SENATE COMMITTEE ON NATURAL RESOURCES AND ECONOMIC DEVELOPMENT

TEXAS SENATE

INTERIM REPORT 2022

A REPORT TO THE

TEXAS SENATE

88TH TEXAS LEGISLATURE

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CHAIRMAN

SENATE COMMITTEE ON NATURAL RESOURCES AND ECONOMIC DEVELOPMENT

January 4, 2023

The Honorable Dan Patrick
Lieutenant Governor
Members of the Texas Senate
PO Box 12068
Austin, Texas 78711

Dear Governor Patrick and Fellow Senators:

Thank you for the opportunity to address important issues facing Texas today through your charges for interim study. The Senate Committee on Natural Resources & Economic Development, having conducted public hearings and received public and invited testimony, is pleased to submit its final report with recommendations for consideration by the eighty-eighth Texas Legislature.

Respectfully submitted,

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INTERIM STUDY CHARGES BACKGROUND, FINDINGS AND RECOMMENDATIONS

1. Economic Development Programs: Review the programs in Chapters 380 and 381 of the Local Government Code. Consider the benefits of each program in generating economic development. Make recommendations for improvements to Chapters 380 and 381 to increase transparency and accountability and the effectiveness of the programs.

BACKGROUND

Municipal Agreements - Chapter 380

Chapter 380 of the Local Government Code authorizes municipalities to offer incentives designed to promote economic development such as commercial and retail projects. Specifically, it provides for offering loans and grants of city funds or services at little or no cost to promote state and local economic development and to stimulate business and commercial activity.

In order to provide a grant or loan, a city must establish a program to implement the incentives. Before proceeding, cities will review their city charters or local policies that may restrict a city's ability to provide a loan or grant.

The statute is broadly written without limitations. Therefore, the scope of the programs and agreements municipalities utilize can vary greatly. The statute states:

> *"The governing body of a municipality may establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality."*

Some restrictions on municipal agreements do exist, however, and are discussed below.

In addition, Chapter 380 authorizes El Paso to establish not-for-profit corporations and cooperative associations for the purpose of creating and developing and intermodal transportation hub to stimulate economic development.

The Chapter also authorizes home-rule municipalities with a population of 100,000 or more to grant public money to 501(c)(3) organizations for purposes of development and diversification of the economy of the state, elimination of unemployment or underemployment in the state, and

development or expansion of commerce in the state. This section includes economic development corporations, however is separate from the establishing and governing statutes related to economic development corporations (Local Government Code Subtitle C1, Title 12).

Constitutional Requirements/Restrictions

Any expenditure in the form of a grant, loan, or provision of city services at less than fair market value involves a donation of public property. Article III, Section 52-a of the Texas Constitution sets up the constitutional framework for public funding of economic development efforts. It provides that economic development is a public purpose and allows the legislature to provide for the creation of programs and the making of loans and grants of public money for the public purposes of development and diversification of the economy of the state, the elimination of unemployment or underemployment in the state, the stimulation of agricultural innovation, the fostering of the growth of enterprises based on agriculture, or the development or expansion of transportation or commerce in the state. To pass the constitutional muster for serving a public purpose, cities can use safeguards such as:

- Binding contracts that outline steps the business will take to justify public funding (job creation, expansion of tax base, etc.),
- Recapture provisions to seek reimbursement if the business does not fulfill its promises, and
- Tangible means for measuring whether the industry has met its obligations.

Statutory Requirements

Any grant or loan must meet the requirements under the budget law contained in Chapter 102 of the Local Government Code. Specifically, any economic development-related expenditure of city funds must be made pursuant to consideration and approval of the item at an open meeting of the city council. If the expenditure was not included within the original budget, the city council would need to pursue a budget amendment.

County Agreements - Chapter 381

Chapter 381 of the Local Government Code allows counties to provide incentives encouraging developers to build in their county. A county may administer and develop a program to make loans and grants of public money to promote state or local economic development, and to stimulate, encourage and develop business locations, and commercial activity in the county.

Chapter 381 is somewhat more prescriptive in the powers the statute grants to counties. The statute stipulates:

"To stimulate business and commercial activity in a county, the commissioners court of the county may develop and administer a program:

- *for state or local economic development;*
- *for small or disadvantaged business development;*
- *to stimulate, encourage, and develop business location and commercial activity in the county;*

- *to promote or advertise the county and its vicinity or conduct a solicitation program to attract conventions, visitors, and businesses;*
- *to improve the extent to which women and minority businesses are awarded county contracts;*
- *to support comprehensive literacy programs for the benefit of county residents; or*
- *for the encouragement, promotion, improvement, and application of the arts."*[1]

The statute allows the commissioners court to make loans and grants of public money and provide personnel and services of the county in the administration of such a program. In addition, *"the commissioners court may:*

- *contract with another entity for the administration of the program;*
- *authorize the program to be administered on the basis of county commissioner precincts;*
- *use county employees or funds for the program; and*
- *accept contributions, gifts, or other resources to develop and administer the program."*[2]

Counties also fall within the constitutional framework described above for cities. Therefore, they must also pass the constitutional muster for serving a public service.

It is notable that county loans and grants of public money under this chapter are not subject to restrictions on amounts or length of agreements such as tax abatements authorized by Chapter 312 and tax abatements authorized under Chapter 381 as discussed below.[3]

Tax Abatements

Chapter 381 also grants counties the power to grant tax abatements for economic development programs. *"The commissioners court may develop and administer a program authorized by Subsection (b)* (list of seven items above) *for entering into a tax abatement agreement with an owner or lessee of a property interest subject to ad valorem taxation. The execution, duration, and other terms of the agreement are governed, to the extent practicable, by the provisions of Sections 312.204, 312.205, and 312.211, Tax Code*[4]*, as if the commissioners court were a governing body of a municipality."* While this section references duration limits found in Chapter 312, data from the database created by HB 2404 (87R) shows that multiple ad valorem tax abatements have been granted that extend beyond 10 years.

This allows counties to make tax abatement agreements that mirror parts of Chapter 312 municipal tax abatement agreements. However, the transparency measures that were enacted in

[1] See Tex. Local Government Code §381.004
[2] Ibid.
[3] See opinion by Attorney General in response to letter from Honorable Garnet Coleman, Chair House Comm. on Cty. Affairs (July 15, 2019), https://www.texasattorneygeneral.gov/sites/default/files/opinion-files/opinion/2019/kp0261.pdf
[4] See Tex. Tax Code §381.004(g)

the 86th Session for Chapter 312 agreements by HB 3143 (Murphy/West) are not present. These included public meeting and notice requirements before a tax abatement agreement can be effective.

HB 2404 (87R) by Meyer/Zaffirini

- Relating to the creation and maintenance of a database of information regarding certain local economic development agreements; providing a civil penalty.

What the bill does

The bill requires the Comptroller to create and make accessible on the internet, a database, to be known as the Chapter 380 and 381 Agreement Database, that contains information regarding all local development agreements in this state. Agreement information will be available to the public during the period the agreement is in effect. The information shall include:

- the name of the local government that entered into the agreement
- a numerical code assigned to the local government by the comptroller
- the address of the local government's administrative offices and public contact information
- the name of the appropriate officer or other person representing the local government and that person's contact information
- the name of any entity that entered into the agreement with the local government,
- the date on which the agreement went into effect
- the date on which the agreement expires
- the focus or scope of the agreement
- an electronic copy of the agreement
- and the name and contact information of the individual reporting the information to the comptroller

Enforcement

- If a local government that enters into a local development agreement has not complied with a requirement to provide information, the Comptroller is required to send a notice to the local government in writing describing the information that is required to be submitted to the comptroller and informing the local government of potential enforcement.
- If the information is not provided on or before the 30th day after the date the notice is provided, the local government will be subject to a civil penalty of $1,000. The attorney general is authorized to sue to collect a civil penalty imposed under this Act.

Implementation

For agreements entered into after the effective date of the bill (September 1 ,2021) a municipality/county, not later than the 14th day after the date of entering into, amending, or

renewing an agreement is required to submit the information to the Comptroller.

- These agreements are required to be entered by the Comptroller within 15 days of receiving the information.
- For each agreement that was in effect on September 1, 2021, the local government that entered into the agreement was required to submit the information to the Comptroller not later than January 1, 2022.
- The Comptroller was required to publish on the comptroller's Internet website the information received under this Act not later than September 1, 2022.

The Comptroller put the database online on August 17th, 2021, and it holds 3,614 entries as of December 4th, 2022. According to Comptroller staff, they are fielding feedback on the rollout and are monitoring responses from local governments. They anticipate responses from local governments to continue to come in as cities and counties become more aware of the new requirements.

TESTIMONY

The Committee held a public hearing on the interim charge on November 17th, 2022, and received valuable feedback on the database and the two chapters.

The office of the Comptroller spoke to the implementation of HB 2404. They testified that the rollout has been going very well with no issues on reporting, or cities and counties not sending in data as of the date of the hearing. As a result of the database, the universe of Chapter 380 and 381 agreements is becoming better known. The office of the Comptroller has not had to utilize any of the compliance measures authorized by the legislation. So far, 352 entities have submitted a total over 3,500 agreements. Almost 21,000 searches have been done on the web tool indicating a significant amount of traffic since the rollout in mid-August. There is some room for improvement, however. While the agreement is posted, accessibility requirements found in Section 508 of the Rehabilitation Act of 1973 prohibit searchable PDF documents on the database, according to the Comptroller's office. Some things that may be helpful to the database would be requiring additional information to be reported by the localities that would help compare them to each other. Increased reporting requirements would help the public utilize the database.

Improvements recommended by Comptroller for additional reporting requirements:

- Total monetary value of agreement if applicable
- Information regarding the entity they entered into an agreement with such as business address and contact info, the person that signed the agreement or a representative entity, and a "Doing Business As" (DBA) or "common" name of entity
- Date of expiration or terms of agreement for expiration
- Type of funds being used for the agreement; or
- Type of taxes being abated or "shared" (sales, ad valorem, HOT, etc.)

- Webpage where the local government posts the direct link to the Comptroller's database

Next, the Committee hosted a panel as invited testimony featuring the Texas Taxpayers and Research Association (TTARA), the County Judges and Commissioners Association of Texas (CJCAT), the Texas Economic Development Council (TEDC), and the Texas Municipal League (TML).

Mr. Dale Craymer, President, TTARA, testified that Chapters 380 and 381 give broad flexibility to cities and counties to structure a wide range of economic development programs involving tax and loans and provision of infrastructure and services. The agreements under this program give local partners in economic development the tools they need to help Texas compete for new investment. The charge calls for improvements to transparency, accountability, and effectiveness, but Craymer noted there is a balance between those three items, and improvements to one can also reduce the effectiveness of another. For example, new requirements in support of greater transparency or accountability can result in additional bureaucratic processes and requirements that may unintentionally impact the effectiveness of the program adversely. Craymer told the Committee that TTARA supported H.B. 2404 and has used the database multiple times. While it would be nice to search inside the documents in the database, Craymer noted that it would be a gargantuan task that would require substantial investment in personnel and funds. Craymer discussed how Chapter 312 has a provision that requires jurisdictions that are going to participate in tax abatements to adopt a guideline or policy directive. Additionally, Chapter 312 requires a thirty day advance notice of a vote on a tax abatement which does not exist in Chapters 380 and 381. Some entities have gravitated to the latter because they view the thirty days as too long. Craymer suggested any public posting requirement that is considered should be closer to five days, which mirrors when jurisdictions are required to post in order to adopt a budget. Regarding the length of the agreement, some jurisdictions have used the chapters to structure tax abatement agreements that goes beyond a ten year limit. However, Craymer encouraged the Committee to look at how the Texas incentives compare to what the competition is doing. Texas recently lost Micron to New York who offered a forty-nine year property tax abatement. Texas also recently lost Intel to Ohio who offered a thirty year agreement. Craymer further testified that there may be a misconception that jurisdictions choose a Chapter 380 or 381 agreement because of the greater flexibility and looser requirements, however that is not always the case. In fact, many property tax agreements under Chapters 380 and 381 require the company to pay the tax first, proving up that they are meeting the standards of the agreement before receiving a refund on that tax.

Johnson County Commissioner Rick Bailey testified towards the history of the chapters and the use of economic development programs to support sustained growth and prosperity. In fact, Governor Abbott has recently presented Grayson, Lubbock, and Williamson Counties with “Deal of the Year” awards from Business Facilities Magazine for these counties’ efforts to secure major projects in their areas. These and other projects will bring tens of billions of dollars in new capital investment, create thousands of new jobs and contribute to the continuation of the Texas Miracle for years to come.

Commissioner Bailey testified that counties are careful stewards of the public trust. When

negotiating tax abatement or supporting development projects, counties negotiate the most beneficial terms for their taxpayers and demand strict performance of these agreements. They continuously face direct competition from other states for these investments, and any limitation upon the current flexibility will diminish their ability to compete in the marketplace. He further testified that maintaining public trust and support for these programs also requires the highest possible degree of transparency. Adequate notice and hearing and public review of these agreements will ensure public support and illustrate the value of these projects to our taxpayers.

As well as testifying towards the history and efficacy of Chapters 380 and 381, Mr. Carlton Schwab, President and CEO, TEDC, gave examples of five recent noteworthy Community Economic Development Award projects that used Chapter 380 agreements to secure the expansion of major projects into their regions of the state. These projects include:

- Producer's Beef – Amarillo. Capital Investment, $650 million. 1,500 jobs.
- Samsung Semiconductor – Taylor. Capital Investment, $30 billion. 2,000 jobs.
- Texas Instruments – Sherman. Capital Investment, $30 billion. 3,200 jobs.
- Globitech – Sherman. Capital Investment, $5 billion. Initially 450 jobs, eventually 1,500 jobs.
- Fuji Film – College Station. Capital Investment, $300 Million. 120 jobs.

Schwab testified that economic development in Texas is done with public dollars in the public arena. Therefore, they do not oppose expanded transparency requirements to the current law. However, they would oppose legislation that reduces or affects a community's ability to enter into such agreements by limiting local control. Local control, supported by strong local economic development initiatives are the very reason we have such an enviable track record of success over the past thirty plus years.

Mr. Bennett Sandlin, Executive Director, TML, explained that as one of the leagues attorneys whose specialty was training new city officials on economic development tools, especially Chapter 380, he was always cognizant that the open ended nature could be problematic and to ensure the authority remained intact, certain best practices should be practiced. Sandlin testified towards three keys to a good Chapter 380 agreement.

- A written contract
- Benchmarks such as job requirements or other creative thresholds
- Adequate claw backs if a business doesn't live up to its promises

CONCLUSION

Chapters 380 and 381 of the Local Government Code have been utilized frequently to promote economic development to the state and local communities. The broad authorization has led to creative and beneficial agreements, while leaving the door open to agreements with poor practices and little transparency. As such, there is room to improve taxpayer confidence and transparency and implement sensible guardrails to protect public dollars and the incentive programs

themselves.

Some improvements to the transparency of the agreements initiated by H.B. 2404 were identified by the office of the Comptroller. For instance, many of the items the Comptroller's office identified above for reporting improvements can be found in the PDF of each agreement, however pulling them out and posting them would require significant time and resources at the state level. Likewise, interested parties who wish to find this information have to search for the agreement, open the PDF, and read for the information. This prevents any efficient way to compare agreements with similar terms. As of now, the only useful filtering methods are by city or county and by business name.

Additionally, the Comptroller's office noted that, as of now, they have not cross-referenced localities that reported Chapters 380/381 agreements with localities that also have Chapters 311, 312, 313, Texas Enterprise Fund, or other agreements and awards. The new statute does not require cities to identify any other agreements a particular project has in addition to the submitted agreement. This may require statutory authority for the Comptroller to request this info, but would be helpful in identifying the full scope of abatements and agreements surrounding an individual project. Another complication to cross-referencing agreements is that projects may be identified using different names across different types of agreements. As a result, asking the Comptroller to determine which projects have agreements across multiple economic development chapters could be more easily and reliably accomplished by requiring localities to identify this information when reporting to the database.

While cities and counties are currently asked what the general scope of the agreement is, it can be vague and lacks identifiers that would allow for searchable types of agreements. Some agreements are simple statements requiring the city and business to accomplish a task (city will build infrastructure to accommodate the business if it brings a certain number of jobs), while some agreements have specific targets and tax rebates or implications regarding specific dollar amounts. In some cases, cities have utilized a Chapter 380 or 381 agreement to offer a property tax rebate that is similar, but much larger in scope, to a Chapter 312 property tax abatement. Likewise, some agreements that involve sales taxes extend as much as sixty years. While cities and counties often point to this flexibility as a driver of success for the chapters, other interested parties view this as a loophole that subverts the existence of Chapter 312 and the transparency measures and limits included in it. It should be noted, however, that most Chapter 380 and 381 agreements involve sales tax revenue that is rebated or paid back to the business.

Further, Chapters 380 and 381 do not require public meetings to be held prior to authorization of an agreement. As such, there is potential for agreements to be made with little to no public input, unlike similar economic development chapters. While most witnesses supported a notice period, the length of such a notice remains debatable. While some jurisdictions would prefer a shorter notice period to prevent other states or localities from offering better deals as a result of the notice, some businesses and communities require more time to incorporate public opinion into the agreement, or complete final negotiations within the thirty day time-frame found under Chapter 312. As the right balance is contemplated, it is important to note that the first responsibility is transparency to the taxpayer.

RECOMMENDATIONS

After careful consideration, the Committee recommends the following:

- The Legislature should implement the items highlighted by the office of the Comptroller with a focus on collecting and displaying data that is useful to local taxpayers, legislators, and other interest groups in the most accessible and efficient manner. The various types of agreements and various formats of agreements prove difficult to compare, and the mentioned increased reporting requirements would be helpful in sorting and studying these agreements.
- Require public notice prior to an agreement being granted under each chapter in an open meeting, similar to the requirement found in Chapter 312. The designation of the length of prior notice should consider the several viewpoints given to the Committee.
- Bifurcate the types of taxes utilized in economic development programs, particularly between Chapters 380/381 and Chapter 312. Currently, local property taxes can be abated using both Chapters 380/381 and Chapter 312, however the requirements in each chapter are different. The authorized economic development incentives should be streamlined, and should not contradict each other. Chapters 380 and 381 are largely used to leverage local sales taxes and other revenue such as fees and permits. These should remain in Chapters 380 and 381 while property tax incentives should be limited to Chapter 312.
- Limit the number of years an agreement can be authorized for under Chapters 380 and 381. The limit should consider the ability of Texas to compete with other states while keeping the entities accountable during the lifetime of the agreement.

