
SENATE COMMITTEE ON NATURAL RESOURCES AND ECONOMIC DEVELOPMENT

TEXAS SENATE

INTERIM REPORT 2024

A REPORT TO THE

TEXAS SENATE

89TH TEXAS LEGISLATURE

SEN. BRIAN BIRDWELL

CHAIRMAN



SENATE COMMITTEE ON NATURAL RESOURCES
AND ECONOMIC DEVELOPMENT

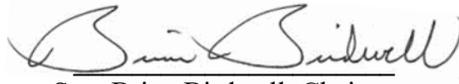
December 3, 2024

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-ninth Texas Legislature.

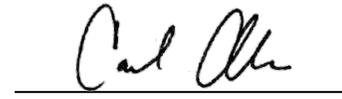
Respectfully submitted,



Sen. Brian Birdwell, Chairman



Sen. Judith Zaffirini, Vice-Chair



Sen. Carol Alvarado



Sen. César Blanco



Sen. Kelly Hancock



Sen. Bryan Hughes



Sen. Lois Kolkhorst



Sen. Borris L. Miles



Sen. Kevin Sparks

VICE CHAIR, NATURAL RESOURCES
AND ECONOMIC DEVELOPMENT

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TEXAS ACCESS TO JUSTICE
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Judith Zaffirini, PhD

DEAN OF THE TEXAS SENATE
STATE SENATOR, DISTRICT 21

COMMITTEES

BUSINESS AND COMMERCE

FINANCE

REDISTRICTING

STATE AFFAIRS

LEGISLATIVE OVERSIGHT
ON GRID RELIABILITY

December 11, 2024

The Honorable
Brian Birdwell, Chair
Senate Committee on Natural Resources
and Economic Development
P.O. Box 12068
Capitol Station
Austin, TX 78711

Dear Chair Birdwell:

Thank you for your leadership as Chair of the Senate Committee on Natural Resources and Economic Development. It is my privilege to serve with you as Vice Chair. Thanks, too, for this opportunity to share my perspective regarding our interim report. Because it includes many fine recommendations, I am pleased to sign it. This letter, however, includes several of my concerns, and I would appreciate your including it in our published version.

First, the report promotes pre-K partnerships but highlights challenges such as the unpredictability of funding flows and district reluctance to collaborate with private providers. To avoid risks that strain public pre-K systems, I believe we should focus instead on predictable and equitable funding mechanisms and quality standards to expand access effectively.

Second, while the report understandably warns against expanding the hotel occupancy tax uses beyond statutory purposes, overly restrictive policies could diminish communities' ability to address essential infrastructure needs that directly impact tourism. Flexibility within the existing framework, coupled with transparency, would help local governments sustain tourism growth and public trust.

Third, related to cement plants that significantly can affect air quality and public health, the report appropriately highlights the importance of technical reviews and compliance monitoring in the permitting process. I question, however, whether

Letter to Brian Birdwell, Chair, Natural Resources and Economic Development Committee
December 11, 2024
Page 2 of 2

current tools are sufficient to address deficient applications satisfactorily. Strengthening the agency's ability to address and perhaps reject incomplete or inadequate permit applications could ensure applicants meet environmental standards and protect nearby communities while supporting responsible economic development.

Finally, while some federal policies may present challenges, collaboration offers opportunities for funding and innovation. Partnering with federal agencies could strengthen Texas' energy and workforce initiatives.

Thank you for your dedication to discussing these important issues. I look forward to continuing to work with you and other members of our committee during the legislative session that convenes on January 14.

May God bless you.

Respectfully,

A handwritten signature in black ink that reads "Judith Zaffirini". The signature is written in a cursive, flowing style.

Judith Zaffirini

Z/ta



BORRIS L. MILES

STATE SENATOR • DISTRICT 13

COMMITTEES: CRIMINAL JUSTICE • HEALTH & HUMAN SERVICES • NATURAL RESOURCES & ECONOMIC DEVELOPMENT • NOMINATIONS • TRANSPORTATION

December 11, 2024

The Honorable Brian Birdwell
P.O. Box 12068
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Chairman Birdwell,

First, I would like to thank you for your leadership of the Natural Resources Committee. The Committee was presented with a number of interim charges and thanks to your staff, we were able to have a thoughtful, substantive discussion about each.

I am going to sign this Committee Report. With that being said, I would like it to be known that I do not agree with a number of conclusions that this report has reached.

School Vouchers Are Not the Answer to Texas' Child Care Issues.

In the report, one recommendation is that the Legislature might look in to school voucher legislation as a way for parents to procure pre-kindergarten services. I have been staunchly against school voucher legislation since the beginning of my tenure in this body and my opposition will not stop. Families that can already afford child care do not need a handout at the expense of the Texas taxpayer. If Texas really wants to expand access to child care, we should look to expand the funding to the Texas Workforce Child Care Services program. According to Texans Care for Children, between 60,000 and 97,000 children are currently on the waiting list. If we can get all of these tens of thousands of children a subsidy and into the marketplace, it will create more opportunity for new childcare centers to open up and a greater number of centers would drive down prices for all. An investment into all Texans, and not just those that already possess the means, would benefit the state in the long run.

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An Increased Focus on Environmental Justice and Public Health Does Not Equate to Incompetence

During the committee hearings and in this report, the Biden Administration's more sensible air quality rules put in place by the EPA were cast as incompetence on the Federal Government's part towards Texas. I disagree with that idea.

The greatest asset of this state is its people. We cannot continue to be the economic engine of this country if we are consistently poisoning the very asset that makes us great. High levels of PM2.5 can cause asthma, cancer, and cardiovascular problems in those affected. High levels of methane can cause strokes, higher rates of preterm births, and can aggravate existing lung issues. It is suggested in the report that federal agencies should take real world experience in to account during rulemaking. Real world experience would tell a normal person that a company cannot continue to grow if its workforce is too sick to continue working. Further, real world experience would show that these facilities are almost always located in black and brown communities, not more affluent white communities. This State cannot sacrifice one specific group of people in the name of progress. Every Texan is entitled to a clean environment and the State should weigh the good of its people over the expansion of industry.

Finally, I only need to look to my own district to see that TCEQ will not adhere to the new standards anyhow. TCEQ continues to issue air quality permits to concrete batch plants and concrete crushers based on air quality standards that have not been updated in over a decade – though they have been updated at the federal level. A federal rule is not hampering Texas business if you can just choose not to enforce it and face no consequences.

This Committee Should Also Focus on Concrete, Not Just Cement

During the interim hearing process, the Lieutenant Governor added cement production as an additional interim charge. I welcomed this addition because aggregate issues are close to the heart of Senate District 13. However, to my dismay, the Committee members were barred from discussing issues surrounding concrete – even though cement is the main ingredient in concrete.

SD-13 has some of the highest numbers of concrete batch plants and concrete crushers of any Senate District in Texas. These facilities pollute the air and lungs of residents that did not ask for these facilities to locate near them and do not want them to stay. Data surrounding the amount of PM2.5 in the air in my district is sparse and the data that TCEQ does collect is from monitors miles away from the bulk of these concrete facilities. TCEQ claims that they do not have the legislative authority to address these issues. So every Legislative Session I

file numerous bills to give the TCEQ that authority and every Legislative Session they are not considered.

The issue of concrete is fast becoming a statewide issue- both urban and rural. The City of Garden Ridge is a small community outside of San Antonio that is facing the same problems as SD-13. This is a community that is made up in large part of veterans. They gave their all to their country and their reward is to be surrounded by concrete batch plants and cement quarries. As these concrete batch plants and crushers branch out from urban areas, it will draw more legislators in to the conversation whether they like it or not. I look forward to working with the Committee this Session to find common sense solutions to these problems to help all Texans breathe freely and Texas industry continue to thrive.

Sincerely,

A handwritten signature in black ink, appearing to be 'Borris L. Miles', with a long horizontal flourish extending to the right.

Borris L. Miles
Senator, District 13



CAROL ALVARADO

STATE SENATOR
DISTRICT 6

December 11, 2024

Chairman Brian Birdwell
Natural Resources and Economic Development Committee
PO Box 12068
Austin, TX 78711

Dear Chairman Birdwell:

I appreciate the opportunity to serve on the Natural Resources and Economic Development Committee and to contribute to the important work outlined in this interim report. While I intend to sign this report, I would like to include this addendum to clarify my position on several aspects of the findings and recommendations:

Federal Government Competence

The report's use of the term "federal incompetence" emphasizes frustrations with certain federal policies, but I believe a more measured tone would better highlight the substantive challenges we face in navigating these complex issues. It is critical to engage with federal agencies in a constructive and collaborative manner rather than defaulting to rhetoric that diminishes the possibility of meaningful partnership.

Specifically, I can understand concerns about regulatory overreach, labeling these actions as "incompetence" fails to acknowledge the complexities of federal rulemaking and the role of public health, energy and environmental considerations.

Cement and Concrete Batch Plants

The report's focus on cement production plants was an important step in addressing the environmental and community impacts of industrial operations. However, I would have preferred to have had a discussion on *concrete batch plants*, particularly given the prevalence of these facilities in Senate District 6 and their documented effects on public health and quality of life.

Concrete batch plants, often located in close proximity to residential neighborhoods, raise serious concerns about air quality, noise pollution and community disruption. I believe the charge on cement production should have been expanded to include concrete batch plants and I urge the legislature to give equal consideration to this issue in future deliberations.

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CAROL ALVARADO

STATE SENATOR
DISTRICT 6

Childcare and School Vouchers

While I strongly support efforts to increase access to childcare and workforce productivity, I cannot support the inclusion of a childcare solution tied to the Senate's proposed voucher legislation. I do not support school vouchers and I believe this approach raises significant concerns that could impact the foundation of public education in Texas. I remain committed to expanding high-quality, accessible childcare through public-private partnerships and other innovative models but firmly reject any attempt to tie this goal to a voucher system.

While I appreciate the comprehensive work of the committee, these points warrant clarification. My signature on this report reflects my general agreement with its findings and recommendations but should not be interpreted as an endorsement of every aspect or its entirety.

Thank you for your leadership and for allowing me to include this addendum to the committee's report.

Sincerely,

A handwritten signature in black ink that reads "Carol Alvarado".

Carol Alvarado
State Senator, District 6

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The Senate of Texas

CÉSAR J. BLANCO

TEXAS SENATOR
DISTRICT 29

December 11, 2024

The Honorable Brian Birdwell
Chairman
Senate Committee on Natural Resources and Economic Development
P.O. Box 12068
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Austin, TX 78711

Dear Chairman Birdwell,

Thank you for your continued leadership and the tireless efforts of your staff within the Senate Committee on Natural Resources and Economic Development throughout this interim session. I look forward to further collaboration with you on this important committee. While I support the report and lend my signature to it, I would like to offer some comments on certain assertions and recommendations presented.

Regarding the childcare charge and its recommendations, I commend the committee for identifying key initiatives that can be implemented using existing resources to strengthen the childcare system in Texas. As the report rightly highlights, there is an urgent need for legislative action to prioritize investments in increasing access to high-quality childcare, strengthening support for childcare providers, and ensuring that working families have dependable and affordable care options. However, I respectfully disagree with the third recommendation for the legislature to examine and prioritize the level at which school choice legislation can incorporate the choice for parents to obtain prekindergarten services at the provider of their choice. I do not believe prioritizing childcare and pre-k services through a private school voucher program would effectively address the immense childcare needs identified by the committee, especially in rural areas of Texas in which public education is the only option for parents.

Additionally, the committee's discussions regarding the use of Hotel Occupancy Taxes (HOT) in Texas were beneficial. The interim report appropriately cautions against the misuse of HOT funds to replace local general revenue, and I agree that such funds should not be used as a substitute for core services. However, we must recognize that Texas communities such as Marfa, with an annual tourist to resident ratio of 40:3, cannot continue to be an economic driver through tourism if basic city essentials such as water infrastructure and roads are being utilized by tourism at a rate faster than the local tax base can keep up with. It is imperative that we find a solution to ensure these communities can adequately accommodate tourism without jeopardizing their long-term sustainability. Moreover, implementing a centralized framework for collecting local HOT from accommodation intermediaries could strengthen collection efforts statewide.

Once again, thank you for your leadership and your collaboration with committee members throughout the interim. It is an honor to serve alongside you on this committee, and I look forward to our continued work together in the 89th Texas Legislature.

Respectfully,

A handwritten signature in black ink, appearing to read "César J. Blanco". The signature is fluid and cursive, with the first name being the most prominent.

