilty. Also, courts of appeal and the Texas Supreme Court would be able to request an individual's name be removed from the Central Registry List if they find the claim of abuse or neglect to be unfounded, and individuals whose name is added to the Central Registry List would receive a notification describing the Central Registry List and the process to appeal their name being added to the list.

SB 1164: An issue of parental rights has been highlighted in Texas Supreme court case, *In Re C.J.C., Relator*. Traditionally, parents are presumed to be fit in making decisions in the best interest of their child. However, this is not stated in statue for modification proceedings when transferring custody of the parent's child to a third party. The Texas Supreme Court Justices, in *In Re C.J.C., Relator*, ruled parents have the "fundamental right to make decisions concerning the care, custody, and control" of that child. Current statute does not conflict with this ruling, however it is not directly stated in statute either. SB 1164 codifies the Supreme Court's ruling, and clarifies that suits by non-parents requesting custody must provide evidence that overcome the presumption that the parent makes decisions that are in the best interest of the child.

SB 1165: Currently under state law, state agencies or child placement agencies can require current or prospective foster parents to provide a registry cataloguing firearms in their household. SB 1165 ensures that no state agency or child placing agency engaged in the licensing of foster homes may require or request a list of weapons or ammunition from a prospective or licensed foster home. If any child placing agency violates this

chapter, it will result in a civil penalty up to \$5,000. Previous legislation has amended this chapter relating to the storage and safety mechanisms of firearms within a current or prospective foster household. The prospective or current foster family would still be required to disclose the ownership of a firearm followed by a storage inspection by the child placing agency; however, the agency may not require a list or registry of each firearm within the household. Pleased to file this companion bill with Rep. Cody Harris.

Miscellaneous

SB 1166: Under Texas law, burglary of a vehicle can range from a Class A misdemeanor to a third degree felony depending on various factors including criminal history and the intended felony or theft within. Currently, the only specified offense that increases the punishment to a third degree felony is a burglary with the intent to steal a controlled substance. However, no other items are specifically mentioned within this section of code, leaving a gap regarding the theft of other dangerous items. For example, the intentional theft of a firearm during a vehicle burglary would qualify as a Class A misdemeanor. SB 1166 would add the criminal offense of burglary of a vehicle with the intent to commit theft of a firearm to the Texas Penal Code. The only specified theft offense in this section, which constitutes a third degree felony, is the burglary of vehicle owned by a wholesale distributor of prescription drugs with the intent to commit theft of a controlled substance. SB 1166 would add burglary of a vehicle with intent to commit theft of a firearm as a separate offense that also constitutes a third degree felony. This legislation would also add the definition of firearm to this section, which carries the same definition assigned by Section 46.01 of the Texas Penal Code.

SB 1168: 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 1168 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 qualified nominees on behalf of the county taxpayer. The current structure allows the nominating taxing entities to then vote proportionately to their property value within the appraisal district thus nominating and confirming whom is to serve. This selection process of nominating and confirming needs to be divided to best serve the citizen.

SB 1169: Presently under state law, current sitting judicial officers, the attorney general, district attorneys, US attorneys, criminal district attorneys, county attorneys, municipal attorneys, and assistant attorneys are permitted to carry handguns in weapon restricted areas including courthouses if they are licensed to carry. While active judges and justices are permitted to carry in restricted areas, they lose that privilege after retirement. With the increasing backlog of cases as a result from the pandemic, retired judges have presided over cases. While they are acting as the presiding judge in some cases, they are still classified as retired and are not able to carry in the chamber or proceeding. SB 1169 amends Section 46.15 (a) of the Penal Code to allow retired judges or justices to carry a handgun if licensed to carry a handgun. Pleased to file the companion bill with Rep. Shelby Slawson.

SJR 52: In 2017 the Texas Legislature passed SJR 2 which formally called for a convention of the states under Article V of the United States constitution with a specific focus on imposing fiscal restraints on the federal government, limiting the power and jurisdiction of the federal government, and limiting the terms of office of federal officials and members of Congress. SJR 38 also passed in the same session, which issued a call for a convention of the states with an established expiration date of eight years. My resolution for the 88th Legislature, SJR 52, will extend the sunset date an additional eight years on the State of Texas's call for a convention of the states. While I did initially file a complete elimination of the sunset clause for the convention of the states, I also filed this legislation to give my colleagues in the legislature the option to at least extend the call for a convention on the three subjects above.