2. Hotel Occupancy Taxes: Study the collection and use of hotel occupancy taxes. Evaluate and make recommendations related to the effectiveness, costs of rebates, incentives, and other taxes applied to qualified hotel and convention center projects. Investigate and determine whether the creation of a standard Hotel Occupancy Tax legislative template is feasible, and whether it would enable the legislature to more efficiently evaluate proposed Hotel Occupancy Tax bills during the legislative session.

BACKGROUND

Local Hotel Occupancy Tax Collection and Use

Under Chapter 351 of the Texas Tax Code, all incorporated Texas municipalities, including general law and home rule cities, may enact a hotel occupancy tax within the city limits. Today, nearly every city in Texas with a lodging property operating in the city limits levies a municipal hotel occupancy tax.

Most cities are authorized to levy up to a seven percent hotel occupancy tax rate. Some cities such as Austin, Corpus Christi, Fort Worth, San Antonio, and South Padre Island may levy a higher hotel tax rate, with the revenue derived at a rate above seven percent dedicated to a specific use such as a convention center.

Texas statute limits the maximum hotel occupancy tax rate to no more than seventeen percent when the state, city, and county hotel taxes are combined.[5] In most cases, only the largest cities in Texas have a combined hotel tax rate that exceeds fifteen percent.

Generally, the maximum hotel tax rate a county may impose fits within one of three varieties.

1. A "flat" two percent countywide hotel occupancy tax that applies to hotels in unincorporated areas of the county, and also to hotels that are subject to a municipal hotel occupancy tax rate.
2. An "unincorporated" seven percent hotel occupancy tax that applies only to hotels that are not subject to municipal hotel occupancy tax. Assuming the municipalities within the county levy a seven percent municipal hotel occupancy tax, the maximum hotel tax rate is the same no matter where the hotel is located in the county.
3. A hybrid or "split-rate" authority. A minority of counties may assess a seven percent hotel occupancy tax on hotels not subject to a municipal hotel tax, and a two percent hotel occupancy tax on hotels that are subject to a municipal hotel tax.

[5] See Tex. Local Gov't Code § 334.254(d)

Because all cities have existing authority to levy a hotel occupancy tax (unlike counties, as discussed below), nearly all municipal hotel tax legislation offered each session involves proposals to authorize new uses of local hotel tax revenues.

For a county within Texas to levy a local hotel occupancy tax, the county must have specific legislative authority under Chapter 352 of the Texas Tax Code. As of 2022, eighty Texas counties have legislative authority, and most of those counties exercise that authority according to the Texas Hotel and Lodging Association (THLA).

Under state law, local hotel occupancy tax revenue may only be expended in a manner that directly enhances and promotes tourism and the convention and hotel industry. Hotel occupancy tax revenue may not be used for general revenue purposes or general governmental operations of a city or county.[6]

Additionally, the local hotel tax expenditures must also fit within one of the statutorily authorized categories. Except in certain instances where a city or county has special legislative authority on point, the following categories of hotel tax usage apply to most cities and counties:

- Convention centers and visitor information centers
- Registration of convention attendees
- Advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the area
- The encouragement, promotion, improvement, and application of the arts
- Historical restoration and preservation project or activities that are visited by tourists
- Expenses related to sporting events in which the majority of the participants are tourists and in which there is substantial economic activity at area hotels (subject to brackets)
- Enhancement and upgrading of existing sports facilities or fields
- Constructing, improving, enlarging, equipping, repairing, operating and maintaining a coliseum or multiuse facility
- Signage directing the public to sights and attractions that are visited frequently by hotel guests

**Note that statute reflects a total of twenty-one authorized uses of HOT. The nine above are mostly statewide, and the twelve additional are bracketed and mostly for specific sport venues.*

[6] See Tex. Tax Code § 352.1015(e) and 352.1031

All Texas municipalities are required to submit an annual report to the Texas Comptroller containing information as to,

1. The hotel tax rate under Chapter 351, Tax Code;
2. The hotel tax rate under Chapter 334, Local Government Code (Sports and Community Venue Projects);
3. The amount of hotel tax revenue collected in the prior fiscal year; and
4. The amount and percentage of hotel tax revenue expended under Tax Code sections 351.101(a)(1), (2), (3), (4), (5), and (9). (List of nine above excluding expenses related to sporting events (open bullets))

Counties that impose a hotel occupancy tax must annually report,

1. The hotel tax rate under Chapter 351, Tax Code;
2. The hotel tax rate under Chapter 334, Local Government Code; and
3. The amount of hotel tax revenue collected in the prior fiscal year.

Local Hotel Occupancy Tax Collection and Use Reporting Issues

For municipalities, the statutory reporting requirement only addresses hotel tax spent under section 351.101(a)(1), (2), (3), (4), (5), and (9) of the Tax Code. However, there are several other categories of expenditures that apply to all cities, and many Texas cities have bracketed authority to use hotel tax in a particular way. The public would get a much fuller picture of how hotel tax revenues are expended if the statutory requirement to report on local hotel tax expenditures included all possible categories of spending.

For counties, the statutory reporting requirement does not include any requirement for a county to report how it is expending hotel tax revenue.

While the requirement for cities and counties to comply with the statutory reporting requirement is not discretionary, many cities and counties do not actually submit annual reports to the Texas Comptroller. For example, in the most recent reporting period, only 425 cities submitted reports to the Texas Comptroller, even though there are 1,220 incorporated cities within Texas. This response low rate is despite the best efforts of the Comptroller, Texas Municipal League, and Texas Association of Counties to educate local governments about the reporting requirement. Some local governments have cited the burden of an unfunded state mandate to produce more reports to the State of Texas according to THLA.

According to the office of the Comptroller, 568 cities and municipalities reported their HOT information for fiscal year 2021. Thirty-nine counties reported their HOT information for fiscal year 2021.

Qualified Hotel Projects

Since the passage of the first qualified hotel project bill in 1993, thirteen qualified hotel projects (QHP) have been constructed and opened for occupancy in Texas. Four QHPs have ended their 10-year state rebate period, and nine QHPs are actively receiving state tax rebates.

As of August, 2022, the qualified hotel project program has rebated about $204.2 million in total state hotel occupancy tax and state sales tax according to information provided by the Comptroller of Public Accounts. Roughly sixty percent of the state tax rebates have been generated from the hotel occupancy tax, with the remaining forty percent of the state tax rebates coming from the state sales and use tax. The below table depicts the total fiscal impact related to the lifetime of the rebates occurring in operating QHPs.

Project Name	Effective		State Hotel Tax Payments to Date	State Sales Tax Payments to Date	Total Payments to Date
Amarillo Convention Center Hotel project – Embassy Suites	09/01/2017 - 08/30/2027		$2,061,932.47	$391,894.28	$2,453,826.75
Arlington Convention Center Hotel Project - Lowes	08/22/2019 - 08/21/2029		$2,357,623.53	$3,231,322.81	$5,588,946.34
Dallas Convention Center Hotel Project	11/01/2011 - 10/31/2021	Ended	$26,871,232.81	$18,969,688.83	$45,840,921.64
El Paso Convention Center Hotel Project - Hotel Sancho Panza LLC	11/01/2018 - 10/31/2028		$776,606.16	$114,381.31	$890,987.47
Fort Worth Convention Center Hotel Project	01/01/2009 - 12/31/2019	Ended	$16,457,243.00	$10,318,297.50	$26,775,540.50
Houston Convention Center Hotel Project - Hilton Hotel	12/01/2003 - 11/30/2013	Ended	$23,231,843.20	$16,973,075.60	$40,204,918.80
Houston Convention Center Hotel Project – Marriott Marquis	12/01/2016 - 11/30/2026		$14,425,872.14	$11,269,954.65	$25,695,826.79
Irving Convention Center Hotel Project – Texican Court	11/01/2018 - 10/30/2028		$702,524.00	$270,845.04	$973,369.04
Irving Convention Center Hotel Project – Westin	3/30/2019 - 03/29/2029		$1,970,615.23	$4,097,264.60	$6,067,879.83
Nacogdoches Convention Center Hotel Project - Hotel Fredonia	06/01/2017 - 05/31/2027		$809,135.83	$770,454.28	$1,579,590.11
Odessa Convention Center Hotel Project - Marriott	10/17/2019 - 10/16/2029		$773,324.71		$773,324.71
Round Rock Convention Center Hotel Project - Kalahari	11/01/2020 - 10/31/2030		$7,174,780.76	$5,553,889.17	$12,728,669.93
San Antonio Convention Center Hotel Project	03/01/2008 - 02/28/2018	Ended	$23,379,775.17	$11,276,350.00	$34,656,125.17
Total Payments - Through August 2022			**$120,992,509.01**	**$83,237,418.07**	**$204,229,927.08**

Note: Odessa does not receive sales tax payments.

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Based on the impact of the four qualified hotel projects that have completed the rebate period, the State is projected to fully recoup its investment within six to eight years after the rebate period ends (years sixteen to eighteen after the hotel opens).[8] The State is projected to realize a $39 million net tax revenue gain within ten years after the rebate period ends. Qualified hotel projects in Texas have created over 6,000 new jobs across the state and added over $2.06 billion in capital investment that otherwise would not likely have occurred except for the program according to the Texas Hotel and Lodging Association (THLA).[9]

Background

The first laws authorizing a rebate of state hotel occupancy and state sales taxes for a qualified hotel project were approved by the Texas legislature in 1993 to assist the City of Houston with the development of a headquarters hotel located next to the City's then-new George R. Brown convention center.

H.B. 2282 (by Coleman/Henderson) was passed during the 73rd Session and authorized the City

[7] Written testimony provided by the office of the Comptroller to the Senate Committee on Natural Resources and Economic Development, November 17th, 2022
[8] Written and oral testimony provided by the Texas Hotel and Lodging Association to the Senate Committee on Natural Resources and Economic Development, November 17th, 2022
[9] Ibid.

of Houston to receive a rebate of the state hotel occupancy taxes and the state sales taxes collected at a hotel located within one mile of the city's convention center (i.e. – a "qualified hotel project"). The rebate period was limited to seven years. The legislation included the authorization to pledge the rebated taxes to the bonds issued to construct the hotel and the facilities ancillary such as shops and parking facilities within one mile of the convention center. H.B. 2282 also authorized the City of Houston to rebate the municipal portion of the hotel occupancy taxes generated at the new hotel project.

The QHP program was created as a public-private financial tool to assist Texas municipalities with the financing of headquarter hotel facilities designed to support convention centers. These "convention center hotels" are often massive in size, generally larger than other hotels, due primarily to the fact that they not only contain more guest rooms than a traditional hotel but also contain vast areas of meeting space, restaurants, and other amenities that complement the convention center. As such, these facilities are expensive and thus challenging, if not impossible, to construct entirely with private-sector funding.

Since the passage of the original QHP legislation, the legislature has, through the passage of several pieces of subsequent legislation, authorized a total of fifty-one Texas cities to participate in the QHP program.

During the 86th Session, the Texas Legislature passed H.B. 4347 (by Anchia/Nelson) which created a new Subchapter C in Chapter 351 of the Texas Tax Code. H.B. 4347 substantially re-codified and amended the existing QHP laws, much of which was decades old. H.B. 4347 brought some much-needed streamlining, clarity, and transparency to the QHP program, including imposing additional fiscal parameters on the type of tax dollars that can be rebated and the type of establishments, and the number of projects that can be built within most municipalities.

Current Law

The QHP laws generally authorize certain municipalities in Texas to receive a rebate of the state hotel occupancy taxes and state sales taxes collected at a qualified hotel located near a convention center. The rebates continue for a 10 year period after the hotel project opens for initial occupancy, except for Arlington, Fort Worth and Dallas which have a 30 year rebate period.[10] The authority for a municipality to also commit its local HOT to a qualified project remains as well.

The rebated state taxes can be used for the "payment of bonds or other obligations issued or incurred to acquire, lease, construct, and equip the hotel and any facilities ancillary to the hotel, including convention center entertainment-related facilities, restaurants, retail establishments, street and water and sewer infrastructure necessary for the operation of the hotel or ancillary facilities, and parking facilities within 1,000 feet of the hotel or convention center facility."[11]

Chapter 351 specifies a number of requirements an eligible city must meet in order to qualify for the rebates under the more standard types of projects:

[10] Arlington is a hotel project under HB 4347 and Fort Worth and Dallas are Project Financing Zones. Both described below.
[11] See Tex. Tax Code §351.102(b)

- Authorized municipality: Foremost, in order to qualify for the tax rebates, the municipality must be one that is described by bracketing language in the enabling legislation.
- Physical location and ownership of the project: In nearly all instances, the qualified hotel project must be owned by or located on land owned by the municipality (or by a nonprofit corporation acting on behalf of an eligible municipality) and located within 1,000 feet of a qualified convention center facility owned by the municipality.

Requirements of the convention center facility: To qualify, a convention center facility must:

- Be primarily used to host conventions or meetings and configurable to simultaneously accommodate multiple events of different sizes and types.
- Contain at least 10,000 square feet of continuous meeting space.
- Be wholly owned by a municipality.
- Be connected to a qualified hotel or have an exterior wall located not more than 1,000 feet from the nearest exterior wall of a qualified hotel.
- Not be located inside a hotel, sports stadium, or other structure, but may share common infrastructure or facilities with the hotel.[12]

Each qualified city with a population of less than 175,000 is limited to one qualified hotel project in perpetuity. After a municipality pledges or commits revenue under this section for a qualified project, the municipality may not ever again pledge or commit revenue for a qualified project.[13]

Types of Projects

The Comptroller identifies seven different types of QHPs that exist in practice today.

1. **Houston Qualified Hotel Project** (Tax Code Sections 151.429 and 351.102(a); Gov't Code Section 2303.5055)
   - A hotel proposed to be constructed, or being constructed, by the City of Houston, including a privately owned or existing hotel selected by the City, that is located within 1,000 feet of the convention center owned by the City, including shops, parking facilities, and any other facilities ancillary to the hotel. (Tax Code Sections 151.429 and 351.102(a); Gov't Code Section 2303.5055). The city may have multiple qualified hotel projects.
   - Businesses eligible for rebates: hotel, facilities ancillary to the hotel, shops exclusively selling tangible personal property, and parking facilities.
   - Type of rebates: State sales and use tax and state HOT.
   - Rebate period is ten years.

[12] See Tex. Tax Code § 351.151(2)
[13] See Tex. Tax Code § 351.155(c) and (d)

- Unlike hotel projects, qualified hotel projects do not receive rebates from restaurants and convention center entertainment-related facilities.
- Only Houston is eligible.

2. **Hotel Projects Prior to HB 4347 (86R)** (Tax Code Sections 351.102(b) prior to 2019 - Struck by H.B. 4347, but eligibility retained if the city pledged bonds or entered into contracts to construct prior to September 1st, 2019)
   - A hotel that is owned by or located on land owned by a city within 1,000 feet of a city-owned convention center facility, including facilities ancillary to the hotel, meeting spaces, restaurants, shops exclusively selling tangible personal property, convention center entertainment-related facilities, parking facilities, and water and sewer systems within 1,000 feet of the convention center or the hotel.
   - Businesses eligible for rebates: hotel, facilities ancillary to the hotel, restaurants, shops exclusively selling tangible personal property, convention center entertainment-related facilities, parking facilities, and water and sewer systems.
   - Type of rebates: State sales and use tax from eligible businesses and state HOT.
   - Rebate period is ten years.
   - Each city is eligible for multiple projects.
   - Eligible cities: Abilene, Amarillo, Arlington, Austin, Carrollton, Cedar Hill, Corpus Christi, Dallas, Denton, El Paso, Frisco, Fort Worth, Garland, Grand Prairie, Houston, Irving, Katy, Kemah, League City, Lewisville, Lubbock, Midland, Nacogdoches, Odessa, Pasadena, Plano, Port Aransas, Prosper, Roanoke, Round Rock, Rowlett, San Antonio, Sugar Land, Tyler.

3. **Hotel Projects Under HB 4347** Tax Code Sections 351.102 (b), (c) and 351.1022)
   - H.B. 4347 created a new set of hotel projects that are owned by or located on land owned by a city within 1,000 feet of a city-owned qualified convention center facility, including facilities ancillary to the hotel, convention center entertainment-related facilities, restaurants, retail establishments, and parking facilities within 1,000 feet of the hotel or convention center facility.
   - These new hotel projects are like hotel projects prior to passage H.B. 4347, but with some differences. **The city-owned convention center has a minimum square footage requirement and cannot be in a hotel, stadium, or other structure. Additionally, these projects include retail establishments instead of shops that exclusively sell tangible personal property, which captures a broader range of businesses.**
   - Businesses eligible for rebates: hotel, facilities ancillary to the hotel, restaurants, retail establishments, convention center entertainment-related facilities, parking facilities, and water and sewer systems.

- Type of Rebates: State sales and use tax and state HOT. Also, Arlington gets state mixed beverage taxes.
- These cities are eligible for multiple projects.
- Rebate period is 10 years, except for City of Arlington.
- Eligible cities: Arlington, Austin, Dallas, Fort Worth, Houston, Kemah.

4. **Qualified Hotel Projects** (Tax Code 351.156 & 351.152)
   - A qualified hotel designated by the city on city-owned land and a qualified city-owned convention center facility that are connected to or within 1,000 feet of one another, including restaurants, bars, and retail establishments within or connected to the qualified hotel or qualified convention center facility.
   - Businesses eligible for rebates: hotel, restaurants, bars, and retail establishments.
   - Type of rebates: state sales and use tax and state HOT.
   - Rebate period is ten years.
   - A municipality may pledge or commit revenue under this section for only one qualified project. After a municipality pledges or commits revenue under this section for a qualified project, the municipality may not ever again pledge or commit revenue for a qualified project except for municipality with a population of 175,000 or more, which are not subject to this limitation.
   - Eligible cities: Corpus Christi, Arlington, Irving, Round Rock, Midland, Lewisville, Roanoke, Kemah, Port Aransas, Alvin, Fredericksburg, Kerrville, Weatherford, Celina, The Colony, Nacogdoches, San Antonio, Amarillo, Odessa, Prosper, Frisco, Rowlett, Sugar Land, Pearland, Baytown, Hutto, Conroe, Richmond, Rio Grande City, Kyle, El Paso, Grand Prairie, Tyler, Abilene, Lubbock, Cedar Hill, League City, Katy, Seabrook, Webster, Cedar Park, San Benito, Commerce, Presidio, Missouri City, and Victoria.