César J. Blanco
Texas State Senator
District 29

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INTERIM STUDY CHARGES BACKGROUND, FINDINGS AND RECOMMENDATIONS

- 1. Enhancing Workforce Productivity: Study ways to increase the state's workforce productivity, including access to childcare. Make recommendations, within existing resources, to maintain childcare availability to support a growing workforce.**

INTRODUCTION

Childcare in Texas is a critical component of the state's economic and social infrastructure, playing a vital role in supporting working families and fostering early childhood development. Texas offers various programs aimed at improving access to childcare and enhancing its quality, including financial assistance through the Texas Workforce Commission (TWC) and quality ratings via the Texas Rising Star Program. These programs are primarily funded with federal dollars, and the federal government, state, and local workforce boards share the utilization of those dollars.

However, significant childcare issues exist. Many families struggle with the high cost of childcare, which often consumes a substantial portion of their income. Access to affordable and quality childcare is particularly challenging in rural and underserved urban areas, leading to limited availability and long waitlists. Additionally, the complexity of bureaucratic regulations, application processes, and variations in local program administration can create barriers for families seeking assistance. These challenges highlight the need for ongoing reforms and innovative solutions to ensure that all Texans have access to reliable and high-quality childcare, allowing parents to fully participate in the workforce.

The enhancing the workforce productivity interim charge, as tasked to the committee, is primarily focused on increasing access to childcare in order to support the state's growing workforce. It is important to clarify that the objective is not to increase the number of children on subsidy or increase subsidy dollars, nor is it to create new program funding streams. Instead, the charge emphasizes finding ways to maintain and improve childcare availability within existing resources. Various state agencies, including the Texas Workforce Commission, the Health and Human Services Commission, and the Texas Education Agency, play key roles in the childcare space. Further, private sector coalitions have identified several pressing issues, including the rising cost of childcare, regulatory barriers, and a lack of successful public-private partnerships, which all contribute to a reduction in workforce participation. Therefore, the Committee held a hearing to learn from these agencies and groups, as well as private childcare providers.

BACKGROUND

Texas Workforce Commission

The Texas Workforce Commission (TWC) plays a role in supporting childcare access and quality across Texas, including the administration of subsidized childcare assistance, largely funded by the federal Childcare and Development Block Grant (CCDBG) and state allocations necessary to draw down the grant. Additional funding from the American Rescue Plan Act and other federal sources¹ has enabled TWC to support workforce-related childcare initiatives, including grants for providers expanding services in underserved “childcare deserts” and in partnerships with employers².

The TWC Childcare Services (CCS) program accounts for about 50% of the agency’s budget. TWC provides childcare subsidies to 13% of the state’s children, exceeding the federal requirement of 10%.

Financial Assistance for Childcare Services

To qualify for childcare services scholarships, families must meet certain criteria, which include income eligibility, child age, and parental status (such as working or attending school). Typically, families must have an income at or below 85% of the state median income, children under the age of 13 (or under 19 if disabled), and parents who are working, attending school, or participating in job training. Additional requirements may vary by local workforce development boards, which administer the program at the local level. Families can apply through their local workforce board offices.³

TWC Prekindergarten Partnerships

In November 2021, the TWC approved \$26 million to expand pre-kindergarten partnership. A pre-k partnership is when a school partners with one or more quality childcare programs to give quality care and education to three and four-year-old children.

- **Formal Partnerships:** In a formal pre-k partnership, children participate in both public school pre-k and the TWC’s Childcare Services program. Children may remain at the childcare center before and after pre-k instruction. These partnerships are beneficial for working parents, ensuring children receive consistent care and learning. The pre-k teacher can be employed by either the school or the childcare program, but must meet specific standards.⁴

¹ Texas Workforce Commission, 2024. *Child Care Relief Fund*. <https://www.twc.texas.gov/programs/child-care/child-care-relief-fund>.

² Texas Workforce Commission (n.d.) *Child Care Stimulus Resources*. <https://www.twc.texas.gov/programs/child-care/stimulus-resources>

³ Texas Child Care Solutions. "Financial Assistance for Child Care Eligibility." Texas Child Care Solutions. Accessed July 10, 2024. <https://texaschildcaresolutions.org/financial-assistance-for-child-care/eligibility/>.

⁴ Texas Workforce Commission, “Child Care & Prekindergarten Partnerships,” accessed July 24, 2024, <https://www.twc.texas.gov/programs/child-care-prekindergarten-partnerships>.

- To sustain pre-k partnerships, funding can come from various sources. TWC’s Childcare Services program may cover the cost of care before and after pre-k classes. Additionally, schools can allocate state funds, such as Average Daily Attendance and Early Education Allotment, to childcare programs. This financial support helps manage the expenses of delivering pre-k education in the partnership classroom.
- Informal Partnerships: In informal partnerships, schools and childcare programs share resources and information, such as teacher training opportunities, school readiness requirements, and family engagement strategies. Unlike formal partnerships, children are not enrolled in both public school pre-k and the childcare program, and no funding is exchanged between the school and the childcare provider. Despite the lack of financial transactions, informal partnerships can serve as a foundation for establishing formal pre-k partnerships in the future.⁵

Texas Rising Star

The Texas Rising Star Program is a quality rating and improvement system for childcare programs participating in the Texas Workforce Commission’s (TWC) Childcare Services Program. The Texas Rising Star (TRS) certification is available to licensed childcare centers and licensed and registered home facilities that meet specific criteria. The program provides three levels of quality certification based on the early learning program’s average score across all measures of a category:

- Two-Star- Average score is below 1.80 (less than 60 percent of total possible points)
- Three-Star- Average score is 1.80 to 2.39 (60-79.9 percent of total possible points)
- Four-Star- Average score is 2.4 or greater (80 percent of total possible points)

Certification Category	Weight
Director and Staff Qualifications and Training	20%
Teacher-Child Interactions	40%
Program Administrator	20%
Indoor and Outdoor Environments	20%

The score for a points-based measure in which multiple classrooms are assessed is based on the median score of the measures, which are then averaged.⁶

Each level is tied to progressively higher reimbursement rates for children receiving childcare scholarships. Research has indicated that children in high-quality early learning programs are better prepared for school⁷. TRS-certified programs, which exceed the minimum standards set by

⁵ Texas Workforce Commission, “Child Care & Prekindergarten Partnerships,” accessed July 24, 2024, <https://www.twc.texas.gov/programs/child-care-prekindergarten-partnerships>.

⁶ "Texas Rising Star Certification Levels." Texas Rising Star. Accessed July 11, 2024. <https://texasrisingstar.org/about-trs/certification-levels/>.

⁷ Texas Rising Star, 2024. *About Texas Rising Star*. Available at: <https://texasrisingstar.org/about-trs/>.

the Texas Health and Human Services Commission (HHSC) Childcare Regulation (CCR), are better equipped to positively impact the physical, social-emotional, and cognitive development of children.

All childcare programs serving children in TWC's Childcare Services (CCS) scholarship program must participate in the Texas Rising Star program. The Texas Rising star program provides financial assistance for childcare through the Childcare and Development Fund (CCDF), authorized by the Childcare and Development Block Grant (CCDBG).⁸ Local Workforce Development Boards manage these services, which help low-income families access childcare so parents can work, attend schools, or receive training. Families can choose from licensed centers, registered homes, or relative providers. Additionally, the boards promote quality improvements in childcare services through various support activities.

Texas Education Agency

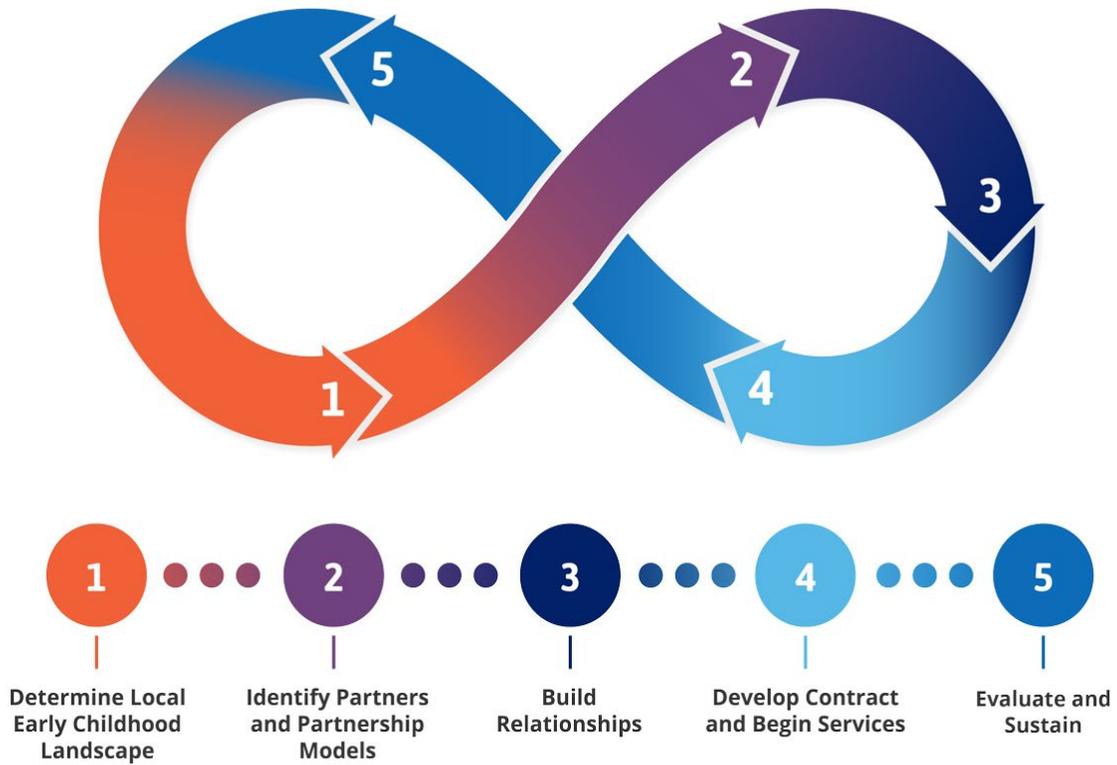
The Texas Education Agency (TEA) is the state agency that oversees primary and secondary public education headed by the Commissioner of Education. The TEA aims to improve outcomes for all public school students in the state by providing leadership, guidance, and support to school systems.

According to TEA, their main focus is to support childcare access and form public-private partnerships along with TWC. Public-private kindergarten partnerships in Texas involve collaborations between local education agencies (LEAs) or independent school districts, and private childcare or Head Start programs.⁹

TEA uses the following framework for Local Education Agencies (LEAs), childcare programs, and Head Start programs to form partnerships aimed at supporting early childhood education. This cyclical process ensures that partnerships adapt over time to better serve children and families in each community.

⁸ The Child Care and Development Block Grant (CCDBG) is a federal program that provides funding to states to help low-income families. Administered by the U.S. Department of Health and Human Services, the grant supports the improvement of overall child care quality, safety, and availability. States use these funds to subsidize child care costs for eligible families, enforce child care standards, and promote early childhood development programs. The CCDBG emphasizes parental choice and aims to provide safe, high-quality child care.

⁹ Head Start and Early Head Start are federal programs that promote the school readiness of preschool-aged children, infants, toddlers, and services for pregnant women. Program options are offered for eligible children in a variety of settings including centers, family child care, child care partnerships and children's own home. Early Childhood Texas, 2024, *Child Care and Education*, <https://earlychildhood.texas.gov/headstart.html>



Public-private partnerships

Public-private kindergarten partnerships can provide numerous benefits such as:

- Expanding educational opportunities for 3- and 4-year olds
- Offer extended care hours, diverse settings, and access to comprehensive services
- Facilitate smoother transitions from prekindergarten to kindergarten

Benefits for LEAs:

- Increase capacity to serve more students and enhance kindergarten readiness
- Boost community awareness of educational options
- Utilize the expertise of early learning partners

Benefits for Childcare & Head Start Programs:

- Create sustainable funding streams
- Foster communication, resource sharing, and curriculum alignment within the early childhood community.

¹⁰ Texas Education Agency, 2024. *Partnership Process*. <https://tea.texas.gov/academics/early-childhood-education/early-learning-public-private-partnerships/partnership-process>.

Health and Human Services

The Texas Health and Human Services Commission (HHSC), through the Childcare Regulation (CCR) division, protects children by overseeing and educating childcare providers. CCR's responsibilities include regulating childcare operations and agencies to ensure children's health and safety, issuing permits, and monitoring compliance with state regulations. CCR also investigates complaints about violations, informs parents and the public about childcare standards, and provides technical assistance to childcare providers in meeting the required standards and laws.¹¹

The Childcare Licensing (CCL) division within HHSC is responsible for the licensing of childcare facilities, including both daycare centers and home-based care providers. The CCL reviews and approves facilities that meet minimum operational standards concerning safety, health, and child development. Providers must meet minimum standards set by HHSC to receive and maintain their licenses. Additionally, childcare centers are required to renew their licenses periodically to ensure continued compliance.¹²

HHSC conducts routine inspections of licensed childcare centers and may be both scheduled and unannounced to assess the ongoing adherence to the state's childcare regulations. These inspections include checks for child-to-staff ratios, cleanliness, safety precautions, and staff qualifications. Non-compliance may result in corrective actions, including fines, or license revocation, resulting in closure of the facility.¹³

All individuals working in licensed childcare centers must pass background checks through HHSC, which include criminal history and checks for child abuse or neglect. Staff are also required to meet ongoing training requirements, which ensure they are equipped to care for children safely and effectively.

