

Weekly Legislative Report

3.25.21



BILL FILING DEADLINE:

The deadline for legislators to file bills to be considered by the Texas Senate and House this session was 6:00 p.m. on Friday, March 12, 2021. The filing deadline does not apply to local bills, concurrent resolutions or simple resolutions. A total of 4,728 HB's/HJR's and 2,191 SB's/SJR's were filed for a total of 6,919 bills. 2,629 were filed in the last week. That compares to:

- 2021 bills filed by the deadline – 6,919 (down 362 from 2019)
- 2019 bills filed by the deadline – 7,281 (up 627 over 2017)
- 2017 bills filed by the deadline – 6,654
- 2015 bills filed by the deadline – 6,107
- 2013 bills filed by the deadline – 5,665
- 2011 bills filed by the deadline – 5,672
- 2009 bills filed by the deadline – 7,136

GOVERNOR:

Election Integrity Proposals

On March 15th, Governor Greg Abbott held a press conference in Houston on the importance of election integrity legislation. The governor named election integrity as an emergency legislative item during his State of the State address in February. Governor Abbott was joined for the press conference by Senator Paul Bettencourt (R-Houston) and Representative Briscoe Cain (R-Deer Park), who have both filed several pieces of election-related legislation. The governor discussed the need to pass laws this session to prevent election officials from jeopardizing the election process and encouraging voter fraud through the abuse of mail ballots and drive-thru voting. He also called for more transparency at the polls by ensuring that poll watchers in Texas are not obstructed from observing the counting of ballots. Governor Abbott said, "Our objective in Texas is to ensure that every eligible voter gets to vote and that only eligible ballots are counted. In the 2020 election, we witnessed actions throughout our state that could risk the integrity of our elections and enable voter fraud, which is why I made election integrity an emergency item this session. Thank you to Senator Bettencourt and Representative Cain for their leadership on this important issue and drafting legislation to protect free and fair elections in the state of Texas."

Unaccompanied Minors at the Border

Also on March 15th, Governor Greg Abbott issued a statement on the unaccompanied minor crisis on the border. He said, "The Biden Administration's reckless open border policies have created a humanitarian crisis for unaccompanied minors coming across the border. With no plan in place, the administration has created heartbreaking and inhumane conditions for children who are being held in Texas. We have no idea if these children are being reunited with their families through DNA testing or other means, or if they have been victims of human trafficking. As the governor, my responsibility is the health and safety of our citizens, and the Biden Administration's lack of planning has created a public health and safety emergency in our communities. Is the federal government tracking what countries these children are coming from

and what COVID-19 variants they might have been exposed to? How long will these children be held in Texas? Are these children receiving COVID-19 tests, and how is the Biden Administration handling those who test positive? Is the federal government conducting contact tracing and following CDC quarantine protocols? The answers to these questions affect the health and safety of our communities, and Texans deserve answers. But more than that, the American people deserve action from this administration. Texas is putting President Biden on notice that his policies are risking the health and safety of Texans and putting children at risk from cartels and human traffickers."

Operation Lone Star

On March 17th, Governor Greg Abbott announced the expansion of Operation Lone Star to include efforts to crack down on human trafficking related to illegal border crossings. As part of this expansion, Texas Department of Public Safety (DPS) troopers and agents, as well as the Texas Rangers, will conduct interviews with unaccompanied minors who crossed the border to identify victims of human trafficking and gain actionable intelligence that will aid in the arrest of traffickers. The governor also requested that the Biden Administration allow DPS to access the unaccompanied minor holding facility in Dallas, as well as other federally-run facilities in Texas, to conduct interviews with unaccompanied minors. The governor made the announcement at a press conference in Dallas alongside DPS Director Colonel Steve McCraw, the Office of the Governor's Child Sex Trafficking Team Director Andrea Sparks, and Traffick911 Advocate Cristy Lopez. Governor Abbott said, "President Biden's reckless open border policies have created a humanitarian crisis that is enriching the cartels, smugglers, and human traffickers who often prey on and abuse unaccompanied minors. Americans deserve to know what the Biden Administration is doing to investigate the surge of unaccompanied minors crossing the border and to protect those who are victims of human trafficking. That is why we are expanding Operation Lone Star to include anti-human trafficking efforts, such as interviewing unaccompanied minors to learn if they are victims of human trafficking. This will help us gain information to keep these children safe, root out human trafficking or other criminal activity, and prevent more children from being trafficked and abused. Whether it's securing the border or fighting human trafficking, the state of Texas will always step up to fill the gaps left by Washington." Operation Lone Star was launched in early March to help secure the border and combat the smuggling of people and drugs in Texas. There are currently 1,000 DPS troopers, agents, and rangers who are engaged in the mission. The new anti-human trafficking efforts will be supported by the Governor's Child Sex Trafficking Team and other organizations and agencies who work to combat human trafficking in Texas.