5. **Expanded Qualified Hotel Projects** (Tax Code 351.157)
   - Same as qualified projects (#4) and includes restaurants, bars, retail establishments, swimming pools, and swimming facilities connected to or within 1,000 feet of the qualified hotel or qualified convention center facility. (Tax Code Section 351.157).
   - The restaurants, bars, retail establishments, swimming pools, and swimming facilities must be on land owned by the municipality and built on or after the date the municipality commences the qualified project.
   - Business eligible for rebates: hotel, restaurants, bars, retail establishments, and swimming pools and swimming facilities.
   - Types of rebates: State sales and use tax and state HOT.
   - Rebate period is ten years.

- A municipality may pledge or commit revenue under this section for only one qualified project. After a municipality pledges or commits revenue under this section for a qualified project, the municipality may not ever again pledge or commit revenue for a qualified project except for municipality with a population of 175,000 or more, which are not subject to this limitation.
- Eligible cities: El Paso, Irving, Cedar Hill, Seabrook, Weatherford, Celina, Grand Prairie, Round Rock, Katy, San Benito, Richmond.

6. **Kemah Multipurpose Convention Center Facility Project** (Tax Code Section 351.1021)
   - A hotel and a multipurpose convention center facility located in the City of Kemah within 2,500 feet of the hotel, including each business in the City within 2,500 feet of the multipurpose convention center facility or the hotel, a parking or shuttle transportation system, and any parking in the City within two miles of the multipurpose convention center facility.
   - Businesses eligible for rebates: hotel, any business within 2,500 feet, parking shuttle or transportation system, and any parking structure or facility within two miles of the hotel or convention center.
   - Type if rebates: State sales and use and state HOT.
   - This project is unique to the City of Kemah. The city-owned convention center can be leased by or wholly owned by the City. Unlike other projects, this convention center is not required to be primarily used to host conventions and meetings. Additionally, this project has an expanded radius and allows any new or existing business to be included in the rebates for the City. The City is also eligible to construct an amended hotel project and a qualified project.
   - Rebate period is ten years.

7. **Project Financing Zones** (Fort Worth and Dallas) (Tax Code 351.1015 & 351.106)
   - A designated area within the Cities of Ft. Worth or Dallas, the boundaries of which are within a three-mile radius of the center of a convention center facility; or a multipurpose arena or venue that includes a livestock facility and is located within or adjacent to a recognized cultural district, and any related infrastructure, that is located on city-owned land or by the owner of the venue; partially financed by private contributions that equal not less than 40 percent of the project costs; and related to the promotion of tourism and the convention and hotel industry.
   - These cities receive the incremental hotel-associated revenue (growth in state sales and use tax, state HOT, and state mixed beverage tax exceeding the base year) from the hotels located in the zone.
   - Rebate period is thirty years.
   - Only Fort Worth and Dallas are eligible and they may designate multiple projects.

While these seven types of projects identify what has been authorized across the history of the Chapter, the types found in numerals 4. and 5. are the primary types municipalities would be included under if authorized by the Legislature today.

TESTIMONY

During the hearing held on November 17th, 2022, the office of the Comptroller identified the types of projects notated above and explained the collection and uses of local HOT.

The Committee discussed the exceptions and additions requested every session, and how continued expansions of the chapter can lead to the minimization of the intended purpose of the chapter, which is the promotion of tourism and the convention and hotel industry in the state and the enhanced economic activity that follows. As exceptions to the use of hotel occupancy tax are continuously granted towards cities and counties, the tax moves closer to general revenue for the localities. Additionally, recent practice in the legislature has been leading towards a practice where each city who wants a hotel and convention center project comes to the legislature to get state assistance. This mission creep reduces the role of the legislature in vetting proposals for QHPs and authorizing them based on the project's ability to promote tourism and increase economic activity for the locality and the state as a whole, largely through out of state dollars. This concern contributes to the support of standard practices and a legislative template to be used during the legislative process. Each invited witness heard during the hearing expressed support towards the implementation of standard practices, or a template to ensure tax dollars are being collected and spent on their intended purposes. Specifically, Texas Travel Alliance's (TTA's) President and CEO, Ms. Erika Boyd, stated "TTA and our statewide members believe that the best and proper use of hotel occupancy taxes is that it strictly promotes travel and tourism to Texas as intended. Any other use that is not laser focused on promoting Texas as a premier destination is not, in our opinion, serving Texas as the law requires."[14]

In 2021 that well defined use of hotel occupancy tax to promote tourism, was directly attributable to direct travel spending of $76.1 billion dollars in Texas, that equates to $144,786 dollars being spent per minute in the state.[15]

Mr. Justin Bragiel, General Council, Texas Hotel and Lodging Association (THLA), suggested the following recommendations to improve legislation in a way that would protect the intent of the chapter and the noted benefits to the state it has facilitated:

- The new HOT purpose should be clearly articulated and delineated.
  - Provisions that allow for use of local hotel tax for general city purposes or for “general tourism-related purposes” are not specific enough to ensure a direct impact on tourism and the convention and hotel industry.

[14] Written testimony submitted by the Texas Travel Alliance to the Senate Committee on Natural Resources and Economic Development, November 17th, 2022
[15] Ibid.

- There should be a return on investment within a certain amount of time for the particular use.
    - Example language: “A municipality to which this section applies may not use revenue from a tax imposed under this chapter for a purpose described by Subsection (a) in a total amount that would exceed the amount of hotel revenue in the municipality that is likely to be reasonably attributable to hotel guests attending events at that facility during the __-year period beginning on the date the municipality first uses the tax revenue for that purpose.
    - The municipality shall reimburse from the municipality's general fund any expenditure in excess of the amount of area hotel revenue attributable to the ------ to the municipality's hotel occupancy tax revenue fund.”
- Ensure tourism marketing doesn't suffer with the new use.
    - Example language: “If a municipality to which this section applies uses revenue derived from the tax imposed under this chapter for a purpose described by Subsection (a), the municipality may not reduce the percentage of revenue from the tax imposed under this chapter and allocated for a purpose described by Section 351.101(a)(3) to a percentage that is less than the average percentage of that revenue allocated by the municipality for that purpose during the 36-month period preceding the date the municipality first uses hotel occupancy tax revenue for the purpose described by Subsection (a).”
- Limit the new use to a hard percentage.
    - Example language: “A municipality may use for the purposes provided by _____ not more than the greater of: (1) -- percent of the hotel occupancy tax revenue collected by the municipality; or (2) the amount of tax received by the municipality at the rate of -- percent of the cost of a room.”
- Possible sunsetting of the use.
- Documentation such as a posting on the locality's website and updates on what that economic activity is used for.
    - Example language: “(a) A municipality that spends municipal hotel occupancy tax revenue as authorized by Section 351.101(i) or (o):

      (1) may not use municipal hotel occupancy tax revenue for the acquisition of land for the sporting related facility or sports field described by that subsection;

      (2) shall annually determine and prepare and publish on the municipality's Internet website a report on the events held at the facility or field, the number of hotel room nights attributable to events held at the facility or field, and the amount of hotel revenue and municipal tax revenue attributable to the sports events and tournaments held at the facility or field for five years after the date the construction expenditures are completed; and;

      (3) may only spend hotel occupancy tax revenue for operational expenses of the facility or field if the costs are directly related to a sporting event in which the

majority of participants are tourists who substantially increase economic activity at hotels in or near the municipality.

(a-1) The report described by Subsection (a)(2) shall be made accessible through a link that appears in a prominent place on the municipality's Internet website."

Further, Texans for the Arts (TFA) Executive Director Graham presented the need for current reporting requirements for cities and counties regarding their collection and use of HOT to be increased. While S.B. 1221 (85R) and S.B. 1655 (87R) have taken crucial steps towards transparency in the local use of local HOT, there remain allowable uses that are not reported and easily accessible to the public. TFA and THLA both recommended allowing the use of HOT funds in a given community ($1,000 for communities under 10,000 and $2,500 for communities over 10,000) to ensure that there is no fiscal barrier to comply to the reporting requirement, addressing the unfunded mandate concerns mentioned previously.[16]

CONCLUSION

The QHP program has had a measurable positive impact on the Texas economy since its inception. However, the sample size of completed projects which have been fully placed on tax rolls is small. Dozens of projects have been authorized since the four projects that have concluded their rebate periods were authorized, many of which feature varying types of incentive mechanisms. As these new projects are implemented, it will be important to meticulously track their progress and results to give perspective on the QHP program going forward. Careful contemplation of legislation that affects the program will be required to ensure that the intent of the program is intact, and that the state and local communities are receiving positive results from the incentives granted. Further, the bracketed nature of the program causes heavy reliance on the Legislature to vet new authorizations. This can be complicated as well, and while larger cities would likely be better positioned to effectively attract outside tourism for conventions, the intent of the program is not to give preferences for one geographic area over another or simply shifting revenue from one city to the next until all cities are authorized. This suggests an importance on pertinent data being accurately provided to the Legislature to make those decisions, and that further consideration of ways to ensure the intent of the program is maintained may be warranted.

In addition to careful consideration regarding the authorization of new projects, further consideration has been given towards the period following the commencement of the project. While safeguards are always desirable for use of tax dollars, simply implementing a safeguard such as claw backs on the program is problematic as noted in testimony form THLA. Rebates for QHPs are often associated with debt services, and cities may have trouble issuing bonds if that revenue is not unencumbered or in doubt. Likewise, if the revenue is encumbered too much, the state might not be attracting hotel and convention business to Texas, as is the goal.

Regarding the collection and use of hotel occupancy taxes, it is clear that transparency measures have been successfully enhanced and made available to the public. However, the measures still

[16] Written and oral testimony delivered by Texans for the Arts and Texas Hotel and Lodging Association to the Senate Committee on Natural Resources and Economic Development, November 17th, 2022

have some gaps and there is opportunity to complete them.

Finally, the interim charge task the Committee with determining if a HOT legislative template is feasible and if it would enable the legislature to more efficiently evaluate proposed HOT bills during session. While a template is feasible, the boundaries are currently set in statute and if the Legislature prescribes to the below recommendations regarding addition HOT or QHP bills, new authorizations will be much more efficient within the original intent of the chapters.

RECOMMENDATIONS

As a result of the discussions that took place during the hearing, the Committee recommends the following:

- Require an annual or biannual report from the Comptroller of Public Accounts be given to the Legislature to aid in the Legislature's role in authorizing QHPs. The information should include data that gives insight to the efficacy of the program and each project authorized so far.
- Further consideration should be given to the structure of the QHP program to determine if there are any statutory ways to ensure the intent of the program is held intact.
- New authorizations to the QHP program should be made only under Sections 351.156 and 351.157 to ensure the scope of the program does not grow beyond its intended purpose as discussed in this report.
- The reporting requirements passed in the 85th and 87th Session for the collection and use of local HOT have some remaining gaps and should be completed, giving taxpayers and interested parties full transparency of the tax. Enforcement measures or incentives should be considered to promote compliance with the requirements.
- Texas Tax Code Chapters 351 and 352 provide the allowable uses of local HOT. Amendments to these uses should not be considered, unless they contain template language as discussed above.

3. Natural Gas Storage: Study the economic benefits of expanding the state's underground natural gas storage capacity and infrastructure. Investigate and make recommendations for additional natural gas transportation opportunities.

BACKGROUND

Natural gas in Texas is bought and sold at every stage in both the production side and the delivery process. Natural gas production in Texas is contracted out to entities in the state, out of state, and out of the country. According to data from the U.S. Energy Information Administration (EIA), from January to November of 2021, the Texas Natural Gas industry produced around 25.7 billion cubic feet per day (BCFD), where as in state consumption averaged around 10.7 BCFD. As of June 2022 (latest per EIA), Texas had natural gas gross withdrawals of 31.1 BCFD, placing it as the number one producing state and accounting for twenty-six percent of total U.S. natural gas production.

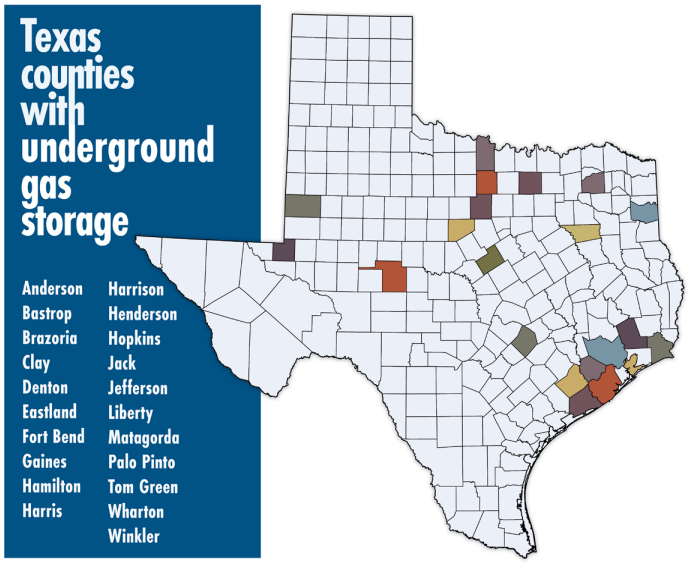
Industrial consumers accounted for forty-eight percent of Texas' natural gas consumption in the first half of 2022 per EIA.[17] Residential and commercial consumers together accounted for twelve percent of the state's natural gas consumption. Natural gas consumption for electricity generation was thirty-nine percent. Of this, roughly half of Texas' 77,460 megawatts of natural gas-fueled nameplate capacity has been operated by competitive electricity generators, per EIA[18] and TCPA in 2021, so competitive generators have represented less than twenty percent of Texas' total natural gas consumption.[19]

Natural gas storage enables supply to match demand on any given day throughout the year by adjusting to daily and seasonal fluctuations in demand, while natural gas production remains relatively constant year-round. Put simply, when natural gas production is higher than natural gas consumption (typically April through October), it can be placed into storage. When natural gas production is lower than consumption (November through March), it can be withdrawn from storage to meet demand. Storage can also be used to keep natural gas flowing to customers in the event of temporary disruptions in production and also helps interstate pipeline companies balance system supply on their long-haul transmission lines. The flexibility and resiliency provided by storage is the key to maintaining reliable and responsive natural gas delivery.

Natural gas is stored underground primarily in three reservoir types: depleted oil and natural gas fields, salt formations and depleted aquifers. Currently, Texas has twenty-three operators, with sixteen salt cavern storage facilities hosting seventy-six wells, and seventeen depleted reservoir storage facilities with 327 wells, for a total of thirty-four active storage facilities spread across

[17] "Texas Natural Gas Consumption By End Use". U.S. Energy Information Administration 2022. *Eia.Gov*. https://www.eia.gov/dnav/ng/ng_cons_sum_dcu_STX_m.htm
[18] Ibid.
[19] American Petroleum Institute (API) testimony to the joint hearing of Texas House Committee on Energy Resources and Texas House Committee on State Affairs, Sep. 13, 2022

twenty-one counties.[20] Texas currently hosts about 478 billion cubic feet of working gas in underground storage with room for about seventy-five billion cubic feet more of additional storage. Operators of such facilities, both depleted oil and gas reservoirs and mined salt caverns, are required to report storage information to the Railroad Commission of Texas (RRC). The principal owners/operators of underground storage facilities include interstate pipeline companies, intrastate pipeline companies, local distribution companies, and independent storage service providers. The roughly seventy-five billion cubic feet of additional storage availability for natural gas could generate enough electricity for 8.61 million Texas homes for a month, according to data from the EIA for electricity production from natural gas and average consumption per household.[21]



In Texas, the RRC has historically regulated underground natural gas storage facilities. Natural gas and other gaseous substances in salt formations is subject to the RRC's Statewide Rule 97 (16 TAC §3.97). Gas storage in freshwater aquifers is not allowed in Texas. Storage of natural gas in depleted oil and gas reservoirs is subject to the RRC's Statewide Rule 96 (16 TAC §3.96) which addresses the procedures for filing of applications, notice and opportunity for hearing, transfer of permits, and technical and safety requirements pertinent to storage facilities.

Underground natural gas storage facilities are also regulated by the U.S. Pipeline and Hazardous Materials Safety Administration (PHMSA). In June of 2016, Congress enacted the PIPES Act "Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016." Section 12 of the Act mandated that PHMSA issue regulations for natural gas storage facilities that store natural gas incidental to transportation. The Act provided that PHMSA may allow state authorities to continue exercising their traditional role in the oversight of intrastate underground natural gas storage facilities, in the same manner through an annual certification process.

RRC opted to become a certified federal agent under PHMSA's Underground Natural Gas Storage Facilities Program. Signing a certification allows RRC to inspect and enforce the federal underground natural gas storage facilities regulations for intrastate natural gas storage facilities located within the state, like the RRC's current Pipeline Safety Program. Under the certification, RRC is required to adopt the federal standards in rulemaking.

[20] Written testimony provided by Railroad Commission of Texas to the Senate Committee on Natural Resources and Economic Development, June 13th, 2022

[21] "RRC: Texas' Underground Storage Facilities Adding to Natural Gas Reserves Ahead of Winter". Railroad Commission of Texas. 2022. *Rrc.Texas.Gov*. https://www.rrc.texas.gov/news/102721-gas-storage-statistics/.

TESTIMONY

Commissioner Wright,, Texas Rail Road Commission (RCC), testified to the committee first and stated natural gas storage helps secure our natural gas supply chain especially during times of high demand like the winter season. Commissioner Wright also pointed out that complications on the natural gas supply chain for power production during Winter Storm Uri were a result of natural gas production byproducts freezing. Additionally, processed & stored natural gas is inherently winterized because it has a freezing point of -297 F. Taking advantage of natural gas storage both increases reliability and reduces costs to consumers.

Next, Executive Director Wang, RCC, testified on the agency's jurisdiction for permitting. He clarified that the RCC has jurisdiction to permit the natural gas storage facility, the underground reservoir, the injection wells to store natural gas, and the same well to pull the gas from storage. Also, through delegation of the U.S. Department of Transportation (USDOT), the RCC permits the safety of the intrastate pipelines to and from the storage facilities, and have recently been assigned jurisdiction over the safety of underground storage facilities from the USDOT. He also stated the Critical Infrastructure Division within the RCC oversees the thirty-four underground storage facilities currently active in Texas. He also explained there are two types of natural gas storage reservoirs; salt dome caverns which are created by discovering the salt dome and melting salt and water into the dome, and reservoirs created by depleting an oil and gas reservoir.