HHSC maintains and provides a publicly accessible database of licensed childcare providers where parents and guardians can review inspection reports, violations, and enforcement actions for licensed childcare centers. This provides transparency and helps families make informed decisions when selecting a childcare provider.

Daycare Capacity for all Texas Regions

According to HHSC, the data on daycare capacity across Texas regions from FY2019 to FY2024 reveals several trends in both the number of operations and their capacities. From FY2019 to FY2024, there is a general upward trend in the total daycare capacity, increasing from 1,147,710 in FY2019 to 1,237,244 by FY2024. This reflects a growth in the availability of childcare services, though fluctuations exist in the number of certain types of facilities.

¹¹ Texas Health and Human Services, 2024. *Child Care Regulation*. <https://www.hhs.texas.gov/providers/protective-services-providers/child-care-regulation>.

¹² Texas Health and Human Services Commission (n.d.) *Minimum standards for child care*. Available at: <https://www.hhs.texas.gov/providers/protective-services-providers/child-care-regulation/minimum-standards> (Accessed: 9 October 2024).

¹³ Texas Health and Human Services Commission (n.d.) *Child Care Regulation enforcement actions*. Available at: <https://www.hhs.texas.gov/providers/protective-services-providers/child-care-regulation/ccr-enforcement-actions> (Accessed: 9 October 2024).

Licensed Childcare Centers (LCCC), which represent the largest category, saw an increase in both the number of operations and capacity over time. Capacity increased from 938,765 in FY2019 to 1,033,099 in FY2024, reflecting a steady rise in service provision.

LCCC Before/After School Programs also exhibited growth in both the number of operations and capacity, with operations rising from 768 in FY2019 to 897 in FY2024, and capacity growing from 64,964 to 74,013.

However, some facility types experienced declines. Listed Family Homes dropped in both the number of operations and capacity, from 2,975 operations and 6,483 capacity in FY2019 to 2,244 operations and 4,245 capacity in FY2024. Registered Childcare Homes similarly showed a decline in operations and capacity, from 3,290 operations and 38,132 capacity in FY2019 to 2,412 operations and 26,602 capacity in FY2024. These declines may indicate a shift toward larger care centers or changes in family preferences for care options.

Licensed Center- School Age Programs showed some variability, with a dip in both number of operations and capacity around FY2021 but recovering by FY2024 to 762 operations and a capacity of 78,455.

Overall, the increase in total capacity despite fewer small-scale care operations like family homes, suggests an ongoing consolidation of childcare services in Texas into larger facilities that can accommodate more children.

Local Workforce Development Boards

The 28 Local Workforce Development Boards in Texas are responsible for distributing funds to childcare providers as part of the Childcare Services (CCS) program, overseen by the Texas Workforce Commission (TWC). These funds, which primarily come from federal and state sources such as the Childcare and Development Block Grant (CCDBG), are allocated to local boards based on regional needs and demographic factors. The boards then enter into contracts with childcare providers who meet specific health and safety standards, ensuring that providers are eligible to participate in the CCS program.

Funds are distributed to childcare providers through a reimbursement process. Providers are reimbursed by the boards for services provided to eligible low-income families, with reimbursement rates determined by factors such as the provider's quality rating under the Texas Rising Star system, the child's age, and the location of the provider. The boards also manage childcare scholarships for eligible families, subsidizing the cost of childcare and requiring families to pay a portion based on a sliding fee scale.¹⁴

Additionally, local boards allocate a portion of their funds to support quality improvement initiatives, such as professional development and training for providers, ensuring that childcare services continue to meet the necessary standards. To ensure compliance with state regulations, the boards regularly monitor providers and the use of funds, conducting audits and reviews as

¹⁴ Texas Workforce Commission. "Child Care Program." Texas Workforce Commission. Accessed September 5, 2024. <https://www.twc.texas.gov/programs/child-care>.

needed.¹⁵

Recent Legislation

SB 1145 by West/Talarico (88R) and SJR 64

SB 1145 passed in the 88th legislative allowing counties and municipalities in Texas to offer a local option exemption from ad valorem taxation on all or part of the appraised value of real property used to operate a child-care facility. These facilities must participate in the Texas Rising Star Program and serve a minimum percentage of children receiving subsidized care. The exemption can range from 50% to 100% of the appraised value and took effect on January 1, 2024, after voters approved Senate Joint Resolution 64 (SJR 64) in November 2023.

For properties that are leased to childcare facilities, the owner must provide a rent reduction reflecting the tax savings, ensuring the benefit reaches the facility. Local governments are also responsible for confirming compliance with the exemption requirements.

The bill is not automatically enforceable statewide; it allows counties and cities to decide whether to adopt the property tax exemption for childcare facilities. Each local governing body has the discretion to implement the exemption, determining if it aligns with their community's needs and resources. Therefore, enforcement depends on local adoption and the establishment of procedures to ensure compliance with the exemption's criteria.

Harris County and the City of Houston have both passed ordinances to implement this exemption. Harris County approved a 100% property tax exemption for qualifying child-care facilities for tax years 2024 and 2025, with plans to review and possibly adjust the exemption every two years. The City of Houston also passed an ordinance granting a 100% exemption for the 2024 tax year and beyond. This exemption helps reduce operational costs for childcare facilities, potentially making childcare more affordable and accessible for families in these regions.

According to Children at Risk, the counties and cities that have passed ordinances include:

- Bexar County & City of San Antonio
- Dallas County & City of Dallas
- El Paso County & City of El Paso
- Harris County & City of Houston
- Tarrant County & City of Fort Worth
- Travis County & City of Austin
- Andrews County
- Aransas County
- Hays County
- Jefferson County
- Knox County
- Medina County
- Milam County
- Potter County
- City of Arlington
- City of Denton
- City of Kyle
- City of Waxahachie
- City of Weslaco

¹⁵ Texas Workforce Commission. "Workforce Development Boards." Texas Workforce Commission. Accessed September 5, 2024. <https://www.twc.texas.gov/agency/workforce-development-boards>.

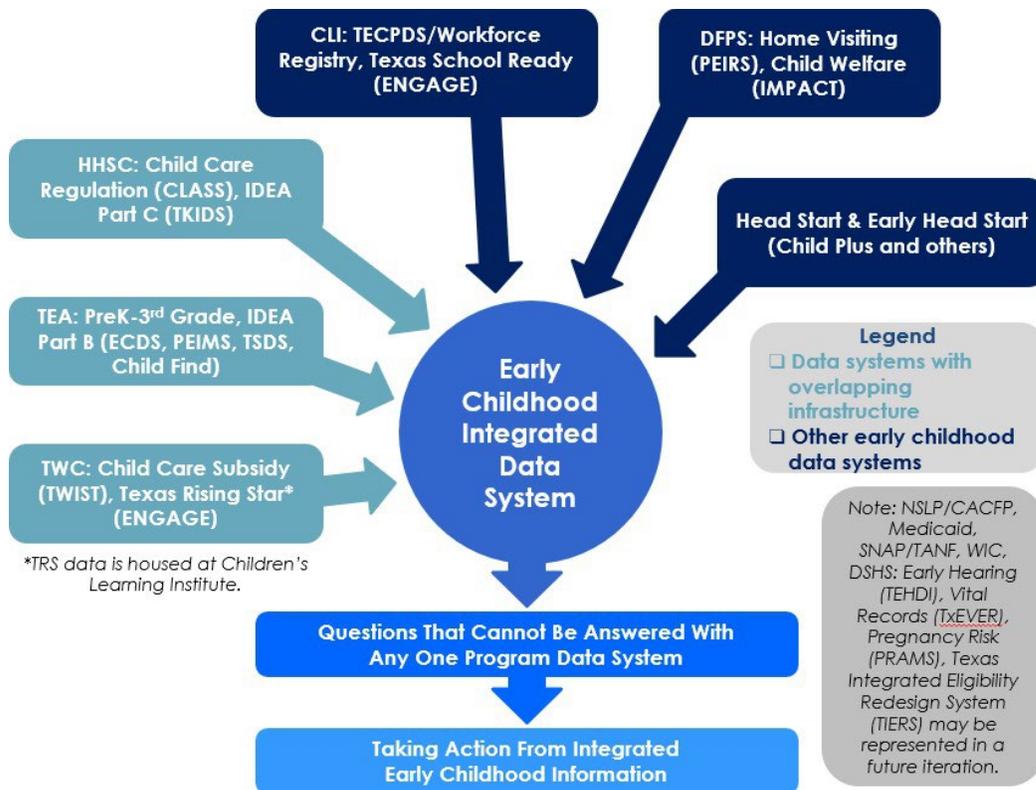
This November, Travis County voters passed a property tax increase to fund affordable childcare. This will raise the tax rate by 2.5 cents per \$100 of property valuation starting in 2025.¹⁶ The increase supports childcare providers in expanding services, including nontraditional hours, and lowering costs for low-income families. The initiative intends to address a gap in early morning, evening, and weekend childcare availability and help reduce long waitlists. Advocates highlighted that the measure serves as a long-term investment in the community's future, with potential economic benefits tied to improved literacy and workforce productivity.

Early Childhood Integrated Data System Roadmap

The Early Childhood Integrated Data System (ECIDS) in Texas is part of the Texas Workforce Commission's (TWC) Preschool Development Grant Birth to Five plan. ECIDS collects, integrates, maintains, stores, and reports information from early childhood programs across multiple agencies within a state that serve children and families from birth to age eight. Typically, the data included in an ECIDS are related to the individual child, the child's family, the classroom, the program/providers, and other services that provide comprehensive care and education for young children.¹⁷ Although not currently part of TWC's priority funding, the system's updates are estimated at under \$5 million, mainly funded by federal sources. On September 26, 2024, TWC submitted a Legislative Appropriations Requestion Hearing where TWC stated "The state plans to use an ECIDS to support high-quality early childhood programs and services by gaining better insight into how early childhood services are utilized across Texas, improving decision-making regarding use and refinement of early childhood programs, providing clearer information to stakeholders and policy makers, and improving outcomes for the children of Texas."

¹⁶ KUT 90.5. (2024). *Travis County Prop A election results*. <https://www.kut.org/politics/2024-11-05/travis-county-prop-a-results-election-2024>.

¹⁷ Coffey, M., Chatis, C., Irvine, S., Sellers, J., & Duarte, S. (2017). *An early childhood integrated data system: What is an ECIDS?* U.S. Department of Education, National Center for Education Statistics.



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Description of Data Systems by Agency

Agency	Data Systems Name and Description
Department of Family and Protective Service (DFPS)	<ul style="list-style-type: none"> • PEIRS (Prevention and Early Intervention Reporting System): Home visiting and other prevention program data. • IMPACT (Information Management Protecting Adults and Children in Texas): Child welfare, protective services, and childcare investigations data.
Health and Human Services Commission (HHSC)	<ul style="list-style-type: none"> • TKIDS (Texas Kids Intervention Data System): Early intervention services data • CLASS (Childcare Licensing Automation Support System): Childcare licensing data • TIERS (Texas Integrated Eligibility Redesign System): Eligibility and

¹⁸ Texas Early Childhood Integrated Data System (ECIDS), 2022. *Texas ECIDS Roadmap: Final Report*. https://www.earlylearningtexas.org/Texas%20ECIDS%20Roadmap_Final.pdf.

	benefit data for certain publicly funded programs, for example, SNAP, TANF, CHIP, and Medicaid) data
Texas Education Agency (TEA)	<ul style="list-style-type: none"> • ECDS (Early Childhood Data System): Public PreK and kindergarten assessment data • PEIMS (Public Education Information Management System): Education organization, finance, staff, student demographics and academic data • Child Find: Special education compliance indicators (SPPI-11 and SPPI-12) data
Texas Workforce Commission (TWC)	<ul style="list-style-type: none"> • TWIST (The Workforce Information System of Texas): Childcare financial assistance data
Children’s Learning Institute (CLI)	<ul style="list-style-type: none"> • Texas Rising Star: State Quality Rating and Improvement System (QRIS) for childcare providers • Engage: Birth-second grade professional development and child progress monitoring • TECPDS (Texas Early Childhood Professional Development System): Workforce and trainer professional development and educational attainment data

Overview of Texas’ Early Childhood Data Systems

The early childhood data sharing landscape in Texas is shaped by several key legislative acts and data-sharing agreements. House Bill 2607 (2021) mandates the Texas Education Agency (TEA) to share data on 3- and 4-star childcare providers involved in partnerships with public schools and charter schools. House Bill 680 (2019) requires the Texas Workforce Commission (TWC) to work with TEA to assign a unique Public Education Information Management System (PEIMS) number to children under six in childcare financial assistance programs, facilitating longitudinal data analysis. House Bill 3 (2019) includes provisions for adopting a multidimensional kindergarten assessment tool and offering full-day pre-k for eligible four-year-olds. Meanwhile, House Bill 4 (2015) introduced additional data elements for the Early Childhood Data System (ECDS), such as class size, instructional staff-to-student ratios, and pre-k student progress.¹⁹

¹⁹ Texas Early Childhood Integrated Data System (ECIDS) Roadmap. *Texas Early Childhood Integrated Data System (ECIDS) Roadmap*. Texas Early Childhood Data Collaborative, 2024. https://www.earlylearningtexas.org/Texas%20ECIDS%20Roadmap_Final.pdf.