Border Visit with Governor Abbott

Two weeks ago, as part of my duties as the Senate Border Security Committee chairman, I joined Governor Abbott for a roundtable discussion and press conference with Operation Lone Star officials and Representative Ryan Guillen—who chairs the House Homeland Security & Public Safety Committee. During the roundtable discussion, we worked to outline the legislative actions needed to continue funding the state's historic defense of the border and Texas' expanding strategies to secure our southern border. Governor Abbott recently

designated border security as one of his emergency items for this legislative session during his State of the State address.



On my right, Rep. Ryan Guillen, on my left, Gov. Greg Abbott, the Governor's appointed Border Czar, Mike Banks, Texas Department of Public Safety (DPS) Director Steve McCraw, and Adjutant General of the Texas Military Department Major General Thomas Suelzer.

Senate Bill 1: The 2024-2025 State Budget

As I mentioned in the last Capitol Update, the Senate Finance Committee has begun the rigorous process of crafting the 2024-2025 budget. Though the budget the Senate negotiates with the House won't get to the Governor's desk till late April or early May and these numbers are not yet final, I wanted to provide you with a brief overview of some of the highlights from the Senate's base budget.

The state fund budget totals \$130.1 billion which is a \$11.9 billion (10.1%) increase from last session. The total funds for the budget with federal dollars is \$288.7 billion which is a decrease of \$8.5 billion due to the removal of one-time federal COVID-19 funds.

SB 1 Highlights:

- \$15.0 billion set aside for additional property tax relief, including \$3 billion to increase the homestead exemption to \$70,000
- \$4.6 billion to maintain current border security operations with a pay raise for border law enforcement
- Fully funds the Foundation School Program including enrollment growth
- \$3.0 billion combined in the base and supplemental budgets to increase investment in mental health, including new and renovated state hospitals and expanded capacity in current hospitals
- \$400 million to finish The Alamo Restoration and up to \$500 million for Gulf Coast Protection District projects
- \$900 million to reduce state debt by retiring law enforcement unfunded pension liability
- \$350 million to create a rural law enforcement fund and enhance sheriff's pay
- \$2.5 billion to create a new higher education endowment to assist non-Permanent University Fund schools (this includes all state universities other than Texas A&M and University of Texas who are in the current Permanent University Fund)
- \$650 million to increase community college funding based on performance
- Rider provisions allowing for development of increased teacher pay and a 13th check or cost of living adjustment for our retired teachers
- \$600 million for school safety initiatives in the supplemental budget

Honorary Pages, Pastors of the Day, and Legislative Days

I wanted to take another opportunity to mention that the Senate provides a unique opportunity for young folks across Texas to come to the Capitol for a day to act as an Honorary Page. While here, the pages assist in making deliveries to various Senate offices, have the opportunity to work on the Senate floor if the Senate is in session on the day of their visit, and get their photo taken with their respective Senator. If you would like more information on having your child be an Honorary Page, please contact Kirstee Bock in my Capitol office at 512-463-0122.

It's also my privilege to ask clergy from my district to come to Austin to serve as the "Pastor of the Day" to offer the invocation before the Senate. Thus far this session, I've had the pleasure of hosting Father Stoglin of Arlington—pictured below—and Pastor Holmes of Waco—who was invited by Lt. Gov. Patrick. I look forward to welcoming more of our men and women of faith from the district.

And of course, I always feel grateful to see constituents from Senate District 22 at the Capitol—students, citizens, and city and county leaders alike. Some of the upcoming city and county legislative days we have scheduled are from Erath, Hill, Hood, and Tarrant Counties and the cities of Stephenville, Granbury, and Waco. My staff and I appreciate your visits to the office; your input is extremely valuable and vital to the legislative process.



Father Stoglin (USMC Col., Ret.) from Arlington and I in the Senate Chamber (with Senator Hancock photobombing!)

In closing, 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](#). If you missed any of my previous Capitol Updates and want to read them too, you can find them [here](#)!

Thanks for reading, and God bless,

Brian Birdwell
State Senator, District 22

Austin: (512) 463-0122 // Waco: (254) 776-6225 // Granbury: (817) 573-9622
Brian.Birdwell@senate.texas.gov // www.senate.texas.gov