Mr. Todd Staples, President, Texas Oil and Gas Association (TXOGA), testified next about the market for natural gas storage. He stated the Texas oil and gas market is one of the most liquid and efficient in the world and that natural gas production is increasing. He also stated the economic driver for storage shouldn't be regulation on oil and gas but the Energy market should provide the demand for storing gas. He also clarified that industry uses interstate pipelines regulated by the Federal Energy Regulatory Commission (FERC) to transport gas to and from the state, and the FERC regulates the rate of return on those pipelines. Since the intrastate pipelines that run from production to the storage facility are instead regulated by the RCC, industry can add intrastate pipelines with less regulatory delays. He also added that there are 847 billion total cubic feet of natural gas storage currently available but, 544 billion cubic feet of natural gas can be stored and used to maintain structural integrity of the storage reservoirs. That 544 billion cubic feet of natural gas is 100x more than the average daily use of gas for Texas power generation. He also pointed out the thirty-five permitted storage reservoirs are primarily located in East Texas and along the coast with the remaining storage reservoirs scattered across Texas. Staples recommended the Electric Market Redesign to factor in the cost of natural gas storage services, expedite the Firm Fuel Supply Service (FFSS) to make it a compensable product generators can use to be reimbursed, permit expedition for wells to withdraw capacity, and to create incentives (tax incentives/abatements) to get storage projects up and running faster. He also recommended infrastructure for the transportation of natural gas needs permitting expedition and tax incentives as well.

Mr. James Mann, President, Texas Pipeline Association, testified stating natural gas storage is an insurance policy for when natural gas runs out and for price spikes during high demand periods. It allows stockpiles of gas closer to the users. Storage is also beneficial to maintain pipeline operations. Natural gas pipelines need to maintain a certain amount of pressure at varying points, and access to natural gas storage helps maintain that pressure, especially during swings of natural

gas consumption. He also noted a correlation between the increasing amount of power generation from renewables and an increase in the swings of natural gas consumption for power generation. Mann then clarified that intrastate natural gas pipelines are not subject to federal regulation and can be moved to interstate pipelines without the potential of Federal Government commandeering the natural gas. Additionally, space in the natural gas reservoirs is rented by multiple people/companies in the same reservoir, but the reservoir is owned by one company.

Lastly, Jeremy Mazur, Senior Policy Advisor, Texas 2036, testified stating reliable natural gas is essential for Texas power generation and global needs. Natural gas storage is a reliable source of fuel for thermal generation, and provides fuel for fast ramp supply needs, and is a hedge against supply disruptions and price shocks. He also stated hydrogen can also be stored underground as a fuel source and that a larger natural gas pipeline network would also provide more natural gas storage.

CONCLUSION

Storage provides balance for the natural gas supply system across Texas and the United States. Planning, investment, and redundancy are necessary to ensure the resources and infrastructure are in place to be prepared to access reserves and operate under any condition. Texas alone has over 100 times the amount of working storage capacity than all natural gas generators would need to provide electricity on a given winter day. Reserves can be utilized by natural gas utilities, electric power generators and others currently and can be a useful tool in providing energy security for the people of Texas.

To the extent that the risk of supply disruptions driven by weather or other events could be mitigated through the combination of natural gas pipeline redundancy, firm transportation commitments, interconnected natural gas storage capacity, and leveraging futures and options to hedge their risk, policy makers should strive to ensure that electric power and natural gas utilities are aligned in their incentives to mitigate these risks. The ultimate prices of natural gas and electricity to residential and commercial consumers could become more stable by sound risk management through the current value chain, including the expanded use of underground natural gas storage.

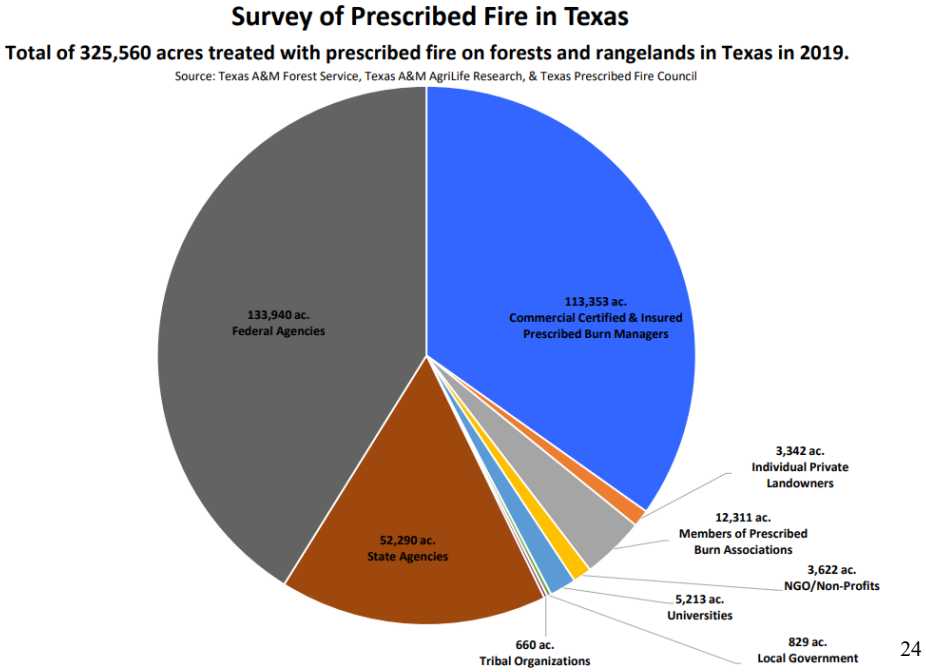
RECOMMENDATIONS

The Committee recognizes that the current system as related to the underground natural gas storage capacity is working and is primed for increased utilization. The competitive dynamic for the natural gas energy market has provided a reasonable market-based price for underground storage. As it currently stands, the Committee finds that industry driven supply and demand of the expansion of the state's underground natural gas storage capacity and infrastructure to be the best route in the current market.

4. Wildfires and Prescribed Burns: Examine ways to reduce the risk of and destructive impact of wildfires. Monitor the role the Prescribed Burning Board plays in controlled burns. Recommend practices and improvements that public and private landowners may use to reduce fire risks.

BACKGROUND

Texas has about 400,000 acres of prescribed burns per year. This number is believed to be under reported because most private landowners do not have to report when and what they burn. Around 50% of this is done by federal agencies, 30% done by commercial certified and insured prescribed burn managers (CIPBMs), 15% by state agencies, and the remaining by universities, cities/counties, tribes, private CIPBMs, private non-licensed managers, and private landowners.[22] In comparison, Florida burns over one million acres per year.[23]



[24]

Most fire and natural resource managers claim that prescribed fire reduces wildfire risk. Fuels reduction is an objective that is often included in burn plans, and many managers and landowners have seen firsthand how wildfires respond in unburned versus frequently burned areas. There have been many studies confirming the observational and anecdotal information that these

[22] Written testimony provided by Texas Forest Association to the Senate Committee on Natural Resources and Economic Development, June 13th, 2022
[23] Not a perfect comparison because of land make up, amount of federal lands, weather/climate, etc.
[24] Written testimony provided by Texas Parks and Wildlife Department to the Senate Committee on Natural Resources and Economic Development, June 13th, 2022

prescribed burns reduce wildfire risk, one of the earliest being in 1963 by Davis and Cooper in South Georgia and Northern Florida. Collectively, these studies indicate that fifty years of research have found similar results: In flatwoods ecosystems in the South, prescribed burning reduces wildfire risk for several years after the burn until the shrub understory and midstory recover.[25]

The last several decades have seen a significant change in the landscape of Texas and this has caused significant issues in not just wildfire risk, but land management as well. Prescribed burns are key for producing grass for livestock and wildlife management, helping rejuvenate aquafers,[26] preventing soil erosion,[27] and protection of natural habitats. The juniper growth in the uplands hasn't just caused more fires, but dries out the aquifers, kills the grass, and cuts down on space to have cattle; woodland encroachment on the wetlands brings in different predators and destroys natural habitats; only 2% of East Texas pines are left on native land. Prescribed burns are the most economical and effective way to help prevent further loss.

Current Texas Laws

The Texas Prescribed Burn Act (the Act) allows for anyone to burn on their own private land without any restrictions[28], but "does not modify the landowner's liability for property damage, personal injury, or death resulting from a burn that is not conducted as provided."[29] Besides private landowners, prescribed burns are done by federal agencies, state agencies, commercial and private prescribed burn managers.[30]

The Act delegates the substance of standards for conducting prescribed burns to a Prescribed Burning Board (PBB), which operates under the Texas Department of Agriculture and in conjunction with the Texas Commission on Environmental Quality (TCEQ). The Act also protects landowners from liability for injury or damages that result from a prescribed burn if the burn is conducted under the supervision of a CIPBM and the CIPBM carries sufficient liability coverage.[31] That is, private landowners in Texas are immune from liability if the landowner complies with the statute by having the burn conducted by a CIPBM with sufficient insurance coverage.[32]

The PBB only regulates the CIPBMs. There are about 100 certified commercial and private prescribed burn managers in the state. The commercial burn managers are the industry people that one would hire to provide prescribed burn services on one's land, whereas the private burn

[25] Long, Alan, and Annie Oxarart. "What the Research Says: Prescribed Fire and Wildlife Risk Reduction." Southern Fire Exchange, 2017, https://southernfireexchange.org/wp-content/uploads/2017-1.pdf
[26] Not just more water, but better quality water
[27] This helps protect reservoirs, lakes, rivers, etc.
[28] The Act does not speak to burn bans. Further prohibition is found in Local Gov. Code §352.081 for counties and §382.018 Health and Safety Code for TCEQ which maintains the overall prohibition in the state.
[29] See Tex. Natural Resources Code §153.002
[30] Cary, Bill, and Jamey Lowdermilk. 2022. Review of Prescribed Fire Liability Report for the Southern United States: A Summary of Statutes and Cases. Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., in collaboration with Jennifer Fawcett, North Carolina State Extension.
[31] See Tex. Natural Resources Code § 153.081 and §153.082
[32] Cary, Bill, and Jamey Lowdermilk. 2022. Review of Prescribed Fire Liability Report for the Southern United States: A Summary of Statutes and Cases. Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., in collaboration with Jennifer Fawcett, North Carolina State Extension.

managers mostly work for big ranches and landowners (King ranch has two CIPBMs and eighteen non certified burn bosses). CIPBMs, have to work under higher standards and go through different training regulated by the PBB. They are able to burn under different conditions than everyone else because they are so highly regulated. For example, they are allowed to operate in a county with a burn ban in effect. To be certified as a CIPBM through the PBB, you have to have qualified insurance. This includes $1,000,000 per occurrence coverage and $2,000,000 aggregate. This seems to be the biggest hurdle to getting more certified PBMs, as there are only currently two companies that will provide this amount of insurance and they will only provided it to Foresters.

Texas State Agency Roles

There are several state agencies which have a role surrounding wildfires and prescribed burns in Texas.

Texas Parks And Wildlife Department (TPWD)

TPWD has eighty-nine state parks, about 760,000 acres of managed area, and prescribed burns are the number one way they manage habitats, specifically around facilities and near their neighbors. They typically only schedule burns between December and April, but do have other times that are driven by ecology, people on the ground, and other needs. They factor in high fuel loads and habitat restoration as well as need/ ability to safely conduct the burn.

H.B. 801 (76R) requires them to notify their neighbors before conducting any prescribed burns. TPWD will send letters to neighbors before conducting a prescribed burn, as well as run ads in the newspaper, put up road signs, have superintendents of the park reach out to neighboring landowners that they have relationships with, and more recently have been upping their social media engagement about prescribed burns. Sometimes after reaching out to neighboring landowners about prescribed burns on state land, TPWD will work with the neighboring landowners to help burn some of the neighbor's land too. TPWD does not provide that as a service on a normal basis, but does teach people how to do it themselves through a technical program for private landowners. Texas A&M Forestry Service helps provide funding for private landowners to do prescribed burns.

They have 150 collateral firefighters[33] who are trained to help fight/ start fires. TPWD also has agreements with the National Parks Service, U.S. Fish and Wildlife Department, and Texas A&M Forest Service to partner/ help each other conduct burns.

The biggest barriers to conducting prescribed burns in TPWD experience is urbanization, public perception, having enough people on the ground to conduct the burn safely, and liability. They believe liability issues in the past have been the biggest reason why private landowners do not conduct prescribed burns as often as they could. They also can't conduct burns when a burn ban is in effect. Burn bans are up to the county and they say a lot of county official's burn bans are not necessarily backed by science and that they have had past issues with different county judges who don't want any fires being conducted in their county. TPWD believe there could be better guidance from the state to counties on how to judge when a burn ban should be in affect. TPWD currently are trying to increase their collaboration within communities, emergency management

[33] These include biologists, park rangers, geologists, etc. who are certified to conduct prescribed burns

groups, and public/private groups to help increase communication/ awareness on the benefits of prescribed burns and the dangers that can arise from not doing them. TPWD is also working on wildfire strategy/ practice plans to be able to accept fires on their lands during wildfire disasters to help locals focus on protecting private lands and saving lives.

Texas Department of Emergency Management (TDEM)

TDEM only works on the disaster response side of the wildfires. They work with TPWD, TAMU AgriLife & Forest Services, Texas A&M Task Force 1 Urban Search and Rescue, and Texas Intrastate Fire Mutual Aid System. They use Texas A&M Forest Services (TFS) as their lead agency during wildfire disasters and are activated at the same time as TDEM, though all money decisions go through Chief Kidd. They also mentioned that now that they are all under the Texas A&M System umbrella there has been a vast improvement in functioning between the agencies.

They also have the Disaster Recovery Task Force who are TDEM employees that they loan to local communities during disasters. They help the locals with coordination of groups, bringing in the right groups to help, setting up recovery areas for affected people, etc.

Texas Department of Agriculture (TDA) & Prescribed Burn Board (PBB)

PBB does not license or permit prescribed burns. PBB only has the ability to set standards for certified prescribed burning and develop comprehensive training curriculum for the certification of prescribed burn managers, which includes the certification, renewal, and training of Certified and Insured Prescribed Burn Managers (CIPBMs) and instructors. Additionally, the PBB ensures that the minimum insurance requirements set forth in the Natural Resources Code are met for the protection of the CIPBM and those participating in or in the vicinity of a prescribed burn.

Before every burn, CIPBMs notify TAMU Forest Services, the local Sherriff's Office, and provide written notification of any sensitive receptors near the area. They also are required by statute to notify TCEQ if they are burning in an area with a burn ban.[34]

With the state being ninety-eight percent private lands, they believe encouraging/ helping private landowners conduct prescribed burns would be the area that would make the biggest impact in helping to prevent wildfires through prescribed burns and fuel reduction.

PBB believe one of the biggest restraints to prescribed burning is lack of knowledge of the benefits by the public and specifically county judges. County judges are not allowed to stop CIPBMs from burning during burn bans, but CIPBMs have still experienced issues and alleged harassment from certain county judges to an extent that many will still not operate in those counties. PBB would be interested in helping create programs and education for the public/ local officials, but have noted to committee staff that they do not have the resources to do this themselves.

PBB also spoke to committee staff about good actors like the City of Borger in the Panhandle being a municipality that has been a best practice on using prescribed burns to prevent wildfires. The City has had a few locals working with an insurance company to bankroll the policy, so they can have a CIPBM in the area since no other insurance company will insure outside of the foresters in East Texas.

[34] This is for air quality monitoring purposes only.

Texas A&M University (TAMU) AgriLife (AgriLife) & TAMU Forest Services (TFS)

Both agencies see the causes for the increase of fuel that create more wildfires are due to several factors. First, because of the increased urbanization of the state there has been increasingly less grazing animals which help to keep overgrowth of different kinds of vegetation. Second, years of anti-fire campaigns have had great effect in helping to decrease campfire related wildfires, but have also had a negative effect on public perception of fires as a whole. Next, the Conservation Reserve Program (CRP), which was created in 1985, helps people cultivate eroded land and turn it into grass, this is great for the land itself, but does add to the fire risk. Lastly, the addition of the wildlife evaluation for property tax relief converted a lot of what was being used as grazed land under the agriculture exemption for property tax relief and turned it into more native/ forage land. This is again good for the land, but does have the effect of increased fire risk. Policy changes, though beneficial in other areas, have had unintended negative impacts on fire risk, but both agencies believe that these risks can be managed with targeted approaches of prescribed burns.

Both AgriLife and TFS do a lot of community outreach and promotion of prescribed burns. They do outreach to new landowners for educational purposes and include information on prescribed burns and the benefits of them. TFS have a Forest Stewardship program to help work with landowners to help prevent fires. TFS help landowners develop a written ten year course of action, outlining step-by-step measures that will enable landowners to meet the goals and objectives established for their property.[35] TFS also have several programs in which they conduct on several of their managed lands throughout, which they call living classroom, that they use not just for university classes, but to help provide education to communities on fire safety.

AgriLife have agents in every county of Texas that have good relationships with county and city officials, working with them in several different capacities. AgriLife mentioned to committee staff that they could be used to further educate local officials on the benefits of prescribed burns and wildfire prevention.

Wildfires and Prescribed Burns in Texas

In the previous ten years, 98,626 wildfires have burned nearly 3,000,000 acres. In 2011 alone, nearly 4,000,000 acres were consumed. TFS's most recent voluntary survey of burn managers indicated upwards of 400,000 acres of prescribed fires are burned annually. This is up from approximately 200,000 acres in the 2010/2011 season.[36]

TFS maintains a website and data base with all current wildfire activity, fire potential across the state, the national incident reporting system, situational briefings from TDEM, information on all county burn bans, as well as many other resources.

[35]" LANDOWNER ASSISTANCE: STEWARDSHIP". 2022. Texas A&M Forest Service. *Tfsweb.Tamu.Edu*. https://tfsweb.tamu.edu/Stewardship/.

[36] Written testimony provided by Texas Forest Association to the Senate Committee on Natural Resources and Economic Development, June 13th, 2022

TESTIMONY

On June 13th, 2022, the Senate Committee on Natural Resources and Economic Development heard both invited and public testimony related to this charge. Invited testimony included each of the individual agencies that have a role surrounding wildfires and prescribed burns in Texas.