Data-sharing agreements play a crucial role in this framework. The TEA and the Health and Human Services Commission’s Early Childhood Intervention (ECI) program have an MOU for sharing data related to IDEA Part B and Part C. The Tri-Agency Master Data Sharing Agreement between TEA, THECB, and TWC enhances data-sharing efficiency among these agencies. The Texas Statewide Data Exchange Compact (TSDEC) provides a uniform agreement for data sharing and security among participating state agencies, including DFPS, HHSC, TEA, and TWC.²⁰

Data security is also a critical consideration. Texas state agencies must comply with information security and cybersecurity standards outlined in the Texas Administrative Code, Chapter 202. Developing an Early Childhood Integrated Data System (ECIDS) will necessitate robust security measures.

Current data systems and sharing practices further illustrate the landscape. The Childcare Licensing Automation Support System (CLASS) and The Workforce Information System of Texas (TWIST) facilitate data sharing between HHSC and TWC regarding childcare providers. Additionally, TWIST sends information on children under six to TEA’s PEIMS, which matches or creates unique identifiers. Furthermore, HHSC shares data from the Texas Kids Intervention Data System (TKIDS) with TEA on children potentially eligible for Early Childhood Special Education programs. This integrated approach underscores the state's commitment to enhancing early childhood data management and analysis, as well as the complexity of the web of data.²¹

The development of an Early Childhood Integrated Data System (ECIDS) in Texas aims to create a comprehensive and informed framework for enhancing early childhood services and policies through improved data integration. The Texas ECIDS is intended to facilitate collaboration across and within agencies and programs, enabling the state to make data-driven decisions that support positive outcomes for young children and their families. The system is designed to provide better insight into the utilization of early childhood services across Texas, improve decision-making regarding program use and adjustments, and offer clearer information to stakeholders and policymakers. The overall objective is to achieve better outcomes for children and families by identifying successful programs, recognizing service gaps, and addressing underserved populations.

Additionally, the ECIDS will use data to:

- Identify bright spots in early childhood services.
- Spot gaps in service provision.
- Highlight underserved populations.
- Discover opportunities for aligning and coordinating programs and services.
- Determine correlations between early childhood services and child progress in key metrics.
- Inform coordination across various programs.
- Illustrate Texas' collective investment in early childhood initiatives.²²

²⁰ Texas Early Childhood Integrated Data System (ECIDS) Roadmap. *Texas Early Childhood Integrated Data System (ECIDS) Roadmap*. Texas Early Childhood Data Collaborative, 2024.
https://www.earlylearningtexas.org/Texas%20ECIDS%20Roadmap_Final.pdf.

²¹ Ibid.

²² Ibid.

TESTIMONY

The Committee held a public hearing on the charge on November 14th, 2024. The Committee heard from two panels of invited witnesses who testified regarding their efforts in enhancing workforce productivity, as well as several individual public witnesses.

Invited Testimony

Texas Workforce Commission

Leading off testimony for the first panel was Bryan Daniel, Chairman of the Texas Workforce Commission (TWC). Chairman Daniel explained TWC's involvement in childcare services, considering these services as an enhancement to the workforce. In terms of funding, this particular program expends about \$1.3 billion a year in federal funds and that's matched with about \$87 million a year in state general revenue funding, roughly \$60 million of which is used to draw down the federal funds. TWC primarily handles the subsidy part of that out of that funding, while HHSC issues the permits for the childcare providers. TWC only deals with HHSC licensed childcare providers. There are about 16,000 regulated childcare providers in the state, totaling a capacity of about 1.2 million children. TWC is involved with about 7,600 of these 16,000 providers, which is 50% of all the providers in the last fiscal year. TWC served about 145,000 children per day, which is about 12% of all the available childcare slots in Texas. When looking at those centers, 73% of the providers in Texas are for-profit companies, about 24% are non-profit entities, and about 3% are governmental entities. Chairman Daniels further detailed that there are traditional centers, as well as home based care, and TWC works with both. For at least 60% of childcare providers in the state, enrollment of subsidized children is less than 20% of their license capacity. TWC is not focused on saturation of subsidized care at those providers, but rather focuses on available care for children, particularly in areas that have limited care and ability for people to get their children in care so that they can go to work. Children in the subsidy program are typically on subsidy for about 25 months. Eligibility to qualify for the subsidy for one or both parents is to have an income of less than 85% of the median household income as published by the U.S. Health and Human Services Agency. Further, parents must be employed, actively looking for employment, or engaged in training that will directly lead to employment. In summary, TWC's concern is based on employment, or the ability to get into the workforce, and those 145,000 children a day that are being served gives the state the opportunity for that many more families to be participating in the workforce. TWC's projection for next fiscal year is that they would serve about 155,000 children per day. TWC considers the subsidy rate based on both national averages and what's going on in Texas. Texas is set at the 75th percentile, which is the rate at which the federal guidelines would indicate that our state should be set. At this level, the state does not have to suffer audits from the federal government and looking at the total cost of childcare, it puts Texas in the top group nationally, providing an opportunity to serve the maximum number of kids that we can serve in a way that's still meaningful for the parents who are engaged in the workforce. Looking at the salary guidelines for how a parent is eligible for childcare subsidies every dollar is going to matter. For TWC, a big part of this mission for them is that this funding creates an opportunity for people to engage in the workforce meaningfully because they have access to childcare and can improve on their work outcomes and trajectory. Further, the reimbursement rate is set at a particular dollar amount that lets TWC ensure that the maximum amount of children that can be assisted through

that subsidy are able to access childcare.²³ The dollars are fixed so if the reimbursement rate were to increase without additional funding, it would necessarily lower the number of students who would be participating via the subsidy program.

Chairman Daniel indicated that, in addition to just the subsidy program, TWC is doing a lot of critical work with quality improvement programs for childcare centers, including more emphasis on early childhood education and how childcare centers can provide better and more numerous options for students to begin their education early in their childcare process. In those efforts, TWC dedicates about \$82 million a year to this effort and the agency continues to work on this with both the workforce boards and the childcare providers. TWC regularly surveys people getting out of the program and, most of the time, departures are related to retirements or the selling of the business. Chairman Daniel further indicated that he thinks there is more TWC could be doing, such as finding ways to enhance training for people who work at childcare centers and leadership programs for people who run childcare centers. Additionally, he explained that TWC, working with TEA and others, has a significant role to play with public private pre-K partnerships where private childcare providers can offer pre-K education which is a head start for children getting into public schools after they complete their time in childcare at age three and four. In a later conversation with Chairman Daniel, Senator Alvarado brought up HB 619 (87R Thompson, S./Alvarado) that directed the creation of the Childcare Workforce Strategic Plan to make recommendations to ensure a sufficient childcare staff. Chairman Daniel highlighted looking for efficiencies within businesses and overall leadership improvement through more training and awareness on the front end of education which can extend retention. Examples include preferred certifications to work in a childcare center, associates degrees in early childhood development, and scholarships for students who want to study that path and who ultimately get those certifications, leading to higher wages and streamlined business operations.

In response to questions from Dean Zaffirini regarding recommendations to the Committee to address the issue within existing resources, Chairman Daniel suggested increased emphasis on using resources that are available to TWC as well as TEA to strengthen three and four year old pre-K offerings for school districts that don't wish to offer those services through the school. In particular, streamline that process so that those local school districts can work with local private childcare providers to give that type of pre-K education. This could extend the ability for childcare providers to provide beyond those pre-K students to a quality offering for all and positions those students that can participate in a quality pre-K program for much greater success in early elementary school which is going to chart the course for their entire educational opportunity in that community. Additionally, he suggested continuing to look at ways to take both state dollars and perhaps federal dollars to find ways to strengthen the business side of childcare and what it takes to operate a center, such as ensuring that there are available, trained employees at the facility. He noted that there are a couple of certificates that a provider can get that would indicate those outcomes, and an increased emphasis on those programs can perhaps provide a larger pool of workforce for the childcare centers. Also, TWC's efforts on the leadership and management of those centers are showing promise and continued efforts there would probably be in order as the state pushes to try to find different combinations of ways it can provide that quality offering for the students and the centers. Chairman Daniel also indicated hope towards additional opportunities

²³ According to written testimony provided to the Senate Committee on Natural Resources and Economic Development submitted by Texan's Care for Children on November 14th, 2024, the waitlist for the subsidy program in Texas has fluctuated from around 60,000 to as many as 97,000 children in recent years.

to bring in additional partners such as employers who have expressed an interest in offering childcare as an employee benefit. This is likely to be a voluntary process for those employers, but it's a large number at this point who recognize it as a concern for their workforce and one that TWC is uniquely positioned to help those employers navigate.

Senator Alvarado brought up other state's approaches such as Tennessee who enacted a reimbursement rate increase for childcare deserts, infant and toddler care, encouraging providers to expand access for these age groups. In Kentucky, the legislature established a public private initiative offering state matching funds for employer sponsored childcare assistance. Senator Alvarado asked Chairman Daniel if Texas has anything similar and if TWC has explored similar recommendations for this legislature. Chairman Daniel answered by first explaining the state of the Texas subsidy program. From about 2019 to today, Texas has brought its overall reimbursement rate from about 30% to 75%. Texas needed to address concerns from all across the spectrum of childcare providers and the amount of money that was available to pay for the care. During the same time period, Texas has actually slightly increased the number of kids daily for which it can provide care, expecting another 10,000 child increase for the next fiscal year from managing those funds. Reimbursement rates are enhanced if the provider is a two-star or three-star or four-star Texas rising star provider based on some basic guidelines that they follow. Therefore, Texas puts the increases in reimbursement rates into the quality of the care, rather than the age group of the child. TWC has looked at incentives for employers to participate more readily in childcare in a couple of ways. During 2021-2022, Texas had a little over \$6 billion dollars in additional federal funding for childcare; \$4 billion came off the top and went to all the childcare centers as additional assistance to deal with lack of attendance from the pandemic and a number of issues that we're plaguing childcare centers following the pandemic period in 2020. TWC looked at how employers need to realize enhanced childcare and what that would do for their workforce. One approach was to look at how an employer would set up a childcare facility on their work site at their place of business for their employees and some of the one time federal money was made available to look through that issue with a pilot program. TWC also put some money forward to look at which employers are most concerned with the availability of childcare and found employers who typically employ people outside of regular hours, such as restaurants and shift workers, who makeup 56-57% of the workforce. Traditional daycare does not work very well for these employees and there are also low margins for the employers. TWC looked at ways to incentivize those types of activities and the money has been long spent, but lessons were learned that there are creative ways for employers to get involved in this space and they will; a lot of employers consider this an employee benefit, but that does not happen in one year with so many considerations to factor. There are several things the legislative branch can consider and employers are leading that charge, but Chairman Daniel indicated that he is not prepared to tell the Committee that there is a singular way to solve the issues. He concluded by explaining that there are employees who have left employers to work at a similar type of employment just simply because it was closer to the childcare center. Employers are looking for ways to make sure that they can keep a quality workforce and are very sincerely engaged in this conversation and not simply looking for someone to just solve the problem for them.

Texas Education Agency

Next to testify was Monica Martinez, Associate Commissioner for Standards and Programs at the Texas Education Agency (TEA).