SENATE:

The Texas Senate was in session on Monday, Tuesday, and Wednesday of last week and recessed to refer bills to committee on Thursday.

Monday

The Senate had not planned to meet on Monday, but they convened and put **SB 2142** on the fast track to pass the Senate. SB 2142 by Bryan Hughes (R-Mineola) would require the Public Utility Commission of Texas (PUC) to order the independent organization certified for the **ERCOT** power region to **correct the prices of wholesale power** and ancillary services sold in the ERCOT market during the period beginning 11:55 p.m., February 17, 2021 and ending 9:00 a.m., February 19, 2021, to reflect the prices of wholesale power and ancillary services that would have been paid in the ERCOT market during that period absent any action of the independent organization or the PUC to raise prices. The Senate allowed the bill to be filed (after the bill filing deadline), referred it to the Senate Jurisprudence Committee, recessed for

the bill to be heard in and voted out of committee, then reconvened to debate and pass it. SB 2142 passed by a vote of 27 to 3. The “no” votes were from Senators Brandon Creighton (R-Conroe), Sarah Eckhardt (D-Austin), and Kelly Hancock (R-North Richland Hills). *Note: Additional information on the issue is in the Energy category below.*

Wednesday

On Wednesday, the Senate debated and passed **SB 25** and **SJR 19** by Lois Kolkhorst (R-Brenham) proposing a constitutional amendment and its enabling bill establishing the **right of residents of a nursing facility**, assisted living facility, or state supported living center to **designate at least one caregiver** with whom the facility or center may **not prohibit in-person visitation**. The bills were filed because those facilities have been on lockdown due to the COVID-19 pandemic and family members have not been able to visit their loved ones. In laying out the bills, Senator Kolkhorst said, “We didn’t understand the pandemic, we had not seen something like this and we were working to protect all of Texas. But when we were doing some of those protections, we were also creating some harm. That’s not the nursing homes’ fault, at all. It was a mandate - we were trying to protect them. Nevertheless, we were saving the body but killing the soul.” SB 25 and SJR 19 passed unanimously.

Total number of bills reported out of Senate Committees last week: 17

Total number of bills passed by the Senate last week: 3

This Week: The Senate reconvened on Monday, March 22 at 2:00 p.m.

HOUSE:

The House was in session Monday through Thursday last week conducting routine business and referring bills to committee. On Wednesday, Representative Trey Martinez Fischer (D-San Antonio) made a parliamentary inquiry asking Speaker Phelan if the House could meet as a Committee of the Whole to take up SB 2142 on Thursday. The speaker replied that he would not be recognized for that motion.

Total number of bills reported out of House Committees last week: 18

This Week: The House reconvened on Monday, March 22 at 4:00 p.m.

ENERGY:

Senate Jurisprudence Committee

On March 12th, the Senate Jurisprudence Committee examined billing errors resulting from Winter Storm Uri and explored the means available for correcting those errors. The committee hearing lasted for over six hours. The witnesses were Public Utility Commission Chair Arthur D’Andrea, ERCOT CEO Bill Magness, and Carrie Bivens of Potomac Economics, ERCOT Independent Market Monitor. Lt. Governor Dan Patrick joined the committee to question witnesses.

Lt. Governor Dan Patrick responded to that Senate Jurisprudence Committee hearing by saying, “Governor Abbott made correcting the Electric Reliability Council of Texas’ (ERCOT) pricing errors an emergency item and asked us to move quickly. We did. Senate Jurisprudence Chair Joan Huffman convened her committee yesterday and charged it with finding out the facts about the pricing errors over 32 hours on February 18th and 19th. She assured the committee and the public that ‘just because something is difficult and complicated, it doesn’t mean we

won't move forward if it is the right thing to do.' Senator Huffman conducted a thorough and thoughtful hearing lasting over five hours including testimony from ERCOT's own Independent Market Monitor (IMM), the outgoing President and CEO of ERCOT and the Chair of the Public Utilities Commission (PUC). Here is what the testimony revealed:

- ERCOT did not pull down the \$9,000 per megawatt hour price after the PUC order had expired on February 17th at 11:55 p.m. when the major threat to the grid had passed and the system was in balance.
- Carrie Bivins, the IMM, testified that the \$9,000 pricing cap should have been pulled down at that time. She said, 'It was a difficult decision for us to ask for a price correction in a real time market, but it was an error and it should be corrected. I did not make that statement lightly.'
- Ms. Bivins reiterated that \$16 billion is the economic market impact of the error adding that \$5 billion is the likely accounting impact of the error and potential liability to the public including at least a billion dollars to public power.
- Ms. Bivins also noted that the providers and market participants in ERCOT are very familiar with the rules and procedures for price corrections and correcting this error would not be an unusual act.
- Ms. Bivins was an extremely knowledgeable and credible witness who candidly responded to over 2 hours of questioning from the Senate Jurisprudence Committee.
- By contrast, Arthur D'Andrea, Chair of the PUC, demonstrated little competence and questionable integrity throughout the hearing. He gave several different answers to a House panel in the morning than he gave to the Jurisprudence Committee in the afternoon. He also said things that simply weren't true. Most notably, he said the Lower Colorado River Authority (LCRA) had told him they would go bankrupt if the prices were corrected. LCRA immediately put out a statement saying they had said no such thing. What was even more incredulous, he persisted in saying he was being truthful, despite LCRA's statement to the contrary.
- Inexplicably, he said it would be 'illegal' for him to correct ERCOT's pricing, although he had testified earlier in both the House and Senate hearings that it was not illegal and he had corrected pricing before.
- Finally, when asked if he were directed by Governor Abbott to correct the pricing errors, he said he would not.
- The fact is ERCOT has the authority to correct the error if they are ordered by the PUC to do so. The PUC has the authority to direct ERCOT to lower the price pursuant to Utilities Code § 39.151 (d). It is true that correcting the pricing error will result in change, but it will bring more equity to the costs. Most importantly, it is the only way we can protect consumers from ultimately having to pay for this pricing error.

"Senator Huffman put it succinctly in the hearing when she asked 'which market do you think has more integrity? A market we know has an error but does nothing about it or a market where we recognize an error that was created by some type of government intervention and we do correct it?' I am extremely proud of the Senate Jurisprudence Committee for their thorough investigation on this issue. Governor Abbott asked us to move quickly and we did. The findings of the Senate Jurisprudence Committee are clear - the pricing errors of February 18th and 19th must be corrected and the PUC should direct ERCOT to correct them immediately. In light of the PUC Chair's refusal to take any corrective action, despite the fact that he has the authority and the evidence is clear, I am asking Governor Abbott to intercede on this issue. "I am also asking Governor Abbott to replace Mr. D'Andrea on the PUC when he fills the other two vacancies there. Mr. D'Andrea's position requires both professional competence and honesty

and he demonstrated little of either in the hearings yesterday. I believe most Texans who watched the Senate Jurisprudence hearing would conclude that D'Andrea should not have full authority over ERCOT or be part of the solution moving forward."

Governor Greg Abbott responded on March 12th to Lt. Governor Patrick's request for the PUC to order ERCOT to make corrective action. He said, "As a former Texas Supreme Court Justice and former Attorney General, I agree with the position of the PUC Chair about his inability to take the action you requested. You asked that I 'intervene to ensure the right thing is done.' The governor does not have independent authority to accomplish the goals you seek. The only entity that can authorize the solution you want is the legislature itself. That is why I made this issue an emergency item for the legislature to consider this session."

House State Affairs Committee

On Tuesday, the House State Affairs Committee heard invited testimony on correction of billing errors in ERCOT. Bill Magness of ERCOT, Arthur D'Andrea of the Public Utility Commission, and Chris Edmonds of the International Commodity Exchange testified.

Bill Magness of ERCOT explained the reasons ERCOT took the reliability action. He said, "This was an intentional and carefully considered decision to protect human health and safety while stabilizing the electric grid. It was not an error." The reasons included:

1. "Protecting Human Health & Safety – Some Texans has been without heat in sub-freezing temperatures since Monday morning and they needed their power restored as soon as possible and they needed it to stay on.
2. Stabilizing the Electric Grid – Throughout the storm, power plants that returned had additional problems and went back offline, creating multiple delays of outages. There was a significant risk that power plants would continue to fail and cause the return to rotating or controlled outages.
3. High Customer Demand Load Forecasts – Computer models showed high load forecasts for Thursday and Friday mornings and were not covered by existing generation. This contributed to the high risk.
4. Bridge Gap Between Ending Outages and Restoring Customers – Transmission owners notified us of likely gaps between ending outages and the need for fieldwork in still-hazardous conditions to restore customer load. While load shed orders may have ended, it would take time to actually restore load – making accurate load ramp-up forecasts very difficult.
5. Large Industrial Loads Returning – Large industrial customers that had reduced or eliminated their load while prices were at EEA3 level would be returning, quickly adding large amounts of load when emergency conditions ended.
6. Acting in the Best Interests of the Grid – We were acting to increase the electric generation needed to restore the load and service it reliably over the long term."