Executive Director Smith, Texas Parks and Wildlife Department (TPWD), testified about the agency's roll in helping mitigate wildfires, mainly the value of prescribed fires. He stating prescribed burns are efficient, effective, and safe. Increases in fuel sources for wildfires are wildland-urban interface is increasing, changes of land management practice, the presence of invasive species like ash junipers, and population growth in rural areas. TPWD conducts roughly 150 prescribed fire a year, ninety of which are on public land, sixty on private land. Private land prescribed burns are for demonstration, education, extension related purposes and TPWD usually teams up with Forest Service, Extension service, and others. TPWD has 300 staff certified through the Nation Wildfire Coordinating Group Standards for the prescribed burns, but less than five percent of the staff are full time fire professionals. Other issues they face is the small burn window during the year, small amount of professionals able to conduct the prescribed burn, and public fear and concern about burning. ninety-five percent of land in Texas is privately owned, and the amount of acreage that has prescribed burns on private land is nowhere where it needs to be. Smith also clarified TPWD leads prescribed burning on public lands, and play a support role to other agencies for prescribed burns elsewhere. They incur the risk and liability only when burning on public land under Texas Parks and Wildlife. Liability would accord to the specific public land owner for public land TPWD do prescribed burns on in conjuncture with the landowner. They are not the burn boss on private land and therefore do not incur the liability. He also added Texas wildlife is fire adaptive, so the prescribed burns have a low impact on harming wildlife and increases the amount of a available habitation for wildlife.

Chief Kidd, TX Division of Emergency Management (TDEM), testified about how TDEM and other agencies assist with wildfires. Agencies assist with wildfires/burns; Texas A&M Forest Service (TFS), TPWD, Texas Military Department, Texas Department of Transportation, Texas A&M Extension Service, AgriLife, Texas A&M Vet Team, and the Disaster Recovery Taskforce. He stated that burning is a tool we must use or we will have to respond to it. The largest pool of responders for wildfires comes from Texas Intrastate Fire Mutual Aid System (TIFMAS) comprised of 6,000 local firefighters with support of local elected officials. TIFMAS firefighters are dispatched by TDEM and paid for by Governors Disaster Contingency Fund. He also clarified that paid firefighters in Texas have to go through certifications by the Commission of Firefighting which better equips them to fight wildfires. There are no requirements for the local entities or prescribed burners to notify TDEM. He also clarified that Federal Administration has funds available to help counties in Texas prepare for drought, which includes fire mitigation. The request for those funds come straight from the citizens on the Small Business Administration side or the farmers and ranchers on USDA side.

Interim Director Davis, TFS testified, stating the mission for TFS is the conservation of natural resources through forestry and land management. They are also the lead agency for responding to wildfires, training and education for fighting wildfires, and fire education for both private land owners and school districts. He stated his priority has been safety, personal retention, and to establish and maintain relationships both internally and externally with other agencies. Director

Davis testified that TFS is working on the Forest Action Plan, which is a projection for recommended prescribed burning. He recommend fourteen million acres per year, and Texas is currently burning about three to four million acres per year.

After Director Davis' testimony, Richard Gray, Chief Regional Fire Coordinator, TFS, went straight into questions from the Committee. Chief Gray clarified that road design is incredibly important as it dictates what vehicles and personal are about to reach the wildfires. Private land roads may not be fit for the transport of large equipment, but the firefighters have training on how to access areas that are difficult to navigate and improvement on infrastructure would increase access for responders. He also clarified the burn boss certification does not come from TFS, but through the Texas Department of Agriculture (TDA) and the Texas Prescribed Burn Board (PBB). Gray went on to say that the Texas Commission on Environmental Quality (TCEQ) requires private land owners to report prescription burns to TFS for civil, cultural, or forest management burns only, and other burns are normally reported at the local level.

Chairman Penick, PBB, TDA, testified stating they are the group that licenses prescribe burners in the State. Penick added there are many groups that preform prescribed burns and they can be licensed or unlicensed. A citizen of Texas does not need to be licensed to do a prescribed burn, but there are benefits to being certified. Certified and insured prescribed burn managers (CIPBM) recently had the level of liability level of smoke from prescribed burns reduced from gross negligence to simple negligence and had the limit of personal liability reduced to the maximum amount of what the insurance company would provide. There are currently around 100 CIPBMs in the state, and half work for commercial companies with the other half working for private companies and land owners. He also stated there is a need to empower private land owners to do more prescribed burns on their land, and the biggest impediment on prescribed burns is a lack of insurance coverage for people preforming prescribed burns. Insurance for prescribed burns has become so limited that there is now only one insurer who only covers licensed foresters East of I-45. To address the lack of insurers, he recommends the State to put money into a self funding cost recovery program that would sunset over time. The fund would serve as an insurance pool for CIPBMs. Users of the pool would be required to take extra training like the S1-3190 for prescribed burn safety and report the data needed for private insurers to enter the market place like the location of the burn, days of the year burns occurred, the number of people that participated in the burn, and acres burned. This could also build actuary tables to take back to private insurers to illustrate burning is safer than a lot of people believe. Penick also clarified that before performing a prescribed burn, CIPBMs are required to give notice to local entities which is normally the sheriffs department, and if there is a burn ban, to give notice to TCEQ and the county judge.

Director Avery, Texas A&M AgriLife Extension Service (AgriLife), testified stating AgriLife works to fill the education component of the land grant mission of research education and service in areas of natural resources and life sciences. He stated prescribed fire is a valuable tool for land management. Prescribed burns provide valuable inputs into the maintenance of agriculture production and is economically efficient. The roll of AgriLife in prescribed fire is mostly just educational. AgriLife educates land owners and managers in the safe and effective use of prescribed fires. Avery also stated the biggest growth areas for their education is with new land owners. He clarified that while there is no minimum requirement for a prescribed burn, there is a high minimum cost that makes prescribe burning smaller parcels of land less desirable.

Mr. William Fox, Extension Specialist, AgriLife, testified stating prescribed burns are beneficial to the livestock industry, hunting industry, watersheds, and as a general land management tool across the state. AgriLife also educates land owners and the general public by putting educational information online about prescribed burns.

Following the invited testimony on this charge, the Committee listened to public testimony.

Mr. Patrick Dudley, Program Director, Agriculture Commodity Boards, TDA, testified to clarify some of the questions of the Committee during the invited testimony section, specifically that CIPBMs conducting prescribed burning during a burn ban must notify County Sheriff's Office, TCEQ, and Texas Forest Service prior and post burn. Dudley also provided photos to the Committee of plots of land before and after prescribed burns, showing the difference in wildfire fuel levels.



[37]

Executive Director Hughes, Texas Forestry Association, testified stating that they have been working closely on a proposal for a state funded insurance pool recommendation. He also stated that the Legislature should address the lack of insurance for prescribed burners for this coming session.

Mr. Brian Treadwell, ranch owner, testified stating prescribed fires are the only natural and sustainable solution to brush management and improving native grass. He recommends striking Natural Resources Code 153082 "Insurance be with a policy period minimum aggregate of at least $2 million." Treadwell also stated that liability concerns prevent volunteer firefighters from "back burning" to stop active wildfires. He also stated that other states have an insurance market place for prescribed burners, but those states only have a liability requirement of $1 million.

Fire Marshall Christensen, Harris County, testified stating the wildland urban interface is most commonly described as when the human developments intermix with the wildland fuels. It is the fuels in the native wildlife area that impose a greater risk to the population. Eighteen percent of Harris county is forested, providing a large fuel source for wildfires near heavily populated areas. Adoption of the International Wildland Urban Interface Codes would protect citizen in the urban areas that are adjacent to wildland area. She also added that only twenty-six counties have adopted

[37] Written and oral testimony given by Texas Department of Agriculture to the Senate Committee on Natural Resources and Economic Development, June 13th, 2022

a fire code.

Ms. Kelly Saddler, Texas Government Relations Manager, International Code Council (ICC), testified stating ICC is a non-profit organization that produces model codes used by most states to regulate building, safety, and fire prevention. Wildland Urban Interface definition is the U.S. Fire Administration zone of transition between unoccupied land and human development. To reduce wildfire risk, Saddler said ICC believes the Legislature should give local officials the ability to adopt an International Wildland Urban Interface Code. She also mentioned that currently only counties with a population of 250,000 or more, and counties adjacent to those counties, have the ability to adopt a fire code.

Ms. Shirley Ellis, Building Official, City of Bastrop, and Board Member, ICC, testified stating Bastrop is growing rapidly, and they do not have the personnel to handle the fire risk for a growing city of their size.

CONCLUSION

There seems to be a general consensus amongst the state agencies and interested parties involved that prescribed fires are one of, if not, the most economical and effective way to prevent wildfires in the State. Though there has been some unfortunate damage that has occurred from wildfires started by prescribed burns conducted by state agencies that got out of hand, the Committee believes the state agencies involved have addressed the issues that led to this and have taken the necessary steps to lower the risks of it happening again.

Prescribed fires are not just beneficial in reducing fuel for the cases of wildfire, but for land management across the state. They can be key for producing grass for livestock and wildlife, as well as rejuvenating aquifers by reducing and slowing the spread of invasive species, like juniper. It can also help with other things like preventing soil erosion, which hurts reservoirs and other ground water sources.[38]

If over sixty percent of current prescribed burning is occurring on the two to five percent of land owned or controlled by the State or federal agencies in Texas, a focus on informing/ helping private landowners conduct prescribed burns would be the most beneficial route forward in addressing fuel reduction and wildfire prevention. Increasing awareness with both new landowners and city and county officials on the benefits of prescribed fire along with helping increase access to resources should be a focus in this effort.

From the testimony the Committee heard during the June 13th, 2022 interim hearing, the largest impediment to having more licensed CIPBM's is the lack of accessible insurance policies that would qualify for their certification. The benefits of having more burn managers across the state would help increase the access to prescribed burns for landowners for both fuel reduction and land management practices.

[38] Written and oral testimony given by Texas A&M AgriLife to the Senate Committee on Natural Resources and Economic Development, June 13th, 2022

RECOMMENDATIONS

The Committee recommends the following:

- Continuation of the education of new landowners and city and county officials of the benefits of prescribed fire through Texas A&M AgriLife and other state agencies.
- Look at incentives and assistance that can be provided to private landowners to increase fuel reduction on private lands.
- Consideration of the creation of a State insurance pool for burn managers by putting money into a self funding cost recovery program to increase the amount of CIPBMs throughout the entire State.

5. Monitor the implementation of legislation addressed by the Senate Committee on Natural Resources and Economic Development passed by the 87th Legislature, as well as relevant agencies and programs under the committee's jurisdiction. Specifically, make recommendations for any legislation needed to improve, enhance, or complete implementation of the following:

a. Senate Bill 13, Relating to state contracts with and investments in certain companies that boycott energy companies;

BACKGROUND

Senate Bill 13 prohibited Texas state agencies that invest funds from investing in financial companies that boycott energy companies. Specifically, the bill required the Comptroller to prepare and maintain a list of all financial companies that boycott energy companies as defined by the bill. S.B. 13 defined "boycott energy company" as "without and ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, 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 and does not commit or pledge to meet environmental standards beyond applicable federal and state law," or does business with a company in that type of engagement or whom lacks that type of commitment or pledge.[39] That is to say, a financial company could have investments in oil and gas while still meeting the definition of "boycott energy company" under the bill and thus mis-aligning themselves with Texas' values and working against Texas' financial interests. The list maintained by the Comptroller is updated not less than yearly, but not more than quarterly, however the Comptroller's office continues to review information on an ongoing basis.

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. The state agencies that invest funds include the Employee Retirement System of Texas (ERS), Teacher Retirement System of Texas (TRS), Texas Municipal Retirement System (TMRS), Texas County and District Retirement System (TCDRS), Texas Emergency Services Retirement System (TESRS), and the Permanent School Fund (PSF). If the company does not stop boycotting energy companies, the state agency is required to 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.

S.B. 13 further stated that a governmental entity may not enter into a contract with a company

[39] See Tex. Government Code §809.001

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. This provision only applies to a company with ten or more full time employees and that has a contract value of $100,000 or more.

Carve-outs

A state entity can cease divesting from one or more listed companies only if clear and convincing evidence shows that: (1) the state governmental entity has suffered or will suffer a loss in the hypothetical value of all assets under management by the state governmental entity as a result of having to divest from listed companies; or (2) an individual portfolio that uses a benchmark-aware strategy would be subject to an aggregate expected deviation from its benchmark as a result of having to divest from listed companies.[40]

In addition, a state governmental entity is not subject to a requirement of this chapter if the state governmental entity determines that the requirement would be inconsistent with its fiduciary responsibility with respect to the investment of entity assets or other duties imposed by law relating to the investment of entity assets.[41]

Finally, a state governmental entity is not required to divest from any indirect holdings in actively or passively managed investment funds or private equity funds. The state governmental entity shall submit letters to the managers of each investment fund containing listed financial companies requesting that they remove those financial companies from the fund or create a similar actively or passively managed fund with indirect holdings devoid of listed financial companies. If a manager creates a similar fund with substantially the same management fees and same level of investment risk and anticipated return, the state governmental entity may replace all applicable investments with investments in the similar fund in a time frame consistent with prudent fiduciary standards, but not later than the 450th day after the date the fund is created.[42]

Implementation

The Comptroller initially identified nineteen financial companies that may be subject to divestment Texas agencies under S.B. 13. The initial criteria used to select these nineteen companies included industry classification, "Environmental, Social, and Governance" (ESG) data, and public commitments and pledges made by the companies. The ESG data was provided by the research firm Morgan Stanley Capital International (MSCI) Inc., a company that measures other company's management of financially relevant ESG risks and opportunities.

The initial group of nineteen financial companies were sent a verification letter from the Comptroller asking the company to verify that it does not boycott energy companies. Responses to this verification letter were reviewed to help make the final listing determination. Recipients had sixty-one days to respond to the Comptroller with a lack of response resulting in an affirmative response to boycotting energy companies.

[40] See Tex. Government Code §809.056
[41] See Tex. Government Code §809.005
[42] See Tex. Government Code §809.055

As a result of the verification process, the Comptroller narrowed the list to ten companies who were officially placed on the list of companies that boycott energy companies. The list was published on August 25th, 2022. The listed companies include:

BLACKROCK, INC	NORDEA BANK ABP
BNP PARIBAS SA	SCHRODERS PLC
CREDIT SUISSE GROUP AG	SVENSKA HANDELSBANKEN AB
DANSKE BANK A/S	SWEDBANK AB
JUPITER FUND MANAGEMENT PLC	UBS GROUP AG

State governmental entities had 30 days after receiving the Comptroller's official list to notify the Comptroller of the listed companies in which the entity owns direct or indirect holdings. All state governmental entities notified the Comptroller they did, in fact, have holdings among the listed companies except for TESRS. In addition, TCDRS only has indirect holdings. In addition, not later than January 5 of each year, such entities are required to submit a report to the presiding officer of each house of the legislature and the attorney general that identifies all securities, sold, redeemed, divested or withdrawn.

The next step in the process is that state governmental entities will send a letter to the financial companies in which they have holdings. The financial companies have ninety days after receiving this notice to cease boycotting energy companies in order to avoid qualifying for divestment by the state. If the companies do cease, they are removed from the Comptroller's list. If the companies continue boycotting energy companies, the state governmental entity shall sell, redeem, divest, or withdraw all publicly traded securities of the financial company with some exceptions discussed previously. Fifty percent of assets must be removed from the state government entity's assets under management within 180 days, and one-hundred percent within 360 days. State government entity divestment can be delayed base on good-faith judgement, however they must submit a report to the presiding officer of each house of the Legislature and the Attorney General justifying the delay. Regarding indirect holdings in actively or passively managed investment funds or private equity funds, state governmental entities are required to submit letters to the managers of each investment fund containing listed financial companies requesting that they remove those financial companies from the fund or create a similar managed fund with indirect holdings devoid of listed financial companies. If a manager creates a similar fund with substantially the same management fees and same level of investment risk and anticipated return, the state governmental entity may replace all applicable investments with investments in the similar fund in a time frame consistent with prudent fiduciary standards, but not later than the 450th day after the date the fund is created.

The Comptroller also developed a list of U.S.-based funds that appeared to adopt a prohibition or limitation on investment in energy companies. A verification letter was sent to the fund managers seeking information about the investment policies of funds associated with those managers. Responses to the verification letters were considered before publishing the list of individual funds

that state governmental entities will be required to divest from. A total of 348 funds were ultimately listed.

Permanent School Fund (PSF)

The PSF is invested by the GLO and the TEA. Following the passage of S.B. 1232 by Senator Taylor (87R), The PSF combines and moves the GLO and TEA portions of the PSF to a new special-purpose government corporation called the Texas Permanent School Fund Corporation (TPSFCO) and housed under the State Board of Education (SBOE). It is structurally made up of the General Land Office (GLO) commissioner and one of the commissioner's choosing, five SBOE members and two governor appointees. The move to the Corporation will be official on January 1st, 2023 and the Corporation will ultimately be the entity making decisions on and enacting divestments from listed companies.

TESTIMONY

Testimony given before the Committee during the Committee's November 17th, 2022 interim hearing, indicated that state agencies are complying with the requirements of S.B. 13. The following testimony indicates how each state governmental entity subject to the bill have been implementing it.

Comptroller of Public Accounts

Mr. Mike Reissig, CEO of the Texas Treasury Safekeeping Trust Co., testified that they have prepared and maintain a number of divestment lists, and S.B.13 directs the Comptroller to prepare and maintain a new list of financial companies that boycott energy companies. The statute gives the comptroller broad authority to interpret the term boycott[43] for the purpose of making the list. Methodology to make the list was based on three criteria:

- The Global Industrial Classification System (GICS) and Bloomberg Industrial Classification System (BICS) used to single out banks and asset managers
- Selection among the top half of Morgan Stanley Capitol International (MSCI) ratings for Environmental, Social, and Governance (ESG) issues
- Selection among signatories to the Climate Action 100 & Net Zero Banking Alliance or Net Zero Asset Managers Initiative.

This methodology yielded nineteen companies. Those nineteen companies received verification requests to address additional questions, and the list of nineteen companies was reduced to a list of ten companies termed Annex I.[44] A second list termed Annex II[45] was also created, and is comprised of specific funds that incorporate ESG strategy. The Annex 2 list was composed by Comptroller research and through verification requests from 138 investment managers. The final Annex II list has 348 funds on the final list. The lists were finalized in August of 2022. State

[43] See Tex. Gov't Code § 809.001
[44] Written testimony submitted by the Comptroller of Public Accounts to the Senate Committee on Natural Resources and Economic Development, November 17th, 2022
[45] Ibid.

government entities that have investment on the energy boycott list have 180 days after receiving the list to get out of half of their direct investment possession and 360 days to get fully out of their direct investment possession.

Employee Retirement System of Texas (ERS)

Executive Director Wilson, ERS, testified that they received the list of boycotting companies in late August, sent a letter to the companies on the list informing them they were on the list, notified the Comptroller of all their holdings, and then began the divestment process. Wilson testified that ERS held eight of ten companies on the list and a few indirect holdings. At the time, they were restructuring their public portfolios, and were already planning on divesting from the eight companies. As a result, they no longer have any direct holding in the companies on the list.