Martinez explained that there is a current statutory provision that does allow school districts and charter schools to contract with private entities to operate the pre-kindergarten programs for three and four-year-old children and TEA has been working in close collaboration with TWC and using funding that has been provided by the TWC to support the expansion of these pre-K partnerships. In 2016, the program started with some grants that TEA awarded to a few areas around the state to understand how these public-private partnerships can be successful and sustainable over a period of time. TEA learned that there were certain things that needed to be true and that there were certain challenges that needed to be addressed, some of which have to do with the way that the funding flows. Within these types of partnerships, there is an opportunity for school districts that received the ADA to pass along that funding to childcare to be able to support providing instruction to three and four-year-old children. There is not a consistent formula for the amount of funding that gets passed through, so this is determined locally within each partnership. TEA has been looking at how to help districts understand what their costs are and what the value would be in passing on the pre-K program to a partnership program, knowing there are some benefits if districts understand what the funding mechanisms look like. In 2021, TEA entered into a partnership with Texas A&M University to look at financial models to provide best practices and some additional technical assistance. As a result, TEA worked very closely with TWC and Texas A&M to try to provide additional support to expand those partnerships. In the most recent survey, there were over 500 childcare providers who were very much interested in entering into a partnership, but there was not a district that was willing to partner with them. Martinez testified that some of the reasons some districts already serving all of their eligible children still have empty seats available within the school district, a lack of staffing, and some concerns around the quality of the education in the childcare space. In the last legislative session, House Bill 2729 (Harris/Creighton) was passed to address staffing shortages. The bill made adjustments to the requirements for the instructors in the partnership classrooms that TEA thinks are increasing flexibility and helping to address that staffing challenge. However, that particular provision will expire in 2029 leaving a couple more years to see how that works before the Legislature decides whether or not to continue that flexibility. Further, TEA has heard some confusion due to differences in requirements for three-year-old classrooms and four-year-old classrooms, prompting an opportunity to consider providing some clarity to ensure that the childcare providers and school districts have a clear understanding of the different requirements depending on the age of the child. This particular point was used as an example of opportunities the Legislature could address within existing resources in response to a question from Dean Zaffirini.

Dean Zaffirini inquired how TEA ensures that childcare programs focus on quality and education, not babysitting. Martinez explained to the Committee that there are statutory requirements for what would be considered high-quality pre-k, including curriculum, progress, monitoring, educator qualifications, and parental involvement. Those requirements for a pre-K partnership classroom are for four-year-old children, not three-year-olds. To the extent that the agency is able to provide support to encourage the same application of those standards to three-year-old classrooms, that helps with the quality, ultimately there are some pieces in place already to ensure that the quality of a partnership classroom matches the quality of a pre-k classroom that is run solely by a school district.

Health and Human Services Commission

Last to testify on the first panel was Quentin Arnold, Deputy Associate Commissioner for Childcare Regulation at the Health and Human Services Commission (HHSC).

Arnold Presented the Committee with a slide deck showing the responsibility of HHSC that primarily revolves around the permitting, monitoring, or inspecting and investigating allegations of violations of minimum standards and daycare operations. The different types of operations that HHSC permits include:

- Licensed Child Care Centers
- Licensed Before or After-School Programs
- Licensed School-Age Programs
- Licensed Child Care Homes
- Registered Child Care Homes
- Listed Family Homes
- Temporary Shelter Care
- Small Employer Based Child Care Operations

The first four, HHSC monitors or inspects on an annual basis, while registered childcare homes are inspected every two years and the listed family homes are not routinely inspected unless they have a report, allegation, or complaint the agency needs to consider. Temporary shelter care and small employer-based childcare operations, of which there are around 20 of each of those across the state, are not routinely inspected either. HHSC also has an Unregulated Operations Unit (UOU) created by the 86th Legislature, which has about 38 full time HHSC childcare regulation employees across the state. Due to the limited number of employees, their primary focus tends to occur in more populated areas where the majority of childcare is taking place. UOU's primary focus is proactively searching for and identifying childcare operations that are not regulated. These operations are without a license or permit or listed as a family home. Once identified, HHSC transitions to educating those providers on the benefits of becoming a regulated provider, assisting them in that process, and then helping them get regulated, licensed, and permitted. If for some reason they choose not to come into compliance and continue operating, HHSC is obligated to pursue enforcement action to make sure children are being kept safe. In response to a question from Senator Miles, Arnold clarified that the primary goal for the UOU is to bring those unregulated entities along towards compliance, rather than seeking them out for pure enforcement action. The UOU also engages in community outreach on a regular basis, with one of their primary functions being to educate unregulated providers and parents about the value of regulated care. Further, the UOU helps the agency make exemption determinations. An example of an exemption is a gym that has daycare which is not required to be regulated because the parents are on the premises. Another is a private school that has before or after school programs also being exempt from regulation.

Senator Kolkhorst requested further information regarding the requirements for listed family homes, noting SB 569 (Huffman/Bonnen) that passed in the 86th Session. Amy Kidwell, Regional Director, Childcare Regulation at HHSC provided testimony to explain. Listed homes were a

category that existed previous to the passage of SB 569, however they became a more magnified option afterwards. It remains a challenge for some people to know that they do need to be listed, and a common myth the UOU is trying to debunk is that if a provider cares for under a certain number of unrelated children, such as only providing for one unrelated child, that they don't need a license. The reality is that if a provider cares for any number of unrelated children, they are required to be licensed. As such, the UOU goes out to the public to explain that they want those providers to be listed and want to provide the benefits of becoming listed with the state. The bill added some additional standards related to the health and safety of children in that specific operation type. There is also a chart that HHSC uses regarding the level of consanguinity of relationship that does not trigger the license requirement. Senator Miles asked Arnold about the numbers of operators that are unregulated. The question was taken for the record and HHSC followed up after the hearing to indicate that the agency encountered 2,475 unregulated operators in 2024. Over a four year period, from 2020 to 2024, they have encountered a total of 10,551 unregulated operators. At the time of delivery of this report, the number that have since become regulated is not available.

Arnold presented the Committee with a list of licensed capacity of August 20th, 2024 across all operation types.

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Operation Type	Number of Operations	Capacity
Licensed Child Care Centers (LCCC) – Child Care Programs	8,626	1,033,099
LCCC – Before/After School Programs	897	74,013
LCCC – School-Age Programs	762	78,455
Listed Family Homes	2,244	4,245
Registered Child Care Homes	2,412	26,202
Licensed Child Care Homes	1,750	19,874
Total	16,691	1,235,888

The licensed childcare centers maintain the vast majority of the capacity. Texas has over 16,000 operations, with that number changing daily, and the capacity of 1.2 million children that could be in care on any given day across the state. Importantly, the number of listed family homes and registered childcare homes has been decreasing since the pandemic and has not quite rebounded, however, the agency continues to work on improving those numbers from a regulator standpoint. Additionally, Arnold explained the agency’s funding streams with the largest block of funds

²⁴ Written testimony submitted by the Health and Human Services Commission to the Senate Natural Resources and Economic Development Committee, November 14th, 2024.

coming from the Federal Childcare Development Block Grant that TWC administers and is pulled down through an interagency contract. Additionally, general state revenue is contributing a smaller amount, and fees collected through permits and certificates are contributing an even smaller amount. The Federal Childcare Block Grant is upwards of about \$26 million for HHSC. In explaining the coordination between agencies, Arnold described the data sharing that occurs with a number of entities, some contractual and some through a memorandum of understanding. The type of data that is shared by HHSC includes the type of operation, permit status of operation, capacity of operation, and the location of operation with operating hours. HHSC has a public use data website²⁵ that includes the Childcare Regulation Data Book²⁶, which is a descriptive statistical resource of services provided to Texans by HHSC for the past 10 fiscal years, and the HHSC Childcare Licensing Daycare and Residential Operations Data/Open Data Portal that contains detailed information about daycare and residential care operations available, including the ability to search for nearby childcare, including those listed operations previously described.

HHSC also does community outreach. The agency has eight navigators focused on childcare deserts, or areas where care is not available, primarily in connecting with individuals that want to become providers helping them through the application process as well as connecting them to some of the other organizations that have resources. HHSC has seen general financial challenges in the public, coming from the rising costs for operators to pay their staff, the rising cost of providing childcare, rising property values, and the challenge of raising tuition to meet the costs they incur ultimately pricing out parents who need and want childcare. HHSC has also seen some increasing regulation impacting the ability for providers to offer childcare, the majority being on the local level. In particular, the agency has seen a significant decrease over the past five years of home-based childcare and noted that in some cases the local jurisdictions may require someone who wants to open a daycare to come before a committee hearing, require them to pay fees, or meet local ordinances that are outside the Health and Safety Code.

In also answering Dean Zaffirini's question regarding recommendations to address childcare issues within existing resources, Arnold expressed the need to address the financial concerns for childcare operations and the affordability of their practice. Additionally, anything that could be done to simplify or clear up health and safety standards to help get providers to be regulated on the front end and compliant with standards would be beneficial to the state.

In further explaining the agency's role in childcare thanks to a question from Dean Zaffirini, Arnold described the collaboration that takes place with the Department of Family and Protective Services (DFPS). HHSC collaborates on a daily basis with DFPS because of the work that they do with respect to placing children on the residential side. On the daycare side, the collaboration is more along the work in investigating abuse, neglect, and exploitation. DFPS places children and HHSC regulates the operations in which the children are placed, in particular regarding the status of those operations and how they're performing in accordance with the standards. Additionally, HHSC performs outreach on the daycare side including health fairs, back to school events, national night out and more. Also, the agency engages with a variety of community groups across the state from the Early Learning Alliance, United Way, Help Me Grow, Early Matters, and others.

²⁵ <https://www.hhs.texas.gov/services/safety/child-care>

²⁶ <https://www.hhs.texas.gov/about/records-statistics/data-statistics/child-care-regulation-statistics>

The next panel consisted of business and local perspectives on childcare.

Texas Restaurant Association

First to testify was Kelsey Erikson Streufert, Chief Public Affairs Officer of the Texas Restaurant Association (TRA). Streufert testified that TRA joined the Texas Association of Business, Texas 2036, and Early Matters to create what they call the Employers for Childcare Partnership, or E4C, at the end of 2023 due to a lack of affordable, quality childcare in Texas undermining workforce productivity. She explained that big and small businesses across the state would say that they do not have enough employees and childcare is a big reason for that. Texas only has 80 available workers for every 100 jobs needing to be filled, and 60% of non-working parents say that lack of childcare is a top reason that they are not in the workforce. Quite simply, it's because they can't afford to work; it's going to cost them more to put one or two kids in childcare than they can earn in the private market. E4C came up with three main findings through their research, looking at what other states have done, looking at what TWC has done, as well as local and business work they have observed. One, our state competitors are investing in childcare as infrastructure. Senator Alvarado mentioned several of those states, Kentucky, Georgia, and Florida. These are states that Texas competes with every day for jobs and businesses to come to Texas. Secondly, they saw the state struggling with a bit of a false choice in the past. It seemed like the only options were to significantly grow the scope and the spending of government, or do nothing and leave this challenge for families to solve. And then last but not least, they think it's really important that any solutions address small businesses and non-traditional hours employees. They have seen in other states that sometimes the lowest hanging fruit and the solutions that are put forward really only help those who are already in a pretty strong position to help themselves. So, when discussing employer incentives, tax credits, etc., they want to make sure that small businesses and non-traditional hours employees are not left out. In response to a question from Dean Zaffirini regarding non-traditional hour employees, Streufert stated that over 40% of children nationally have a parent who works non-traditional hours and only 8% of childcare centers offer non-traditional hour care. Streufert presented their recommendations to the Committee, considering the charge limitation of within existing resources. First, the Partnership recommends a one-stop-shop for businesses to access childcare information and resources for employers on the TWC's website. They have talked to TWC and expect the agency can do it within existing resources. Second, the Partnership would like to see TWC and HHSC collaborate on a process to streamline childcare regulations, referring to the testimony from the agencies on the different roles they play ending up with different layers of regulation that can be hard for childcare businesses to manage. Third is improving cross-agency data sharing. Fourth, maintain the existing sunset scheduling dates for TWC and HHSC, ensuring the two agencies go through the process together. Fifth is for the Legislature to create a new priority category for childcare teachers in the childcare subsidy system to help childcare teachers stay in the classroom. Lastly, E4C advocated for local regulatory barriers being removed for those home-based healthcare providers.

Texas Mutual

Next to testify on the panel was Jeanette Ward, President and CEO of Texas Mutual Insurance Company, sharing her perspective as a business leader on the importance of this issue to the economy of Texas. Ward explained that Texas Mutual is the State's leading provider of workers' compensation insurance, covering just over 78,000 businesses across the state of Texas and taking care of over 40,000 of their employees who are injured on the job each year. They employ just

over 1,030 employees who work at our four locations across the state, from the corporate headquarters in Austin to their satellite locations in Dallas, Houston, and Lubbock. Ward is also the Chair of Early Matters Greater Austin with other business leaders in central Texas who believe access to high-quality childcare and education is not only good for Texas families, but also good for business. Access to childcare enables parents to work and support their families while simultaneously supporting school readiness for children, setting more students up for success from the beginning of the education journey through entry into the labor force. For many working parents, lack of access to affordable, high-quality childcare is a barrier that contributes to the labor shortage that many Texas businesses face.

She spoke directly to the issue as an employer and explained that several years ago, Texas Mutual was losing quality employees to another local business. When the company began digging into the reasons why, they found that employees having access to childcare at their place of employment was one of the leading causes. That's why when Texas Mutual built its new corporate headquarters in the Mueller community in 2018, they purposefully reserved lease space for a childcare center and began leasing that space to Primrose Schools, serving not only Texas Mutual employees but the larger community as well.