He further explained the issues that were out of ERCOT's control:

- Continued winter weather risk
- Power plants continuing to experience failures (supply)
- Restoring service to customers (demand)
- Timing of industrial loads (demand)

And, the available options for managing the risk of renewed outages:

- Maintain every market-based incentive to keep generators running at full power

- Encourage large, price-sensitive loads to slowly return, rather than creating a spike that could send the system out of balance

He concluded by saying, "Our approach maintained maximum supply, and encouraged maximum economic demand response."

Speaker Dade Phelan (R-Beaumont) issued a statement following the House State Affairs Committee hearing saying, "I appreciate the House State Affairs Committee conducting a deliberative examination of ERCOT's electric rates during Winter Storm Uri - a discussion in which several key factors were brought to light. According to the testimony provided by the Public Utility Commission of Texas, the Independent Market Monitor economists for ERCOT downgraded their initial cost estimates from \$16 billion to \$3.2 billion, and we now recognize more clearly the winners and losers affected by repricing. I appreciate the thoughtful questions asked by committee members and we will continue to hear testimony next week about this critical issue."

Chris Edmonds of the International Commodity Exchange (ICE) said, "Retroactively modifying prices is not the way to resolve the issues from February. Violating the doctrine of final settlement will break convergence and will lead to far greater macro-economic pain for a much larger group of Texans and market participants. Making a decision to reset the rules after the fact will have profound and detrimental consequences for economic activity within Texas. Should the legislature decide to reset the market price after the fact, banks will no longer be able to price risk for any future-long covenant. Any such decision by this political process will forever define the 'open for business' culture Texas has worked diligently for decades to create. While the storm was catastrophic, it uncovered a number of infrastructure shortcomings worthy of significant attention, the markets performed as designed by ERCOT."

PUC Chair Resigns

On March 17th, the Public Utility Commission of Texas announced that Chairman Arthur D'Andrea has resigned his role with the Public Utility Commission of Texas, effective upon the appointment of a replacement.

Governor Greg Abbott issued a statement on the resignation of the Public Utility Commission (PUC) Commissioner Arthur D'Andrea. He said, "Tonight, I asked for and accepted the resignation of PUC Commissioner Arthur D'Andrea. I will be naming a replacement in the coming days who will have the responsibility of charting a new and fresh course for the agency. Texans deserve to have trust and confidence in the Public Utility Commission, and this action is one of many steps that will be taken to achieve that goal."

Senate Business & Commerce Committee

Also on Tuesday, the Senate Business & Commerce Committee took up:

SB 415 by Kelly Hancock (R-North Richland Hills) would authorize a transmission and distribution utility to contract with a power generation company to provide electric energy from an **electric energy storage facility** to ensure reliable service to distribution customers; but would prohibit a transmission and distribution utility from owning an electric energy storage facility. In support were representatives of Texas Advanced Energy Business Alliance, Texas Association of Manufacturers, Lone Star Chapter of the Sierra Club, Texas Competitive Power Advocates, Broad Reach Power, Enchanted Rock, Advanced Power Alliance, Texas coalition for Affordable Power, Steering Committee of Cities Served by Oncor, Texas Solar Power

Association, Exelon Generation, City of Houston, Enel North America, Environment Texas, NRG Energy, Tesla, Dow Inc., and Vistra Corporation. There was no opposition. *It was left pending.*

SB 566 by Dawn Buckingham (R-Lakeway) would allow the Public Utility Commission to review **Austin Energy's electricity rates** if the petitioning customer or group has non-demand metered total usage of more than 100,000 kilowatt hours per year or is served through a demand meter at secondary or primary voltage. In support was a representative of Data foundry and one individual. Opposed were representatives of Austin Energy, Texas Public Power Association, AFSCME, Texas AFL-CIO, and Lone Star Chapter of the Sierra Club. *It was left pending.*

SB 760 by Drew Springer (R-Muenster) would specify procedures for **solar power facilities** to be removed from a landowner's property. In support were representatives of Texas Public Policy Foundation and Texas and Southwestern Cattle Raisers Association. There was no opposition. *It was left pending.*