Teacher Retirement System of Texas (TRS)

Executive Director Guthrie and Jase Auby, Chief Investment Officer, TRS, testified briefly stating all internally managed direct holdings have been divested, and they anticipate all remaining externally-managed direct holdings in the list of boycotting companies to be divested by December 31, 2022.

Texas Municipal Retirement System (TMRS)

Dave Hunter, Chief Investment Officer, TMRS, testified stating TMRS received the notice from the comptroller, sent a letter to the companies on the list, notified the comptroller of all their holdings, and then began the divestment process. Hunter testified that TMRS had one investment manager and one direct holding that they divested from within two weeks of receiving the letter from the Comptroller. Additionally, TMRS had five indirect holdings and provided notice on the proper divestment procedures of S.B. 13.

Texas County and District Retirement System (TCDRS)

Ann McGeehan, General Counsel of TCDRS, testified stating they received the notice from the comptroller, sent a letter to the companies on the list, and notified the Comptroller that they had no direct holdings. However, they did have indirect holdings and followed the prescribed process by sending letters to the fund managers requesting removal or to create a similar managed fund.

Texas Emergency Services Retirement System (TESRS)

Tiffany White, Executive Director of TESRS, testified stating they received the notice from the comptroller and notified the Comptroller that TESRS has no direct or indirect holdings with companies on the list from the Comptroller.

General Land Office (GLO)

Mark Havens, Chief Clerk and Deputy Land Commissioner, GLO, informed the Committee that they received the notice from the Comptroller and notified the Comptroller of their holdings. Havens testified that GLO is limited by statute to private equity investments in three classes; Energy, Infrastructure, and Real Estate. S.B. 13 has a specific exemption from divestment for private equity.[46] GLO has four investments with Blackrock which are three funds and one co-investment. All four investments are traditional oil and gas investments.

[46] See Tex. Government Code §809.055

Texas Permanent School Fund Corp. (TPSFCO)

John McGeady, Director of Government Relations, Texas Education Agency (TEA)/ TPSFCO indicated that they received the notice from the Comptroller, sent a letter to the companies on the list, and notified the Comptroller of all their holdings. The Public School Fund (PSF) had nine direct holdings and two indirect holdings. At the time of the hearing, McGready said that TEA/ TPSFCO staff were analyzing the current holdings for the impact of divestment on value and performance of the fund. The recommendations derived from the findings will be presented to the board of the PSF after TPSFCO assumes the fiduciary responsibility of all the assets after January 2023.

CONCLUSION

Each agency has responded to the requirements in S.B. 13 by fulfilling their statutory duty. A report is due to be delivered to the Legislature and Attorney General by January 5th that identifies:

- All securities sold, redeemed, divested, or withdrawn
- All prohibited investments
- A summary of any changes made under Government Code, Section 809.055

This report will allow the Legislature to continue to monitor the progress and impact of S.B. 13.

b. House Bill 1247, Relating to the development of and report on a tri- agency work-based learning strategic framework by the Texas Workforce Commission, the Texas Education Agency, and the Texas Higher Education Coordinating Board;

BACKGROUND

In its first interim hearing on June 13th, 2022, the Committee monitored and examined the implementation of House Bill 1247, relating to the development of and report on a tri- agency work-based learning strategic framework by the Texas Education Agency (TEA), the Texas Workforce Commission (TWC), and the Texas Higher Education Coordinating Board (THECB). H.B. 1247 passed during the 87th Regular Session and became effective on September 1st, 2021. H.B. 1247 directed TEA, TWC, and THECB, known collectively as the Tri-Agency Workforce Initiative, to jointly develop a strategic framework to encourage work-based learning in Texas and jointly prepare and submit to the Legislature a report on the framework. This provided better cohesion across the multiple levels of education and the workforce, and statutorily prompts coordination between Texas education, workforce training, and credentialing opportunities.

Importantly, this bill brings each agency to the table to develop a common language across agencies related to work-based learning. In addition, the Senate Committee substitute added a requirement that the report identify available federal funds for work-based training and make recommendations on the use of those funds. The bill required the agencies to implement that section of the bill as soon as practicable once the report is submitted.

Project Lead the Way summarized the benefits of H.B. 1247 well: "H.B. 1247 establishes a state-level strategic framework that would remove barriers to creating high-quality work-based learning programs across the state's diverse regions. Additionally, the bill would address duplication of efforts across regions, streamline data reporting, establish quality standards, and help interested stakeholders identify avenues of fiscal support. All of this without incurring additional costs for the state. By standardizing work-based learning through common definitions, standards and data collection, our public schools, community colleges, trade schools, employers and institutions of higher education will be able to better plan the pipeline of school to employment and ensure Texas students are workforce-ready when they graduate."[47]

TESTIMONY

The Committee heard invited testimony from by the Texas Education Agency (TEA), the Texas Workforce Commission (TWC), and the Texas Higher Education Coordinating Board (THECB) (the Tri-Agency) who are all tasked with carrying out the Tri-Agency Workforce Initiative. The panel of agency personnel testified towards its initial efforts in implementing the objectives of the legislation with an emphasis on identifying where they work well together,

[47] Written testimony provided by Project Lead the Way to the Senate Committee on Natural Resources and Economic Development, June 13th, 2022

where they hand-off nicely to each other, and where they don't duplicate their efforts. The Tri-Agency began a series of monthly internal workgroup meetings as well as held meetings outside the Tri-Agency that focused on receiving stakeholder input.

Among the initial accomplishments, the Tri-Agency developed the definition of work-based learning. The drafted definition as reported in testimony during the hearing reads: "Practical, hands-on activities or experiences through which a learner interacts with industry professionals in a workplace, which may be an in-person, virtual, or simulated setting. Learners prepare for employment or advancement along a career pathway by completing purposeful tasks that develop academic, technical, and employability skills."[48]

In addition, the Tri-Agency developed a continuum of work-based learning that recognizes the fact that Texans have multiple entry points to employment, from later in compulsory education to later in life, and engagement in work based learning is an iterative and on going process, not simply a check list of activities. The continuum is shown here:

[49]

[48] Written testimony submitted by the Tri-Agency to the Senate Committee on Natural Resources and Economic Development, June 13th, 2022
[49] Ibid.

The Tri-Agency created a career development definition and continuum. As drafted, the career development definition reads: "career development is the process of choosing a career, improving skills, and advancing along a career path. It is a lifelong process of learning which includes exploration, building self-knowledge, and making decisions in pursuit of meaningful employment." This continuum focuses on interest awareness, career awareness, work-based learning, and career and lifelong learning. These four key points of the continuum reciprocate with each other and continue through an individuals education and workforce career.

[50]

In addition to defining work-based learning as mentioned, the Tri-Agency identified and aligned some common language and terms. The Tri-Agency gave the committee some examples of those terms and testified towards the importance of coherent and consistent messaging across the three agencies.

[50] Written testimony submitted by the Tri-Agency to the Senate Committee on Natural Resources and Economic Development, June 13th, 2022

DEVELOPING COMMON LANGUAGE AND DEFINITIONS

- Apprenticeships
- Career Curriculum
- Customized Training
- Cooperative Education
- Employability Skills
- Incumbent Worker Training
- Industry Speakers
- Industry-Based Skills Competitions
- Integrated Education and Training
- Internships
- Job Shadowing
- Mock Interviews with employers
- On-the-Job Training
- Pre-Apprenticeships
- Project Based Learning
- Registered Apprenticeship
- Reskilling
- Service Learning
- Simulated Workplaces
- Technical Skills
- Transferrable Skills
- Transitional Jobs
- Upskilling
- Virtual Workspaces
- Workforce Preparation Activities
- Worksite Tours
- Youth Apprenticeships

51

At the time of the hearing, the group was currently in the process of engaging stakeholders with their draft continuums and language to ensure that they resonate across K-12, Higher Education, and Workforce development.

Further, the Tri-Agency is developing the report in response to the requirements laid out in the bill, and drafting recommendations for implementations aligned to the following phases:

- Defining quality: supporting users of the continuum, highlighting indicators of good, better, and best practices, and career development activities.
- Communicating and training: Introduce continuum with practitioners across the state with shared messaging and training opportunities.
- Incentivizing adoption of the work-based learning framework: align the continuum with core initiatives and grant programs across the agencies to incentivize adoption of the framework.
- Monitoring and iterating: moving the work forward in a continuous manner to make sure they are doing the evaluation they need to do and to continue to get feedback from the field.

Following the testimony from the Tri-Agency representatives, the Committee echoed the need for a comprehensive look, continued coordination towards work-based learning, and to address the needs of Texas to support learners and further promote the growth of our economy. Efforts should be maintained to ensure that employers are getting what they need from the current and potential workforce in Texas. Further, the task laid out in H.B. 1247 is preliminary and efforts to

[51] Written testimony submitted by the Tri-Agency to the Senate Committee on Natural Resources and Economic Development, June 13th, 2022

bridge the gap between the deliverable report recommendations and the implementation of those recommendations will be paramount going forward.

Mr. Renzo Soto, Policy Adviser, Texas 2036, a group focused on the population growth and its effects as Texas approaches its bicentennial, testified on the universe of work-based learning in the state as well as the positioning after the passage of related legislation in the 87th Session. Specifically, Soto testified that Texas has started to address the expansion of workplace learning in the state: apprenticeship programs in 2014 and 2015 had positive wage outcomes for its participants - a 29% increase in quarterly earnings.[52] Over the same time periods, other programs, like the veterans workforce initiative, showed negative outcomes, so a look through this initiative and H.B. 3767 to identify the positive programs is needed. H.B. 3767 calls for education and training programs to be tied to employment with a self sufficient wage[53]. Other efforts such as the state credential library in H.B. 3767 allows employers to look at the library and view where potential partnership opportunities exist. In addition, H.B. 1247 can be leveraged in the Texas Virtual Education Commission (TCVE) and Texas Commission on Community College Finance (TCCCF) to ensure that high-quality work-based learning is accessible in every Texas community. Both the TCVE and TCCCF are focusing on workforce-aligned recommendations for Texas public schools and community colleges that will deliver a long-term, high-quality Texas workforce. Each commission's discussions have involved work-based learning programs due to the existing availability of those programs and the respective commission's focus on workforce outcomes. In summary, utilize other, ongoing state education and workforce efforts to continue to support work-based learning outcomes with H.B. 1247 and H.B. 3767.

The Committee also evaluated potential criticism of promoting work-based learning in-lieu of getting a under-graduate or graduate degree. TWC highlighted a large shift occurring in the workforce moving towards short term training, and the need for Texas to respond to that shift. Having the three agencies working on this together provides checks and balances as well as increased insight from relative entities. Some individuals leave high-school and go straight to the workforce and shouldn't be ignored. Also, the pandemic has resulted in learning taking place that is outside typical college student experience, and includes adults later in life coming back to learn. Timing, age, and circumstances are different for all Texan's and career paths are not always a straight line from compulsory education to college to the workforce. In addition, many employers are seeing themselves as the trainer or educator. Some employers can take the lead on educating the workforce and the State needs to be able to respond appropriately. Furthermore, THECB noted the use of high-value credentials. There is a new focus on upskilling and reskilling occurring in industry. At the four-year level, higher education programs have accelerating credentials and they are embedding those in education plans to promote marketable skills as students transition in to the workforce. Therefore, work-based learning is not simply in-lieu of a degree, but is also in addition to or in support of a degree. Further, there is new focus on continuing the education of workers as they continue their career.

Concerning at-risk students, the deliverable and included continuum infuses the work TEA is doing on at risk students, such as programs of study, to discover student interests and get them in

[52] Aim Hire Texas, *Aim Hire Texas Workforce Issues*, February 2021, page 28, https://texas2036.org/wp-content/uploads/2021/04/AHT-Initial-Findings.pdf.
[53] "Workforce Innovation & Opportunity Act: Self-Sufficiency Wage Levels". Texas Workforce Commission. July 14, 2022. *Twc.Texas.Gov*. https://www.twc.texas.gov/workforce-innovation-opportunity-act-self-sufficiency-wage-levels

related CTE classes. Currently, students can be flagged as being at-risk, and related data sets on the population of at-risk students can drive different programs with an emphasis on keeping those students in school. The work done by the Tri-Agency in this effort can be a good opportunity to get at-risk students, including foster care and CPS students, to have better access and knowledge of the availability of technical schools. TEA has staff dedicated to supporting that population of students, recognizing the importance of helping ensure these students are not losing credits when transferring and are getting improved opportunities towards getting to be productive members of society and the Texas economy.

CONCLUSION AND RECOMMENDATIONS

The Tri-Agency is required to submit a full strategic framework to encourage work-based learning in this state to the Legislature no later than December 31st, 2022. The reported framework under this bill as well as results from H.B. 3767 will provide opportunities to continue the response to the needs and efforts surrounding the Texas workforce and the work-based learning supporting it. H.B.1284 requires the Tri-Agency to implement the recommendations of the report as soon as practicable and new or expanded legislative authority may be required. Further, it should be noted that the statute requiring the strategic framework expires on September 1, 2023, and the Tri-Agency should be available to assist and testify on legislation related to work-based learning during the extent of the 88th Legislative Session.

c. House Bill 1284, Relating to the regulation of the injection and geologic storage of carbon dioxide in this state;

BACKGROUND

In its second interim hearing on September 14th, 2022, the Committee monitored and examined the implementation of House Bill 1284 (87R). H.B. 1284 amended the Injection Well Act, Water Code and the Texas Clean Air Act, Health and Safety Code, to expand the jurisdiction of the Railroad Commission of Texas (RRC) over the geologic storage and associated injection of anthropogenic (man-made) carbon dioxide (CO2) to include jurisdiction over any onshore and offshore injection and geologic storage of carbon dioxide in Texas.

Senate Bill 1387 (81R) established the framework for geologic storage of anthropogenic CO2 in Texas. The previous statutes split jurisdiction between the RRC and Texas Commission on Environmental Quality (TCEQ) and required both agencies to adopt regulations consistent with federal regulations and to seek primacy for the program.

H.B. 1284 consolidated the jurisdiction over onshore and offshore Class VI underground injection control (UIC) wells solely under the RRC in order for the state to more easily apply for and obtain primacy of this permitting program from the Unites States Environmental Protection Agency (EPA).

Currently Texas has primacy over Class I-V UIC wells and permitting authority is divided between RRC and TCEQ.

- Class I wells are used to inject hazardous and non-hazardous wastes into deep, isolated rock formations
- Class II wells are used exclusively to inject fluids associated with oil and natural gas production
- Class III wells are used to inject fluids to dissolve and extract minerals
- Class IV wells are shallow wells used to inject hazardous or radio active wastes into or above a geological formation that contains an underground source of drinking water (USDW)
- Class V wells are used to inject non-hazardous fluids underground. Most Class V wells are used to dispose of wastes into or above underground sources of drinking water
- Class VI wells are used for injection of carbon dioxide (CO2) into underground subsurface rock formations for long-term storage or geologic sequestration
- Class VI UIC wells are authorized under the federal Safe Drinking Water Act and are used to inject man-made CO2 into deep rock formations for geologic sequestration storage.

Owners and operators of Class VI wells must first obtain a permit from the EPA in order to

inject and store anthropogenic CO2, unless EPA has delegated permitting jurisdiction, known as primacy, to a state to issue such permits.[54]

On May 31, 2022, RRC submitted their pre-application to the EPA Region 6 which gives the EPA notice that the state is preparing to apply for primacy. This provides the EPA with a draft to review and identify issues before the state submits its official request for primacy. The RRC will seek the required certification from the Attorney Generals office that the program meets minimum federal requirements. upon receipt of the certification from the AG's office, the Commission will request that the Governor sign a letter to EPA Region 6 officially requesting primacy for the Class VI UIC program.[55]

Additionally, this bill clarified that the RRC may not issue a class VI well permit for a previously authorized Class I well and requires an applicant for a Class VI well permit to obtain a letter of determination from TCEQ concluding that the Class VI well will not interfere with any previously authorized existing Class I wells.

In order for a well to become a Class VI well, the operator must complete six steps before beginning storage of CO2 followed by an application of permit for geologic storage of CO2.

1. Geologic Storage Facility Permit: An entity must submit an application for and receive a geologic storage facility permit under Title 16, Texas Admin. Code (TAC), Chapter 5 - Carbon Dioxide (CO2), Subchapter B – Geologic Storage and Associated Injection of Anthropogenic Carbon Dioxide (CO2) [Note: you may not apply for a permit unless you have an active Organization Report (Form P-5)];

2. Permit to Drill: After the entity has received the geologic storage facility permit, they must submit an application (Form W-1) for and receive a permit to drill, deepen, or convert the well for geologic storage;

3. The entity must drill and complete the well;

4. Notice of Completion and Completion Report: The entity must submit a notice of completion of construction to the Oil and Gas Director or their delegate and submit a completion report (Form W-2/G-1) to RRC Online;

5. Inspection: An RRC inspector must inspect the injection well and find that it is in compliance with the conditions of the permit; and

6. Permit to Operate: The Oil and Gas Director or their delegate must have issued a permit to operate the injection well.

The Texas General Land Office (GLO) has awarded a carbon sequestration project that allows for offshore CO2 storage in submerged lands near Port Arthur in Jefferson County. The CO2 byproduct produced by industrial activity helps GLO provide for market-driven decarbonization goals while raising money for the Permanent School Fund. Almost the entire Texas coast was identified for its submerged geologic area and ranges in nearly 40,000 acres of state-owned

[54] Written and Oral testimony submitted by RRC to the Senate Committee on Natural Resources and Economic Development, September 14th, 2022
[55] Ibid.

submerged land.

Currently, there are three energy companies (Chevron, Talos, and Carbonvert) planning to decarbonize industrial areas. The winning bidder for the GLO in Jefferson County is now known as Bayou Bend CCS, which is a joint venture between Talos and Carbonvert. The three companies announced a memorandum of understanding expanding the joint venture between the three companies to expand Bayou Bend CCS which is the first and only offshore lease in the United States dedicated to CO2 sequestration.