A little over a year ago, Primrose was faced with a long waitlist for their center and approached Texas Mutual for additional lease space, which allowed them to add 12 new classrooms, serving an additional 300 students. However, knowing more could be done, they donated an additional 5,000 square feet if Primrose would serve children in the Childcare Subsidy (CCS) program administered by TWC. As a result, Primrose will be able to serve up to 30 children in the CCS program over time. This is just one example of how businesses can use their resources to partner with others to expand the availability of affordable and high-quality care in their local community. In response to a question from Dean Zaffirini, Ward described prior efforts of Texas Mutual in addressing childcare in which the company attempted to get with their neighbors in the Mueller area, pool their resources, and help subsidize care but found that it was not sustainable in the long term. Having the public and private sectors collaborate and understand the needs of the area and then come up with solutions that practically work for the employers in that area is most likely to help make better decisions about addressing childcare on a larger scale. Senator Miles asked about employee retention after their work to help with childcare, and Ward answered that the company used to have around 12% to 15% employee turnover but is now steadily around 6% in the last several years. This can't be attributed only to the childcare improvements, for example, they pay above market, Ward said she knew anecdotally from some of the people who work for the company it is absolutely beneficial to them and they appreciate it and told them several times. As a top executive, she is confident the investment in their facility has paid off.

Ward also offered a more personal take, explaining that when she moved to Austin from a small town in East Texas 35 years ago, she was a young single mother who put herself through college at the University of Texas while working part-time as a sergeant in the Texas House. Because both childcare and housing were much more affordable back then, she was able to raise her daughter, graduate, and take an entry-level job at Texas Mutual as a receptionist. She worked her way up through the ranks and 30 years later was named CEO in March of last year. Ward expressed concern that if the same version of herself with the same skills and capabilities in the same situation but in today's Austin, Houston, Dallas, etc. she would not be able to achieve the same level of success because of the lack of affordability. While there is no obvious or easy solution, businesses

working together with advocacy groups and the Legislature will create an opportunity to make a big difference and come up with solutions that align with the values of Texas.

Workforce Solutions for North Central Texas

Third to testify was Phedra Redifer, Executive Director of the Workforce Solutions for North Central Texas Workforce Board. She explained that Workforce Solutions for North Central Texas serves the 14 counties surrounding the Dallas-Fort Worth metroplex, providing a variety of support services with a mission to advance business-driven solutions that promote economic growth, opportunity, and a skilled workforce. In particular, the Board oversees programs that enable local businesses to remain competitive and grow jobs, provide workers access to training to find careers and economic mobility, and support community prosperity and economic resilience. According to the U.S. Department of Labor, parents represented nearly a third of all employees in 2023, and 70% of mothers with young children are employed outside the home. This means that ensuring families can access affordable, quality childcare so that they can engage in work, school, or a job training program is a critical strategy for workforce development. She also cited a U.S. Chamber study that indicated Texas employers lose \$7.5 billion annually due to employee absences or turnover with 62% of those employees citing childcare as a contributing factor to leaving the workforce.

Redifer gave some additional detail in her written testimony regarding the flow of the block grant dollars to the local level. In Texas, approximately \$1.2B (or roughly 10%) of those federal funds are granted to TWC. TWC then passes down funding to the 28 Local Workforce Development Boards across the state to operate the childcare scholarship program at the local level in alignment with Texas Rising Star, the State's childcare quality-rating and improvement system. Boards are obligated to use approximately 70% of their funding for childcare scholarships, and 6% for quality improvement initiatives, with 5% allocated towards administrative costs. Supporting working families to access quality childcare that they can afford is a significant part of the mission of the workforce boards. In fact, roughly 73% of their budget is comprised of funding from the childcare block grant. She explained that her board currently serves over 8,000 children through the scholarship program, enabling their parents to participate in the workforce, school, or job training. However, she explained that with the explosive growth in their area of Texas, they are struggling to keep up with the demands of childcare with the increased number of people needed for the workforce. Their board currently has over 9,000 children on the waitlist for childcare scholarships, and with the current regional block grant allocation of about \$87 million, they would require nearly twice the amount of funding to serve all of the children currently waiting. Redifer summarized to say that the supply of childcare is not meeting the needs of the workforce, and yet current funding and policies leave little room for boards to implement innovative solutions to address these gaps and meet the needs of employers and their employees. She concluded her testimony by giving recommendations to the Committee. First, she asked to consider enabling Workforce Boards to engage in supply-building grant initiatives, citing the Tarrant County Prime Early Learning Pilot which is a competitive grant program aimed at supporting existing, high-quality programs to expand their capacity to provide high-demand services, aligned to their local needs. Creating a statewide pilot to replicate this program in other regions could give them tools to increase the supply of childcare, support early educator wages, and incentivize partnerships with local employers to address their employee's childcare challenges. In addition, the state could examine ways to incentivize better public-private partnerships with employers, for example, by granting

tax incentives to employers who fund supply-building grants or provide direct childcare benefits to their employees. She also recommended the Committee examine transferring unused funds from the Temporary Assistance for Needy Families (TANF) program to the Childcare Development Fund (CCDF) to increase the number of available Childcare Scholarships. Federal law enables states to transfer up to 30% of unused TANF funding to CCDF, which would provide additional capacity to childcare scholarships and quality programming in alignment with federal and state requirements, though more research needs to be done regarding those particular dollars.

Dallas Regional Chamber

Last to testify on the panel was Jarrad Toussant, Senior Vice President of Education & Workforce at the Dallas Regional Chamber. He explained that in Dallas County, 62% of the 178,000 children under age six have all available parents in the workforce, meaning that accessible childcare is necessary for their workforce participation, and referenced the same report from the U.S. Chamber of Commerce that Redifer mentioned. He also cited a study from the Boston Consulting Group, which found that childcare benefits help attract employees as much as healthcare and retirement benefits. The high cost of childcare is a driving factor for working parents who choose to exit the labor force to take care of their young children. The average cost of infant care in Texas is nearly \$10,000 per year which is prohibitively expensive for many working families, particularly those with multiple young children.

Toussant also recognized the local option childcare property tax abatement, also known as “Prop 2,” to provide tax relief to childcare providers, in an effort to reduce both childcare operating expenses and, in turn, lower costs for families. The DRC is proud to have supported the adoption of the Prop 2 property tax exemption locally and Dallas was the first city and county to both approve 100% property tax exemptions for eligible childcare providers. In addition to public strategies to lower childcare costs for working parents, employers have increasingly introduced benefits, such as dependent care stipends and on-site childcare, to support working parent employees with their childcare needs. In Dallas, Parkland Hospital partnered with a local nonprofit, Annie’s Place, to provide on-site childcare to hospital patients and staff. The partnership addresses common childcare challenges for employers, providers, and families. By subsidizing space for the provider, Annie’s Place is able to offer increased salaries and benefits for its educators and staff. For Parkland, both staff and patients have access to care that otherwise would keep them from working or receiving medical care, especially in the non-traditional evening and weekend hours. Similarly, Richardson ISD is tackling the critical teacher shortage through two Child Learning Academies, which offer childcare to children of full-time district employees, beginning as early as 6 weeks old until the child ages into pre-K services. Dallas County, as well, is exploring innovative local models as an employer by leveraging discretionary economic development funds to create a matching program for public and private employers to implement childcare benefits alongside efforts to build childcare capacity in downtown Dallas by leveraging unused commercial real estate. He cited another study from the Boston Consulting Group from earlier in 2024 that found that childcare benefits provide a significant return on investment, ranging from 90% to as high as 425% among companies surveyed, largely as a result of improved retention rates. Finally, Toussant also brought up some of the other state efforts like Michigan and Kentucky who use public funds to incentivize employer contributions to childcare, sometimes using franchise tax credits.

Public Testimony

Following the invited testimony on the charge, the Committee heard public testimony.

Tim Kaminski, the president-elect of the Texas Licensed Childcare Association (TLCCA), shared his perspective on the state of early childhood care in Texas. He highlighted his background as the owner and director of Gingerbread Academy, a childcare provider with over 40 years of experience in Texas, operating centers in Richmond and Rosenberg, as well as after-school programs in the Lamar School District. He spoke on behalf of his family's business and other childcare providers across the state. Kaminski emphasized the need to differentiate between "education" and "care" in early childhood services, stressing that while legislation has focused on the educational quality of childcare, he feels as though it has largely ignored the business and economic challenges of running childcare centers. He argued that early childhood care plays a crucial role in supporting the broader workforce and that childcare providers are foundational to the functioning of other businesses, including the government. He pointed out several financial pressures facing childcare businesses, including rising property taxes, higher liability insurance premiums, and escalating labor costs, all while enrollment at his center has dropped by 50% due to competition from public schools offering free or subsidized pre-K. When asked by Chairman Birdwell about the issue with the districts essentially taking customer flow from private providers into public programs, Kaminski explained that since the partnerships are not mandated, the districts can continue to execute their programs and must simply show that they made an attempt to get a partnership. In addition to expanding their programs with unmandated partnerships, the districts are allowed to charge tuition rates that are often 50% less than the private sector, further pulling from the private sector's customer base. Additionally, he described the state's childcare subsidy system as underfunded, with a waitlist of over 86,000 children. Kaminski called for more involvement of childcare providers in legislative decision-making and urged the state to develop a comprehensive plan to address the growing challenges facing the childcare industry, which he believes has been underfunded for decades. He further expressed concern regarding the subsidy program, noting that childcare centers are not getting reimbursed at the highest reimbursement level, even though that is allowed by the federal government. Kaminski also elaborated on the regulatory entanglement within the childcare industry and expressed his frustration with having five separate regulatory agencies that he believes do not communicate with one another. He reflected on his experience with the agencies and their inability to refer him to the proper agency with his specific issues and proposed a more integrated system between the agencies. Chairman Birdwell suggested creating a committee-type entity composed of the regulatory agencies that discuss coordinated decision-making, with one agency being the lead coordinator.

Glenda Gonzalez, co-owner of Kiddie Academy of Aliana Childcare Center in Richmond, Texas, shared the struggles her business has faced since opening in 2017. Initially, the center experienced strong enrollment and was fully booked, but the COVID-19 pandemic severely impacted their operations, causing enrollment to plummet from over 190 children to just 28 at one point. While efforts to rebuild have been ongoing, current enrollment still hovers at only 50-60% of pre-pandemic levels. Despite adjusting staff wages and tuition rates, escalating expenses have made it difficult to sustain operations. The center has also lost a significant portion of its pre-K enrollment to public schools, which offer free or lower-cost programs. This has further impacted the center's ability to attract families, particularly in its after-school programs, as the public schools offer much lower rates. As the new enrollment season approaches, Gonzalez hopes for a recovery but

expressed concern that without a significant increase in children enrolled, she may be forced to make difficult decisions, such as cutting staff, reducing programs, or scaling back operations. She urged the Committee to understand the financial pressures faced by small childcare providers and to support measures that would help stabilize the industry and ensure continued service to the community.

James Ihedigbo, former NFL player and owner of six Kiddie Academy childcare centers in the Houston area, testified about the severe challenges facing childcare providers in Texas. He highlighted the negative impact of House Bill 3 from the 86th Legislative session, which expanded Universal Pre-K and caused significant revenue losses, including a drop in enrollment at his centers. Ihedigbo also expressed his issues with the Texas Workforce Commission's subsidy program, which has long waitlists and requires providers to absorb the cost difference between subsidy rates and private tuition. These challenges have led to financial strain, with his centers losing \$1.5 million in revenue over the past year. He called for reform to support childcare providers and ensure affordable, quality care for families.

Eric Bonhard, a childcare provider from the Dallas-Fort Worth area, spoke on behalf of his wife and himself, sharing the financial struggles their business has faced due to changes in local public school programs. Similarly to the other witnesses on the panel, Bonhard has experienced issues with staffing and tuition costs, and these issues have nearly driven them to bankruptcy. He expressed his belief that the Texas childcare sector lacks adequate support compared to other businesses in the state and called for reforms that would integrate private childcare into the state's education funding system ultimately giving parents more options.

Hayman Patel, owner of three large childcare centers in the Dallas-Fort Worth area, testified to provide further clarification on the business model for childcare centers in order to further illuminate the issue at hand. Since local school districts expanded their pre-k programs, his enrollment, especially among three- and four-year-olds, has dropped sharply. Patel highlighted that infant care operates at a loss, despite their heavy labor demands and his profits come primarily from older children. With the loss of pre-k enrollees, he's faced with the challenge of either raising infant fees or risking financial instability. He also noted that while school districts benefit from property tax abatements, private childcare centers still bear high taxes and are contributing to the same public programs to which they are losing business.