TESTIMONY

The Committee heard invited testimony for House Bill 1284 from the Texas Railroad Commission (RRC), Executive Director Wang, and Chief Geologist Savage. Executive Director Wang gave an update on H.B. 1284, since the bill directed RRC to seek primacy from the United States Environmental Protection Agency (EPA) regarding Class VI injection well permitting. Wang stated an entity would currently have to apply with the EPA and RRC to get permitting. If RRC should get primacy from the Federal Government, an applicant can simply go to the RRC to apply for permitting on Class VI and carbon dioxide (CO2) storage. The RRC had submitted a pre-application on May 31, 2022 to the EPA Region 6 giving them notice that the state is preparing to apply for primacy.[56] They mentioned they are already working with the Attorney General's Office (OAG) as well as the Governor's Office to verify that there are no conflicts with federal regulation in regards to the RRC's rules adaptation to CO2 storage. The RRC will then work with the Governor's Office to obtain the Governor's official letter and submit the letter with the RRC application to the EPA Region 6. Wang went on to state that the they are streaming the process for applications permitting. Potentially, this will attract additional business and allow the energy industry to continue producing energy while addressing environmental concerns.

Chief Geologist Savage testified stating they originally adapted regulations in 2010 in response to Senate Bill 1387 (81R)[57] and had adopted those regulations a few days before the EPA had adopted their regulations. In amending the RRC rules to implement H.B. 1284, RRC included a requirement to obtain a letter from TCEQ that states a proposed Class VI well program will not impact any Class I underground injection control wells that are permitted by TCEQ. Savage mentioned they had to adopt their regulations before the EPA finalized their regulations, stating there are approximately 650-700 elements that states need to make sure matches with federal regulations and policies. RCC compared the regulations and requirements at both the State and Federal level and discovered a few areas of regulations and requirements that needed to be included in their amendments. The proposed amendments were adopted on Aug. 30, 2022, and became effective on Sept. 19, 2022. The certification from the OAG had to state that the laws and regulations in existence at the time of certification, meet the minimum federal regulations. This caused the RRC to wait before the amendments were adopted to request certification from OAG. RRC has already sent over the information and have already contacted OAG in order for them to

[56] Written and Oral testimony submitted by RRC to the Senate Committee on Natural Resources and Economic Development, September 14th, 2022

[57] Senate Bill 1387 (81R), relating to the implementation of projects involving the capture, injection, sequestration or geologic storage of carbon dioxide.

get the certification and will request the letter from the Governor's Office transmitting their official application that includes the final rules, a memorandum of agreement, a program description on how the state plans to implement the program, have public participation and response to any public comment received, and the crosswalk comparison.[58] The EPA is currently looking at the State's pre-application information and the crosswalk comparison to determine if it meets the minimum federal standards or if the state may need to make any changes either in statute or in rule. At the time of the hearing, Savage said the EPA believed that statute is sufficient, but the EPA may come back and inform the RRC that rules may need to be changed. The purpose of the pre-application is to determine if there are any issues with the state program, so that the EPA can address them before submitting the official application. The EPA have four steps in the primacy application process.

- Phase I: pre-application activities
- Phase II: completeness review and determination
- Phase III: application evaluation
- Phase IV: rulemaking and codification[59]

Having already completed Phase I, the EPA is now in Phase II of the primacy application process and will proceed with the following phases.

Savage stated that North Dakota and Wyoming currently have primacy, but it took North Dakota five years to obtain theirs. Louisiana submitted their application in May of 2021 and are currently awaiting a decision from the EPA. With experience from other states and having had discussions with those states, the RRC believed there are not many, if any, changes they would need to make.

Savage further stated that even though RRC have had one applicant apply to the EPA, under existing regulations, the applicant was required to submit an application to RRC. Should RRC receive primacy before the EPA issues the Class VI permit, the applicant would not have to resubmit their application and it would be an easy transition. There have been several announced projects in the State of Texas, but RRC doesn't have an estimation on how many applications they will receive from those announced projects.

Senator Zaffirini asked the RRC panel for any recommendations that could be made to the upcoming legislature relating to this charge. From the stand point of regulation, Savage said that she did not see any, but explained that others in the industry have been wanting to address the clarification for "pore space ownership," unitization strictly for the purpose of geologic storage of carbon dioxide, and discussion regarding liability.

For clarification, Chairman Birdwell asked Savage if discrepancies were resolved when

[58] The Crosswalk comparison is the third step in the process to develop the Revised Monitoring Program. It serves as a gap analysis between the monitoring needs and requirements outlined in the MS4 permit and monitoring efforts currently being implemented through MS4-related programs as well as other monitoring programs not driven by the MS4 permit. See District Department of the Environment, *Crosswalk Comparison of Monitoring Needs and Existing Monitoring Components*, September 2014, https://dcstormwaterplan.org/wp-content/uploads/Final_Crosswalk_and_Appendix.pdf.

[59] "Primary Enforcement Authority For The Underground Injection Control Program". United States Environmental Protection Agency. 2022. *epa.gov*. https://www.epa.gov/uic/primary-enforcement-authority-underground-injection-control-program-0.

performing the crosswalk comparison to which she confirmed they had made the adequate changes that were necessary and are awaiting the EPA to finish their process.

The RRC panel was asked by Chairman Birdwell if the inclusion of Class VI wells required them to alter their Legislative Appropriations Request (LAR). Executive Director Wang explained they made changes to include five full-time equivalents (FTE) for the department of Class VI wells.

Following invited testimony, the committee heard public testimony. Ms. Virginia Palacios, Executive Director, Commission Shift testified that they collaborated with 36 environmental and community groups across Texas to review and comment on the RRC carbon dioxide rule. Palacios stated that Commission Shift have engaged with EPA Region 6 regarding the RRC application for primacy to be the sole permitting authority for Class VI wells in Texas.

Palacios went on to explain that recommendations made by Commission Shift were accepted by the RRC, allowing for operators to include emergency response procedures and alerts as part of their safety plans. Palacios noted that Commission Shift disagreed with the decision made by RRC, allowing operators to qualify for a monitoring period of less than 50 years for post-injection site closure. Palacios said Commission Shift sees wells as permanent storage and believes wells are likely to degrade over time, not improve as conditions change surrounding storage sites that RRC allows for additional injections. If the post injection site closure monitoring period is less than 50 years, the state would absorb the cost of any problems that occur with the site after the monitoring period ends.

RECOMMENDATIONS

The RRC has been implementing the bill by working to obtain primacy from the EPA. The Committee does not have any recommendations relating to the implementation of the bill as the application for primacy appears to be going well and is ongoing. However, primacy is only the beginning of the discussions relating to CO2 sequestration. As the market develops for the practice, additional issues may arise such as pore space ownership, liabilities, and unitization for the purpose of geologic storage as discussed by the RRC. Further, new applications for CO2 sequestration wells by industry will continue to evolve and increase permitting activity within RRC, constituting the need for additional monitoring to effectively supply RRC with adequate FTEs through the appropriation process.

d. House Bill 3973, Relating to a study on abandoned oil and gas wells in this state and the use of the oil and gas regulation and cleanup fund; and

BACKGROUND

The 82nd Texas Legislature established the Oil and Gas Regulation and Cleanup Fund (OGRC) in 2011, replacing the former Oil Field Cleanup Fund.[60] The Rail Road Commission of Texas (RRC) for nearly four decades has managed the preeminent state managed plugging program to help plug orphaned wells and clean up abandoned oilfield locations through this fund and its predecessor. An orphan well is an inactive, non-complaint oil or gas well that has been inactive a minimum of twelve months and the responsible operator's Organizational Report (Form P-5) has been delinquent for greater than twelve months. Only orphaned wells can be plugged through the OGRC currently. Orphaned wells are sometimes called abandoned wells, though statutorily they are technically two different terms.

House Bill 3973 created a joint interim committee to study matters related to abandoned oil and gas wells in the state of Texas, including the costs associated with plugging abandoned wells and bonding requirements imposed on owners or operators of oil and gas wells. The joint committee was to conduct a review of the oil and gas regulation and cleanup fund that includes revenue sources of the fund, projected revenue for the fund through fiscal year 2025 based on the fund's existing fees and fines, and also evaluate and identify other sources of potential revenue. Those include federal funds and other existing taxes and fees paid to the benefit of the state which could be utilized to meet the goals for the committee, as well as to identify potential solutions to reduce the need for general revenue spending to plug abandoned wells.

RRC was to provide information to the committee created by H.B. 3973 that is necessary to conduct the study that includes information related to budget and performance measures of the commission, fees and fines collected by the commission, and any regulatory or statutory changes needed to assure adequate operating revenue for the commission, including revenue used to plug abandoned oil and gas wells.

The joint interim committee was to report their findings no later than December 1, 2022 and make recommendations to the Legislature. On January 1, 2023, the joint interim committee is to be abolished.

The joint interim committee was to be composed of five members that are appointed by the Lieutenant Governor and five members appointed by the Speaker of the Texas House of Representatives.

No appointments were made by the Speaker, therefore the joint interim committee created by H.B. 3973 failed to meet.

[60] Senate Bill 1588 (82R), Relating to the creation and re-creation of funds and accounts, the dedication and rededication of revenue, and the exemption of unappropriated money from use for general governmental purposes.

Additionally, during the testimony the Committee heard related to this charge, the issue of P-13 wells was addressed. The term P-13 comes from the form at the RRC which allows a landowner and the operator of an oil or gas well to convert or condition a drilled well into a water well for freshwater production.[61] Both the landowner and the operator must sign Form P-13 and attest to the following information:

- The oil or gas operator will properly plug the oil or gas well in accordance with RRC requirements up to the base of the usable quality water as defined by the RRC's Groundwater Advisory Unit.
- The landowner must assume responsibility for plugging the water well and obligating themselves, their heirs, successors, and assignees to complete the plugging operation.
- The landowner must also submit a copy of the permit from the Groundwater Conservation District (GCD) for the area where the well is located or must attest to the fact that:
    - There is no GCD for the area in which the well is located;
    - There is a GCD for the area where the well is located, but the GCD does not require that the well be permitted or registered; or,
    - The landowner has registered the well with the GCD for the area where the well is located.

TESTIMONY

Before hearing testimony Chairman Birdwell explained that while the charge was meant to monitor the report from the joint committee created by H.B. 3973, at the time of the hearing, the House had not selected their portion of members to serve on the joint committee. Due to this, the Committee did not receive a report in time for consideration. The Chairman believed that unless members from the House are appointed and met before the joint committee is abolished on January 1, 2023, it would not give the Committee ample time to include recommendations made before submitting the final report. However, it was important to hear testimony from stakeholders and get the associated issues on the record.

The Committee called from the Texas Rail Road Commission (RRC), Executive Director Wang and Chief Financial Officer, Corey Crawford to provide testimony regarding House Bill 3973.

Executive Director Wang testified that the state managed plugging program was established in the 1980's and has been a great program for the state and RRC. Last year (2021) they were recognized by the Interstate Oil and Gas Compact Commission with a national environmental stewardship award for their work with the National Park Service to plug eleven wells and remediate the abandoned well size on the national seashore on Padre Island. Wang described that the well plugging program provides a risk assessment/ prioritization of all orphaned oil and gas wells in the state. The priority system is made up of four factors relating to the threat a wellbore

[61] Written testimony submitted by RRC to the Senate Committee on Natural Resources and Economic Development, September 14th, 2022

poses to public safety and the environment. This includes twenty seven different subfactors and inspectors investigating orphaned well sites. Wang stated that inspectors visit every abandoned well site and performed an echo meter[62] test to determine any fluid leak. Every RRC district office completes the risk prioritization and assigns a risk score to every well they have. The scores are then listed as priority:

- Priority 1- Leaking Well
- Priority 2H- High Risk well (based on definition and/or total weight of 75+)
- Priority 2- Total Weight of 50-75
- Priority 3- Total Weight of 25-49
- Priority 4- Total Weight <25[63]

Inspectors, district officers, and engineers look at the priority ranking to determine which well will need to be plugged. Prior to 2018, RRC used a lease specific contract for well plugging service companies and since then switched over to a master service agreement that has allowed for leveraging of resources in different districts. Due to the switch, RRC has exceeded legislative performance measures in terms of well plugging for the last six years. RRC continued to plug wells even after meeting their performance target for the 2022 year of 1000 wells plugged, increasing to 1075 wells plugged. Due to the changes they have made, RRC has been able to maintain the number of abandoned wells under control and has been staying around 8,000 for the last four years. Wang went on to mention that the pandemic had an impact on several small operators, where many did not survive. The Legislature, for the past twenty years, has passed legislation trying to offset the issue of smaller oil and gas businesses failing and leaving orphaned wells by creating incentives for companies such as a severance tax incentive to take over an inactive wellbore. Wang stated that one operator had taken over 375 wells due to these incentives and these incentives had been made permanent four years ago (SB 533 86R).[64] With the actions taken by the Legislature and the commission the last few years, it has allowed them to see a benefit in reducing and keeping wells under control around 7,000 - 8,000, despite the pandemic and two market down turns experienced in the last decade. According to the Interstate Oil and Gas Compact Commission, Texas, the top producer among the fifty states, has had the least rise in orphan wells since 2018 among the thirty-five producing states and five Canadian provinces.

Additionally, Wang stated regarding the oil and gas regulation clean up fund (OGRC) established in 2011 to replace previous account number 145. That same piece of regulation expanded the purpose of OGRC account 5155 and placed a surcharge on fees collected from the industry as well as expanding the purpose of what could be paid with that money.

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[62] Echometer Company, *Echometer Digital Well Analyzer*, 2008, https://echometer.com/Portals/0/Brochures/BrochureEchometerWA_2008_12_01.pdf

[63] Railroad Commission of Texas, *OIL & GAS MONITORING & ENFORCEMENT PLAN | Fiscal Year 2023*, 2022, page 39-40, https://www.rrc.texas.gov/media/2bwbeqtk/o-g-monitoring-enforcement-plan-fy-2023.pdf

[64] Railroad Commission of Texas. "Present Texas Severance Tax Incentives". 2022. *Rrc.Texas.Gov*. https://www.rrc.texas.gov/oil-and-gas/publications-and-notices/texas-severance-tax-incentives/present-texas-severance-tax-incentives/.

Next, Corey Crawford, formally the Chief Financial Officer, RRC, now Project Manager, Federal Grants, RRC, testified before the Committee. Crawford went over the history of the Oil and Gas Regulation Cleanup Fund (OGRC) in his testimony. He stated that the program started back in 1984[65] and plugged 177 wells. To date RRC has plugged over 43,000. Crawford agreed with Executive Director Wang, reiterating that the Oil and Gas Compact Commission has named them the industry leader managing orphan wells. RRC staff is currently monitoring wells and have risk factors stated by Wang that allow them to prioritize which wells are getting plugged first. Crawford mentioned that out of the 1,075 wells plugged last year (2021) seventy percent were top three tiered in priority.

RRC had contracted a neutral third party from the Texas Tech Center for Energy Commerce to assist in assessing the study of the revenues and determining how to proceed with the fund to present to the joint interim committee from H.B. 3973. Texas Tech has been analyzing and looking at the funding sources and what should concern RRC. Crawford stated that last year (2021), it cost over $28 million to plug 1,075 wells, where seventy-five percent of the funds to do so came from industry fees and surcharges on those fees. Financial assurance collected from operators made up fourteen percent and the remaining eleven percent was sourced from other various sources of revenue. In fiscal year 2023, the RRC will receive $23 million from the initial grant from the Infrastructure Investment Jobs Act to ramp up the program. The grant will fund the plugging of 800 wells on top of the 1000 wells funded by the State. They also anticipate the RCC will receive the Formula Grants totaling over $300 million dispersed over the next five or six years and after that RCC anticipates they will receive performance grants to keep plugging wells. The current financial state of the OGRC is that they are down from 2018. Wang clarified when companies plug their own wells, they have to submit a report which includes where they set the plug and what material they used for the plug. He also stated that of the 8000 abandoned wells, about 10% predate financial security requirement set by the legislature in 1984.

To start the public testimony portion of the charge, Mr. Schuyler Wight, a private property owner and rancher, testified stating the orphan well issue is an black eye on the state. He has a ranch in Pecos County with over 100 orphan wells and estimates there are another twenty to thirty abandoned wells with three of those wells being in the Pecos River and the RCC does not have these wells in its data base. One of the RCC plugged well on the property is actively leaking and the RCC refuses to re-plug it. He also stated there are about thirty-five to forty P-13 wells in the area. TxDOT unsuccessfully plugged a P-13 well in 2009, and it has pushed the toxic water with radioactive elements into the Pecos Valley Aquifer. Wight also stated there has been a lack of communication about his unplugged wells between himself and TCEQ and RCC.

As a result of the testimony from Wight, Chairman Birdwell called up Clay Woodul, Assistant Director, Oil and Gas Division, Field Operations, RRC as well as Ashley Forbes, Deputy Director, Radioactive Material Division, TCEQ to foster discussions regarding roles and responsibilities between the agencies and Wight. Forbes testified stating TCEQ and RCC need to get together to discus the complaints brought up by Mr. Wight's during his testimony. Woodul testified stating P-13 wells were originally drilled in the 1950s as an oil and gas well, but were never productive oil wells. Instead they were used as sulfur or water wells for irrigation. He also stated that RCC is actively looking into Mr. Wight's situation and solutions. Woodul added that

[65] "Railroad Commission's Abandoned Oil and Gas Well Plugging Program Exceeds Goals Set by Texas Legislature" Railroad Commission of Texas. Sep. 23, 2020. rrc.texas.gov. https://www.rrc.texas.gov/news/092320-well-plugging/

he believes the forms for P-13 wells shifts the liability of the well onto the land owners, however that would not have been the form used in the 1950s. The authorization of the well would have been through RRC, but Mr. Woodul testified that RRC no longer has regulatory oversight of those wells. Further, he testified that RRC is looking into these types of wells and sulfur exploration wells. Chairman Birdwell implored any applicable agencies to come together to determine where any weakness in the state law exists, and determine what is the mechanism to cease what appears to be an environmental hazard. Wight added that future conversations with TCEQ and RCC need to include Middle Pecos Groundwater District.

Mr. Craig Horn, Ward County landowner, testified stating there are a lot of undocumented abandoned wells in west Texas that need to be plugged because they have a large negative impact on the environment.

Mr. Cyrus Reed, Conservation Director, Lone Star Chapter Sierra Club testified stating the federal funding for abandoned and orphan wells is good. The funds can go toward plugging abandoned wells, locating wells of which the State is unaware, and monitoring wells that have previously been plugged. Reed also recommends looking at the statutory caps that prevent more money from going into the Oil and Gas Regulation Cleanup Fund (OGRC). An example of this is that bonding levels were set in 1989 for individual wells at $2 a foot, and that isn't enough finical insurance to plug wells. Reed also added RCC fines for abandoning wells are capped at $10,000 per violation per day in the Natural Resources Code[66] and those fines should be increased and go into the OGRC. He also recommends reevaluating the rules that classify wells as inactive, abandoned, or orphaned.