Brian Gutman, Vice President of public policy and government relations at Learning Care Group, discussed the challenges his business faces as a larger provider that serves over 21,000 children and employs about 2,100 educators and school staff in Texas. Although his struggles are shared among other childcare providers, they are experiencing them at scale. He articulated his belief that the intent of past legislation was to create partnerships with providers, emphasizing that these partnerships are critical for families and the workforce. He highlighted successful models in other states and also proposed tax credits for employers who subsidize childcare with state matching funds to help reduce waitlists and make care more affordable for middle-income families. Additionally, he raised concerns about the inability of providers to charge the difference between private pay and subsidy rates, limiting family choice and provider participation in subsidy programs.

Kim Koffron, Senior Director of Education at Children at Risk, discussed the importance of childcare as a workforce support system, noting that the U.S. has a long history of recognizing the

value of childcare in enabling families to work, dating back to World War II and the Military Childcare Act of the 1980s. Koffron emphasized her belief that the current childcare system still falls short of meeting demand. She highlighted the widespread issue of childcare deserts in both rural and urban areas across Texas, with a particular decline in family childcare providers which have not recovered from the pandemic. Koffron called for removing local-level obstacles to pre-k partnerships, streamlining administrative processes, and prioritizing childcare for educators. She also stressed the need to support childcare workers and allow local workforce development boards to offer higher reimbursement rates to providers. Lastly, Koffron urged addressing the large waitlists for childcare services in Texas to better serve families in need.

Mike Malkemes, a representative from Generation One, a nonprofit in Houston's Third Ward, shared his experience in childhood education. The organization has been serving a high-need, low-income community for 18 years, providing tuition-free pre-k, social-emotional learning, therapy services, and a focus on kindergarten readiness. They have seen significant success, with a 96% retention rate and 91% kindergarten readiness, compared to the local ISD's 37%. Despite this success, Generation One faces challenges such as long waitlists for funding and services, as well as transportation challenges for families. The nonprofit recently purchased land to expand its capacity but is struggling with financial sustainability. They advocate for state support, including matching CCS funds and opening up the NCI waiting list, to help serve more children and continue their impactful work.

Melanie Rubin, Executive Director of the North Texas Education Alliance, testified about the critical role of the childcare industry in Texas, highlighting its economic importance. Childcare businesses generate over \$5 billion in revenue annually and employ over 139,000 people. However, Rubin declared that the industry is struggling with employee recruitment and retention, which can affect the state's labor force participation and economic stability. Rubin outlined several proposals to improve the childcare system, including:

- Providing scholarships for childcare educators' children.
- Allowing local workforce boards more flexibility to meet local childcare needs.
- Adjusting reimbursement rates for providers, particularly for infant care.
- Strengthening partnerships between childcare providers, school districts, and employers.
- Implementing a regional pilot program for local childcare solutions.
- Developing a comprehensive early childhood data system to improve coordination.

She concluded by communicating her viewpoint that the state must find ways to incentivize partnerships with matching programs and tax incentives.

Juliette Stipeche, Executive Director for Workforce Solutions Gulf Coast, the largest workforce board in Texas, testified on the challenges and progress made in improving childcare services in her region. In 2021, the board received \$241 million to support childcare for over 43,000 children and 22,000 families, and due to staffing and contractor issues, there was \$14 million in unspent funds. In 2022, the board received an additional \$13 million from TWC and the workforce board made sure to create a system founded on coordination, adaptability, strategic partnerships, and quality when distributing these funds. The main goal was focused on reducing the childcare waitlist, and by increasing staffing, streamlining processes, and investing in technology, the board exceeded its enrollment targets and served over 55,000 children. This reduced the waitlist from

34,000 to 20,000. However, despite this progress, demand for childcare continues to rise, with the waitlist growing by 28% in just three years. Stipeche emphasized that while funding is crucial, a well-coordinated system is needed to meet the increasing demand, especially given broader socioeconomic trends like population growth and dual-income households.

Kurt Hudson, a preschool owner in Collin County, emphasized what he believes is the fundamental economic challenge facing childcare: the high cost of tuition versus the low wages paid to staff. In the childcare industry, about 50% of revenue goes toward staffing, making it labor-intensive. However, the wages remain low, and raising staff pay would make childcare unaffordable for families. Hudson argued that the solution lies in increased state funding, which could address this "elementary math problem." While the initial investment may seem high, it would likely pay off with a net zero impact financially or even a positive return. He compared childcare to essential infrastructure like roads, which are crucial to the economy. He concluded with the analogy: Just as we invest in highways, investing in childcare is an investment in people, with long-term economic benefits for Texas.

Parul Shah, the owner of Children's Lighthouse of Copperfield in Houston, spoke about the struggles her childcare center is facing due to declining enrollment and rising costs. Echoing other witnesses, she explained how many middle-income parents have been forced to reduce their work hours or quit their jobs because childcare costs are too high, negatively impacting her business. Shah called for measures like providing childcare assistance to middle-income families, expanding school voucher programs to include childcare, and mandating public school pre-K partnerships with private childcare centers. She emphasized that without these supports, more parents may be unable to work, and childcare centers like hers will be forced to close.

Allie Lam, owner of a Children's Lighthouse in Katy, Texas, testified about the significant challenges her childcare center faces, reinforcing key issues that had been highlighted throughout the hearing. She explained that the workforce in her center is primarily female and struggles with low wages that haven't kept up with the rising cost of living, making it hard to retain qualified staff. Competing with local school districts for teachers has further strained her center, causing a 20% increase in personnel costs, which in turn drives up tuition and makes childcare unaffordable for families. Lam also pointed out that the high property taxes in her area are funding public pre-k programs that compete with her center for enrollment, leading to fewer students and higher costs. She urged for a reduction in waitlists and more support to make childcare more affordable and accessible for working families in Texas.

Lauren Gerken, the Senior Public Policy Analyst for the Texas Council for Developmental Disabilities (TCDD), addressed challenges related to the Inclusion Assistance Rate program with childcare scholarships. This program, intended to help providers accommodate children with disabilities, offers reimbursement rates up to 190% for additional staff and accommodations. However, Gerken highlighted barriers such as administrative burdens and delays in receiving reimbursement funds, which providers often need upfront to implement accommodations. She recommended reversing the order, allowing providers to receive funding before implementing changes. Additionally, Gerken suggested that childcare providers should be able to initiate the inclusion assistance process, as the current system places the burden on families, which can create reluctance due to cultural barriers or lack of understanding about the program.

Brian Chameli, head of Government Affairs at Care.com, testified on behalf of the web service and expanded on the challenges Texas families face in accessing affordable childcare. While acknowledging the State's investments in childcare infrastructure, he emphasized that many families still fall into a "care gap"—those who earn too much for subsidized care but too little to afford full-priced care. He pointed out that the cost of infant care in Texas can exceed 14% of the state's median household income, which is more than the cost of a year of in-state tuition. Additionally, childcare deserts and a lack of available slots are limiting workforce participation. Chameli advocated for more flexible childcare policies, especially for parents working nontraditional hours or in decentralized work models, which are becoming more common. He also highlighted Care.com's support for flexible care benefits and noted that the company had already helped thousands of Texas workers access care during childcare disruptions. Chameli endorsed a robust employer childcare assistance program, including tax incentives, to increase access and reduce costs.

David Feigen, Director of Early Learning Policy at Texans Care for Children, testified about the critical importance of childcare subsidies for working families. He shared the story of a mother in the Austin area who, after receiving a childcare services scholarship, was able to secure stable housing and work full-time. He used her story to illustrate the positive impact of the program, which serves about 150,000 children but noted that nearly 80,000 children are currently on a waitlist, with wait times ranging from six months to two years. He highlighted successful efforts by other states, such as Florida and North Dakota, that have increased investments and reimbursement rates to support more families and providers. Feigen emphasized that Texas can learn from these examples and referenced a letter he provided that was signed by 120 Texas organizations proposing policy solutions to address the childcare crisis.

Jonathan Feinstein, Texas State Director for the Education Trust, shared insights on the challenges faced by parenting students in higher education. He emphasized that one in four college students in Texas is a parent, many of whom struggle with accessing childcare. These students often juggle caregiving, work, and school, with 40% spending over 40 hours a week providing care and 25% missing a day of class due to lack of childcare. Feinstein pointed out that the significant unmet financial need for students (around \$11,000 for two-year college students) is compounded by the high cost of childcare, averaging an additional \$10,000 per year. This financial burden greatly hinders completion rates, with only 35% of students facing over \$10,000 in unmet needs graduating within six years, compared to over 60% of students without unmet needs. Feinstein recommended prioritizing parenting students for childcare support, suggesting they be given quicker access to services to help them complete their education and achieve economic mobility.

Ashley Harris from United Ways of Texas discussed the importance of childcare for low-income families and businesses across the state. She highlighted that many local United Ways are working with families using a two-generation approach, providing integrated services for both parents and children. Harris emphasized that childcare is critical not only for the success of families in workforce education and training programs but also for small businesses, especially in rural areas. She shared a personal example from her own small business, where childcare issues are affecting her employees' productivity. Harris stressed the need for statewide solutions to address childcare challenges, particularly in communities with few providers and businesses facing difficulties finding childcare options for their workers. She also pointed out that the lack of childcare has impacted her family's ability to pursue fostering, underlining the broader societal and economic

implications of this issue.

Jolene Sanders from the Coalition of Texans with Disabilities discussed the challenges faced by children with disabilities in accessing inclusive, high-quality childcare. She highlighted that under the Americans with Disabilities Act (ADA), childcare providers are required to serve all children unless doing so would significantly alter the program, pose financial strain, or compromise safety. However, she noted that these requirements are not always followed, with some centers misrepresenting their ability to serve children with disabilities. Sanders applauded the Texas Health and Human Services Commission (HHSC) for removing misleading language on its website but recommended adding a statement about ADA compliance to childcare providers' operational policies. She also advocated for improved training for childcare providers on working with children with special needs, suggesting that it be made a mandatory part of professional development. Lastly, Sanders called for an expansion of eligibility for full-day pre-k programs to include children with Individualized Education Programs (IEPs) or Section 504 plans, which is a program under the Rehabilitation Act for kids who are eligible to enter the public school system for early childhood special education but do not get full day care unless they're also eligible in another category such as service members, first responders, English as a second language, and so forth. She described the need to expand special education services to a full day so that more people could benefit from inclusive opportunities.

Leonardo Taves, a childcare center owner South of Austin, discussed the financial struggles and challenges faced by his business. Despite having capacity for 180 children, the center currently serves 146 kids and has a waitlist of 143, with some children not even born yet. He highlighted the financial strain of providing benefits like healthcare and a 401(k) plan for employees but noted that only a third of employees use the healthcare plan due to its high cost. The center's margins have been decreasing, and Taves expressed concern about the future viability of the business, particularly with the loss of pre-k seats, which are now in direct competition with public schools. Taves also mentioned not accepting certain subsidy programs, including Texas Rising Star, because they don't provide enough financial support. He praised two subsidy programs, Florida's voluntary pre-k education program, and the military's Child Care Aware program, as models that work well by offering substantial support to families while ensuring childcare providers can maintain reasonable margins. He concluded by encouraging the committee to consider these programs as potential solutions. He also described his struggle with his local appraisal board in getting his childcare facility exempt from property taxes under Proposition 2 (2023) and his inability to do so even though the exemption was adopted by the county.

Chairman Birdwell asked Taves how long his business could continue operating under the current structure of HB 3 (86R), to which Taves responded that the key factors influencing this are beyond his control and depend on county property taxes, subsidy programs, and partnerships. Chairman Birdwell expressed the sense of urgency at hand regarding addressing this aspect of HB 3 and evaluating its effectiveness and unintended consequences.

CONCLUSION

It is clear that childcare access and affordability have become a significantly pressing challenge for parents, employees, and employers. Those challenges have a direct impact on the Texas workforce and our economy. The Committee heard testimony from the primary agencies that regulate child care, businesses that are impacted by childcare, and local public and private efforts to address the issues. The most significant underlying concern is that many parents can't afford to be in the workforce because it is costing them more to put one or two kids in childcare than they can earn in the private market. Also, employers generally do not have enough employees in the state, with only 80 available workers for every 100 jobs needing to be filled according to the Texas Restaurant Association.²⁷ That problem is only growing as 473,453 people moved to Texas in 2023, which can be expressed as nearly 1,300 people a day.²⁸ Factors contributing to the high costs of child care include inflation, rising taxes, rising costs of providing the care, and a supply shortage of the care parents are seeking. Childcare operators are experiencing slimmer and slimmer margins prompting reforms such as Proposition 2 (2023) that recently allowed local governments to exempt property taxes for child care facilities. Additionally, cities like Austin and Dallas County have sources of local funding to supplement childcare services in those areas. Further, important trends indicate a shift in where childcare is occurring. In particular, state agencies showed that there are fewer home-based operators, with much of that care moving to centralized private facilities in part due to burdensome and inappropriate overregulation at the local level, despite extensive health and safety regulation at the state level. The Committee heard testimony that some local governments are implementing restrictions on small, home-based care providers such as industrial-grade fire sprinklers and the outright prevention of individuals operating out of their homes. While some of these additional regulations might make sense for businesses that serve a large number of children, the result is the elimination of a regulated operator to simply care for as little as a single child that is not related to them in some cases.