Mr. Cole Ruiz, Attorney, Middle Pecos Groundwater Conservation District testified stating the abandoned well issue in Pecos County is a long term problem that requires a long term solution. There are at least forty wells RCC has refused to plug. He stated P-13 and abandoned wells are not defined in the Natural Resources Code. Since the P-13 wells are classified as water wells, RCC claims to not have jurisdiction over them.

Mr. Michael Lewis, Environment Texas testified and recommended using the funding that is available to increase inspection of active wells. He stated inspections are currently on a five year cycle and it should be at least a two year cycle. Lewis also stated there needs to be a new inventory made to include undiscovered abandoned wells as well as a forecast for new abandoned wells.

Ms. Virginia Palacios, Executive Director, Commission Shift testified stating abandoned wells effect multiple generations of families. Palacios proposed reducing inactive well plugging extensions, requiring full cost financial assurance, and clarifying the definition of orphaned wells. The slow pace of well plugging and cleanup by operators and RCC has lead to water pollution, road damage, and dangerous blow outs. Requiring full cost financial assurance and reducing plug extensions would generate more jobs and protect the natural resources and people of Texas.

[66] See Tex. Gov't Code Ann. §91.002

CONCLUSIONS AND RECOMMENDATIONS

With the joint interim committee created under H.B. 3973 not forming, this committee does not have sufficient information to complete this charge as given by the Lt. Governor's office. However, the testimony the Committee received in absence of the joint committee it was charged with monitoring was informative and brought to light several issues that could be addressed in the 88th Legislature along with several that could warrant further monitoring and study. This includes, but not limited to the further monitoring of the P-13 well issue and the current oversight of the agencies involved and to make changes if necessary.

e. House Bill 4110, Relating to the registration of metal recycling.

BACKGROUND

In its first interim hearing on June 13th, 2022, the Committee monitored and examined the implementation of House Bill 4110, relating to the regulation of metal recycling; increasing a criminal penalty. H.B. 4110 requires a person attempting to sell a catalytic converter to a metal recycling entity (MRE) to provide the year, make, model and identification number for the vehicle from which it was removed from as well as the title or other documentation proving ownership of the vehicle from which the catalytic converter was removed. MREs require this documentation before any purchase of catalytic converters.

The bill also requires metal recycling facilities to mark each catalytic converter with a unique number and keep an accurate record of each purchase. Records will have to show information provided by the seller, such as a clear and legible thumbprint of the seller unless the seller presents to the metal recycling entity a valid cash transaction card issued under Texas Occupations Code Section 1956.0382 (Cash Transaction Card). Additionally, this bill requires a business selling a catalytic converter to a registered MRE to maintain a record of all repairs for a vehicle in connection to that converter. The record must include the name and address of the vehicle's owner and copies of all related invoices. Records must be kept for two years from date of repair.

The criminal penalty for providing false information to a metal recycling facility is raised from a class A misdemeanor (up to one year in jail and/or max fine of $4000) to a state-jail felony (180 days to two years in state jail and an optional fine of up to $10,000). Repeat offenses are enhanced from state jail felonies to third-degree felonies (two to 10 years in prison and an optional fine of up to $10,000).

Catalytic converters are mandatory pieces of equipment on all combustion engines since the late 1970s due to the federal Clean Air Act.[67] They work by passing the flow of exhaust through a web of metal composed of platinum, palladium and rhodium to help convert harmful compounds from an engine's emissions into safer gasses. Due to the sudden increase in the prices of these considered precious metals, catalytic converters have become a high value target for thieves.[68]

Once catalytic converters are removed (legally or illegally) they can be taken and sold to scrap metal dealers who then take it to "de-canning" facilities. The facilities then sell the honeycomb of precious metals to smelters, who use extreme heat and other processes to isolate the precious metals into a pure form to be sold for other uses, including making new catalytic converters. The recycling process is especially necessary when these rare metals are not being mined and prices are extremely high.

Thieves target a wide spectrum of vehicles from different years, makes, and models, but favor

[67] The enactment of the Clean Air Act of 1970 (1970 CAA) resulted in a major shift in the federal government's role in air pollution control. This legislation authorized the development of comprehensive federal and state regulations to limit emissions from both stationary (industrial) sources and mobile sources. See 42 U.S.C. §7401 et seq. (1970 CAA)
[68] Written testimony submitted by Alliance for Automotive Innovation to the Senate Committee on Natural Resources and Economic Development, June 13, 2022

those with higher ground clearance. This is due to the easier access of being able to remove the catalytic converters from vehicles.[69] Hybrid vehicles are favored due to the significantly less internal corrosion per mile than other cars that increases the value of the precious metals in catalytic converters.[70] Due to the differing makes and models of vehicles, the associated costs are difficult to asses since they require distinctive parts, but Gulf States Toyota stated that Toyota's average parts and labor price to replace a catalytic converter is $3,630.48. Various costs were also associated with stolen catalytic converters such as damage to other parts of the vehicle, including fuel lines, mufflers, etc., and rental car charges for the vehicle owner.[71]

The City of Houston reported a total of 375 cases in 2019 and 7,822 total reported cases of catalytic converter thefts in 2021. Just four months into 2022, The Houston Police Department (HPD) reported 3,200 cases, and stated that if cases stayed consistent, they would increase catalytic converter thefts by 2,000 from the previous year. The access to multiple vehicles in one location allows for criminal organizations to hit multiple cars in minutes, allowing for the organizations to make several hundred or thousands of dollars if successful.[72]

HPD mentioned in written testimony provided to the Committee that catalytic converter theft was historically considered a property crime, but has since become increasingly violent as gangs and robbery crews have turned to this low risk way to fund their operations. The misdemeanor theft or criminal mischief charge is not a deterrent and considered simply the cost of doing business. HPD mentions that the cutters are the most violent and while the criminal act itself is non-violent, these crews will resort to aggressive and violent acts if caught or confronted by citizens.[73] A notable example provided by HPD is the murder of Harris County Sheriff's Deputy Darren Almendarez who had interrupted the theft of his catalytic converter after shopping for groceries with his family. The increased violent behavior is due to more violent gangs transitioning into cutting crews and the virtually unlimited supply of catalytic converters on streets and parking lots.[74]

TESTIMONY

During the first interim hearing on June 13th, 2022, the Committee heard invited testimony from Assistant Chief Hester, Regulatory Division, Texas Department of Public Safety (DPS), Ms. Claire McDonald, Texas Automobile Dealers Association (TADA) and Mr. Mel Wright, the Recycling Council of Texas. Before invited testimony was heard, Chairman Birdwell expressed concern with not encroaching onto the Criminal Justice Committee which had also received an interim charge on this bill and would focus this Committee's questions on regulatory matters regarding the bill rather than criminal penalty aspects.

[69] Written testimony submitted by Gulf States Toyota to the Senate Committee on Natural Resources and Economic Development, June 13, 2022
[70] Ibid.
[71] Ibid.
[72] Written testimony submitted by the Houston Police Department to the Senate Committee on Natural Resources and Economic Development, June 13, 2022
[73] Ibid.
[74] Ibid.

Chief Hester testified that his division is responsible for regulating the 663 MREs around the state under the authority of the Occupations Code Chapter 1956 (Sec. 1956.001. (2-a)).[75] Hester stated with the passing of H.B. 4110, with any transaction of a catalytic converter, requirements now had to be met, which include marking of the catalytic converter, proof of ownership and more. Hester described the rule making process conducted to define what the markings on loose catalytic converters would be when entering a recycling facility. The markings consisted of the following three sections:

- A three digit alphanumeric code
- A dash followed by the month and year
- A dash followed by the metal recycling center's ticket or transaction number they wish to assign

The metal recycling facilities now keep copies of records and then input all information online within 72 hours to the Texas Online Metals Database System. After the implementation of this system, DPS found that the smaller metal recycling centers had fewer catalytic converter transactions.

Hester further described the contents and functions of catalytic converters including the "honeycomb" design that reduces emissions as they warm up. As mentioned, the honeycombs are made up of three precious metals consisting of Palladium, Platinum and Rhodium. Of the three, Rhodium holds the highest value with a cost of $12,900/oz according to DPS. Hester mentioned that there is a large demand for Rhodium and a need for it to be recycled within a legitimate recycling stream in the Unites States..

Prior to COVID-19 in the United States, these precious metals were being mined out of South Africa and Russia. When South Africa was forced to shut down it's mines due to the pandemic, it lead to an increase of the price of Rhodium due to it not being readily available. The Russian and Ukrainian war further exacerbated the problems, causing the price of Rhodium to jump to $27,000/oz.

Ms. McDonald testified next, discussing catalytic converter thefts and how they impact dealers. McDonald expressed how auto dealership customers are being impacted as catalytic converters are being stolen from their vehicles, sometimes while the dealer has it in their possession. Based on discussions she's held with other dealers, they seem to be having the same issues as municipalities, as well as pretty much anywhere there are lots of cars in one place. The costs of the converters are high; McDonald stated it can cost between $1000 and $3000 to replace per vehicle, and these costs hit the owner and insurance company pretty hard. There is also a hidden cost due to supply shortages, taking almost one to three months to get replacement parts, leaving the owner stuck without a vehicle or with additional costs of rental vehicles if they are able to find one due to shortages and rental lots also being targeted for catalytic converter thefts.

McDonald went on to testify that H.B. 4110 helps better police the transactions at Texas metal recycling facilities, requiring that information be collected and held for five days. Though according to an investigator from TADA, several Texas metal recycling facilities no longer take

[75] Chapter 1956. Metal Recycling Entities. Subchapter A. General Provisions. Section 1956.001 Definitions in this Chapter: (2-a) "Catalytic converter: includes any material removed form the catalytic converter.

the catalytic converters due to the statutory requirements and penalties for the possession of stolen catalytic converters. McDonald expressed efforts to separate legitimate from non-legitimate sellers of catalytic converters have not reduced financial incentives for catalytic converter theft in Texas because they are also being transported across state lines. The lack of identification on catalytic converters was the greatest concern for dealers along with the inability of law enforcement to make arrests for possession. There is current federal legislation that requires automobile manufacturers to stamp catalytic converters with unique identification numbers, but the requirement only applies to new vehicles and excluded used vehicles.[76] McDonald expressed that there are many Texans that support imposing criminal penalties for possessing stolen catalytic converters and putting liability on the possessor of the catalytic converters for proof of ownership.

Next, Mr. Wright testified representing the MREs. Wright said that they are in support of DPS wanting to resolve the issue of stolen catalytic converters in the state of Texas and United States. MREs are the first line of defense in stopping metal theft including catalytic converters. Mr. Wright testified that the Recycling Council of Texas recommended only companies registered with DPS and compliant with DPS reporting should legally be able to purchase and sell old detached converters so that law enforcement can track them and keep consistent information so that prosecutors can keep bad actors off the streets.

Senator Kolkhorst asked the panel "who is buying a catalytic converter?", Wright responded "Check Facebook." In further response to this question, the panel discussed that possession not being a crime poses an issue that prevents sellers or buyers on Facebook or those caught transporting as many as twenty catalytic converters that are presumed to be stolen from being subject to policing. Senators Birdwell & Hinojosa discussed possession and the lack of law enforcement being able to make arrests due to possession of catalytic converters not being illegal. The Committee further debated the definitions of possession in regards to catalytic converters that could potentially criminalize those who came about possessing catalytic converters in a legal fashion and those who possessed them by illegal means. The officer involved shooting that resulted in the death of Deputy Darren Almendarez,[77] who attempted to stop men who were trying to steal a catalytic converter had elevated the discussion and put a sense of urgency of the issue. Senator Alvarado stated that while HB 4110 has done good, it may have moved transactions of stolen catalytic converters towards social media sites to be sold out of state and other venues for sale.

Recommendations were asked by the Committee to the panel, specifically to Jason Hester of DPS, asking what could be done by the state on the enforcement side or MRE side, without being an impediment to lawful businesses transactions. Hester answered that there must be uniform penalties for the possession of stolen catalytic converters and addressed that some of their issues are the transactions that are occurring outside of their licensed facilities that DPS regulates.

Chairman Birdwell asked the panel if the passage of H.B. 4110 has created a circumstance where MREs are refusing catalytic converters and pushing it to interstate business transactions instead.

[76] H.R.6394 — 117th Congress (2021-2022) & S.5024 — 117th Congress (2021-2022)
[77] Galvan, Jamie. "Third suspect arrested in shooting death of HCSO Deputy Darren Almendarez, sheriff says". KHOU-11. April 1, 2022. https://www.khou.com/article/news/crime/harris-county-deputy-darren-almendarez-killed-farm-to-market-road-1960-capital-murder/285-8787577e-e289-42e9-aef1-d393983585d4

Wright responded, and stated they believe that is what is happening. Due to H.B. 4110, MRE's have to identify specific catalytic converters to the make and model of vehicles in order to properly identify ownership and have swayed MRE's from continuing to intake catalytic converters due to the rule being difficult to follow. Wright mentioned that other agencies such as the FBI and postal service are working on this on the national level as well, while criminals are re-etching catalytic converters and falsifying VINs in the attempt to defraud the MREs.

Chairman Birdwell asked the panel about business to business transactions, records kept by businesses, and if the removal of a catalytic converters makes vehicles inoperable, but not functionally inoperable. McDonald said the removal of catalytic converters would be very obvious due to how loud the vehicle would sound. Hester stated it would also not pass any emissions test and would become illegal to operate. McDonald also mentioned that it would be very easy from a repair service center perspective to document repair orders, replacement parts, etc. to prove the legal possession for a business.

Senator Hinojosa emphasized the need to address the organized crime involved with stolen catalytic converters, from the regulatory side as well as the criminal side.

Chairman Birdwell discussed the particulars of catalytic converters replacement, asking if the amount of precious metals in the catalytic converters makes it impractical for the vehicle owner to replace. McDonald said converters could be sold for $250 to $1,000 to MREs, while replacing them could cost the customer from $1,000 to $3,000. The Chairman then asked who were separating the precious metals from the converters. Wright said that the refiners are the ones that are receiving the de-canned catalytic converters and melting the precious metals inside, giving them the ability to separate them. Only six refineries are in the United States, one of which is located in Texas.

Following invited testimony the Committee called Earl Cooke, Director of Compliance and Business Development, Texas Independent Automobile Dealers Association (TIADA), Daniel Scesney, Chief, Grand Prairie Police Department, Tchad Taormina, Legislative Director, Texas Automotive Recyclers Association (TARA), and Steve Bresnen, PGM of Texas, as the first panel of public testimony.

Mr. Cooke was the first to testify during the public portion of the testimony, stating a specific issue the dealers have seen; Once their vehicles become victims of catalytic converter theft, due to statue, they are unable to sell the vehicle until the catalytic converter theft has been replaced. They are unable to list the vehicle in any listing or show the vehicle until it is fixed. Cooke believed that a simple change in code in which the sale but not the delivery of a vehicle is allowed until the catalytic converter has been replaced.

Grand Prairie Police Chief Scesney recommended that in order to make significant change in reducing catalytic converter theft, the legislature should add a defense to prosecution in statue so that law enforcement has the power to seize any potentially stolen catalytic converters. Scesney stated that Texas is the number two state in highest catalytic converter theft in the nation, California being number one.

Mr. Taormina, testified that in TARA's members standard course of business, they remove the catalytic converters from vehicles and sell the parts to MREs. They have increased security

measures at their salvage yards to deter theft, but they have had catalytic converters stolen from delivery trucks. Taormina testified that TARA would like to be part of the conversation and solution of this pressing problem.

Mr. Bresnen testified that Platinum Group Metals (PGM) is one of the oldest and largest recyclers of catalytic converters in the country. The process for recycling a catalytic converter is to decant the biscuit from the catalytic converter and crush the biscuit into a fine level to be smelted and refined. Legitimate business are required to keep records of vehicle and parts in their possession, but those requirements can be more in depth and uniform across the State. Chairman Birdwell asked if materials from recycled catalytic converters were being used for any purposes other than the manufacturing of new catalytic converters to which Bresnan replied no. Bresnan expressed to the Committee that it is important to draft statute to protect the legitimate stream of commerce and to work with other states as this is a national problem.

Chief Art Acevedo, Former Austin and Houston Police Chief testified that catalytic converter theft needs to view more like organized crime, and funding needs to be administered to police departments for task forces relating to catalytic converters.

CONCLUSION

The Committee recognizes that though H.B. 4110 has been a great step forward, there is still work to be done. Both this Committee and the Senate Committee on Criminal Justice having interim charges to address this problem which is a testament to the severity to the issue. The Committee also recognizes that as a state, there is only so much that can be done, with a lot of the stolen catalytic converters going over state lines to states with lesser or no penalties, or potentially to Mexico. That said, Gulf States Toyota stated in written testimony provided to the Committee after the hearing, that since the passage of H.B. 4110, numerous states have also passed similar legislation to help curb what they believe to be a national problem.[78] With more states passing legislation to help stop the issue, our laws will continue to work better.

The Federal Government is working on legislation to require the etching or engraving of vehicle identification numbers (VINs) onto catalytic converters on new vehicles.[79] While the Committee believes this is well intentioned, it does not address the central cause of the problem, which is the accessible resale of stolen catalytic converters. The grinding or scratching off of VINs, as well as erosion from outside elements over time, render any markings useless to help trace stolen parts. It also does not address vehicles that are already on the road.

RECOMMENDATIONS

The intention of the Committee was to stay within the regulatory side of the conversation, while the Senate Committee on Criminal Justice focused on the criminal side. The Committee does not

[78] Written testimony submitted by Gulf State Toyota to the Senate Committee on Natural Resources and Economic Development, June 13th, 2022
[79] H.R.6394 — 117th Congress (2021-2022) & S.5024 — 117th Congress (2021-2022)

have a recommendation of whether any legislation coming from the recommendations of both committees should be within separate bills or combined into one.

During the 88th Legislative Session, the Committee recommends continuing to monitor implementation of H.B. 4110 in coordination with any monitoring efforts by the Committee on Criminal Justice. With the information stated above, the Committee makes the following recommendations:

- Consider any new legislative fixes required for DPS in their rule making efforts to clean up the business to business transactions definitions.
- Further consideration should be given to whether or not additional regulatory framework needs to be implemented to tighten business to business transactions to prevent any remaining open streams for stolen catalytic converters in the state.
- Coordination with other states should be an increased focus to mitigate catalytic converters that are stolen in Texas, but transported out of state to be sold in other states.