Employees with non-traditional hours prefer home-based care, but with the numbers of that category declining, reversing that trend could be immensely beneficial to the State's workforce. Additionally, centralized private facilities are now losing children to public pre-kindergarten services being offered through school districts. The number of students that school districts are serving in pre-k are returning to pre-pandemic levels, while private providers have not seen the same recovery. This appears to be the result of increased pre-k services provided by school districts through foundation school program funding (a combination of local district property taxes, state funds, and federal funds) as a result of HB 3 (86R). Additionally, school districts have been largely unwilling to partner with private providers, instead of facing the several challenges that exist with partnerships and have opted to keep those dollars in house and offer the services themselves. In particular, HB 3 mandated school districts that offer pre-k services to four-year-olds to offer full-day services as opposed to the previous requirement for half-day services with full-day being optional for the districts. According to information provided by the Texas Education Agency after the hearing, 1,093 school districts offered pre-k out of 1,207

²⁷ Streufert, Kelsey. "Senate Committee on Natural Resources and Economic Development: Enhancing Workforce Productivity" (November 14, 2024)

²⁸ United States Census Bureau. "U.S. Population Trends Return to Pre-Pandemic Norms as More States Gain Population." December 19, 2023. <https://www.census.gov/newsroom/press-releases/2023/population-trends-return-to-pre-pandemic-norms.html>

districts and charters in Texas and there are currently 14 districts that have partnerships with private childcare providers. There is a distinction, but obvious overlap, between childcare and pre-k instruction. But, the reality is that private childcare operators rely on providing services to three and four-year-olds to balance their books due to the nature of the costs of providing care to different age groups. A loss in pre-k aged children is not made up by replacing those spots with infant or toddler aged children because of the difference in costs and staffing ratios. In a time when private childcare providers are operating on thin margins, this issue has the potential to collapse several private operators. High-quality pre-k is very important to educational outcomes for students as they progress through kindergarten and beyond, so solutions to this problem need to be advantageous to both the childcare provider and the ability of school districts to receive better prepared students.

Another primary concern raised by witnesses was the decentralized regulation of the childcare space across several state agencies and a perceived lack of coordination. Childcare providers are governed by three primary regulatory agencies, Health and Human Services (HHSC), the Texas Workforce Commission (TWC), and the Texas Education Agency (TEA). Alongside these key agencies, the Texas Department of Family and Protective Services (TDFPS) and the Texas Department of Agriculture (TDA) also play important roles in the childcare space through the oversight of providers and the implementation of certain programs. Providers must navigate, get licensed, and report to each of these agencies, but witnesses expressed their frustration with the lack of communication between the state agencies. Each agency has its own set of quality standards and requirements that providers must comply with in order to secure licensing and access public funding. In addition to the financial challenges of delivering high-quality care, childcare providers often face significant regulatory barriers that further complicate their operations. To address this issue, the Legislature may consider establishing a coordinating board made up of representatives from regulatory agencies and the private sector. This would facilitate a decision making process that incorporates feedback from providers while streamlining data management and program coordination.

As Executive Director of the Workforce Solutions for North Central Texas Workforce Board Phedra Redifer, put it, helping parents access child care removes the need for them to make tough decisions, like reducing their work hours or even quitting their jobs entirely. When parents are confident that their children are in nurturing, high-quality environments, they can continue to be productive at work, which in turn drives the economic activity of our regions.

RECOMMENDATIONS

The Committee received numerous recommendations from several witnesses, with many of the proposals varying in viability and relevance to this charge as it is written. For purposes of this report, the most appropriate recommendations, in a manageable quantity, are being put forward. Based on the discussions held and testimony received during the hearing, the Committee makes the following recommendations, specifically within existing resources, to help address the significant challenges facing childcare provision and the resulting workforce limitations:

- Regulations on home-based childcare should be restricted to the extensive state health and safety measures expressed in relevant statutes, not to arbitrary local ordinances that are not practical for these smaller operations. It may be

appropriate to establish an upper threshold for the number of non-family children who are served in home-based care to which local health and safety regulations should not apply.

- Coordination across the several agencies that regulate childcare needs to be improved, and any statutory prohibitions on that coordination need to be removed. Addressing this could take the form of a coordinating board, committee, or something similar to the tri-agency initiative created for workforce development. In either form, it is important to make sure that private and public providers have a seat at the table. Further, this effort should include data sharing across the agencies as well as the local workforce development boards. This data should be available to the public so stakeholders and governmental entities can make informed decisions and better address issues going forward.
- Given the degrading circumstance for childcare providers created by the state directed provision of expanded free pre-kindergarten services at school districts, the Legislature should consider requiring, or strongly encouraging, school districts to utilize public-private partnerships to the extent possible so that private providers are not penalized through the loss of the age group of children that make private care economically viable. Solutions that would strongly encourage the partnerships will need to find ways to overcome the challenges school districts and private providers find with the partnerships. Another option could come in the form of school choice legislation that is a priority for the Senate. The Legislature should examine and prioritize the level at which school choice legislation can incorporate the choice for parents to obtain pre-kindergarten services at the provider of their choice, so long as it is high-quality as required by school district pre-k education.
- Further examine the option for states to transfer unused funds from the Temporary Assistance for Needy Families (TANF) program to the Child Care Development Fund (CCDF) to increase the number of available Child Care Scholarships. More information is required to know if this is a good option for Texas, or if there are unknown encumbrances or other reasons those unused funds should not be transferred to this particular use.
- It can be difficult for childcare providers, parents, and employers to access resources for childcare programs, availability, waitlists, best practices, and other relevant information as these resources are spread across each childcare regulating agency. The legislature should direct the consolidation of these resources in a one-stop-shop format, housed under one agency's website, with noticeable links on other agency's websites to re-direct to that information.
- Childcare employee availability is a real problem, and a lack of that availability results in a lack of access to care for parents on a larger scale. The Legislature should create a priority category for eligible childcare workers to access childcare subsidies for their own children to ensure providers have the workforce necessary to support the larger workforce through childcare access.

2. Overcoming Federal Incompetence: Consider the impact to the Texas economy from federal interference including, but not limited to, restricting liquified natural gas exports, supply chain limitations, a net-zero carbon agenda, and other air emission provisions. Report on what impact these federal interferences will have on the Texas economy and workforce, and make recommendations to minimize the damage to Texas.

INTRODUCTION

Texas engages on a nearly full-time basis in combatting federal interference; particularly in areas that impact natural resource production and exportation, and economic activity. Under the current administration, policies have been enacted, almost exclusively without congressional or statutory approval, that often undermine and contradict the very things that make Texas attractive for living and doing business. Under Article I of the U.S. Constitution, the Federal Government has specified and implied powers under the necessary and proper clause for carrying into execution the foregoing powers. While we may not agree with some federal decisions, if the federal government has those powers enumerated constitutionally, some of those decisions may not amount to federal interference, though the State would appreciate greater freedom of maneuver. However, when the federal government steps outside its granted powers, the Attorney General has the responsibility to defend our state and its citizens. To further explore these issues, the committee invited several state agencies and industry representatives to discuss this charge.

BACKGROUND

The background information provided in this report is a sample of some of the federal actions that have impacted the state, whether the state has filed suit, seen success in combatting, or is ultimately subject to the action.

Restricting Liquified Natural Gas Exports

On January 26th, 2024, the Biden Administration and the Department of Energy (DOE) abruptly paused all new approvals of export applications for Liquified Natural Gas (LNG) to non-Free-Trade-Agreement countries²⁹, effective immediately. There was no prior notice of this pause, nor was there any consideration for a less disruptive course of action that would not hamstring the natural gas industry or threaten the United State's energy security. This proclamation reverses decades-long practices by the DOE that have consistently been interpreted as the best way to

²⁹ The United States has [14 Free Trade Agreements with 20 countries](#), which generally provide a reduction of trade barriers including zero or reduced tariffs.

determine public interest and completely disregards the negative impact on Texas's economy, employment security, and direct revenue for public education through the Permanent School Fund. In March 2024, Attorney General Paxton filed suit on behalf of Texas to hold the LNG Export Pause unlawful. Texas is joined by Mississippi, Alabama, Alaska, Arkansas, Florida, Georgia, Kansas, Montana, Nebraska, Oklahoma, South Carolina, Utah, West Virginia, and Wyoming in suing the federal government. It is statutorily required for the DOE to authorize export authority to non-FTA countries unless there are indications that the proposed exportation will not be consistent with the public interest.³⁰ The DOE and Biden Administration ignored the statute's specific command, and unlawfully paused reviews for applications through arbitrary and capricious claims. Per the Congressional Review Act, all rules must be submitted to Congress to allow it an opportunity to pass a resolution disapproving the rule. The DOE failed to do so, consequently violating the Congressional Review Act. Additionally, the pause violates Article I of the Constitution. The Constitution vests Congress with all legislative Powers, specifically including the power to regulate Commerce with foreign Nations.³¹ Due to this, the actions of the DOE and the Biden Administration are beyond their legal power or authority and should be reviewed to determine if the pause has violated the Constitution or the statute under which the challenged action was taken.

Under the Natural Gas Act³², any company that wishes to export LNG to countries that do not have a Free-Trade-Agreement with the U.S. must submit an application to the DOE to determine whether the export or import is within the public interest. The DOE has historically approached non-FTA export applications on a case-by-case manner that has adhered to principles detailed in its' 1984 Policy Guidelines.³³ This stance supports that the market is the most efficient means of allocating natural gas supplies. Additionally, the Federal Energy Regulatory Commission (FERC) is responsible for the siting, construction, and operation of LNG export facilities. So not only does this pause interfere with new non-FTA applications, but it will also interfere with projects that are awaiting approval from FERC for the siting and infrastructure of LNG facilities. This case-by-case adjudication has been a longstanding practice, and LNG exports have consistently and instinctively been deemed aligned with the public interest, yet the Biden Administration and the DOE obstinately halted all LNG exports indefinitely.

Net-Zero Carbon Agenda & Other Air Emissions

TxDOT Green-House Gas Target Lawsuit

The Federal Highway Administration (FHWA) within the federal Department of Transportation (DOT) issued a new and final rule on December 7th, 2023, that went into effect on January 8th, 2024. The rule is a new try at a very similar rule that was attempted right before President Trump took office. When the administration changed over, the rule was quickly repealed for being

³⁰ See [15 U.S.Code § 717b\(a\)](#)

³¹ See [Art.I.S8.C3.7.10](#)

³² See [Natural Gas Act of 1938](#)

³³ [It is the guidelines' goal to minimize federal control and promote a balanced energy resource system.](#)

deficient and without statutory authority. The new rule, like the previous attempt, would require state departments of transportation (TxDOT) to create declining targets for CO2 emissions to ultimately achieve President Biden's target of net-zero carbon emissions by 2050. If states don't meet the "self-made" targets, they would have to document actions the state would take to achieve its target. The rule expands (without Congressional direction) on the statutes and rules that implement the National Highway Performance Program which provides federal funding to support the National Highway System. So, the rule would likely result in future federal funding towards projects that somehow comply with CO2 emission reduction goals of the current Administration. As of now, there are no specific penalties, and TxDOT would likely do the targeting and tracking if the rule was upheld, but the implementation would most likely lead to more stringent measures and enforcement down the road, sidestepping the EPA and Clean Air Act which is the appropriate agency for emission regulation.

On March 27th, 2024, Judge James Wesley Hendrix of the U.S. District Court in Lubbock vacated the rule, saying it was not authorized by statute and therefore deficient. The federal government officially appealed the ruling on May 23rd, though no action has occurred as of this writing.

Methane Rule

EPA's Final Rule for Reducing Methane Emissions:

The U.S. EPA's Final Rule under the Clean Air Act, issued on December 2, 2023, and published on March 8, 2024, aims to significantly reduce methane emissions from oil and gas industries.

New Source Performance Standards (NSPS):

The new rule includes the implementation of the 2023 New Source Performance Standards (NSPS) for new, modified, and reconstructed emissions sources which will necessitate significant investment in new technologies and infrastructure. For existing sources, compliance with state implementation plans are at least as stringent as the new NSPS and will also incur substantial costs to upgrade equipment, install emissions control devices, and conduct regular maintenance to ensure ongoing compliance.

The rule requires states to submit implementation plans within two years and for companies to comply within an additional three years, which imposes a strict timeline on the state. This will likely create logistical challenges and necessitate dedicated compliance teams within companies to navigate the complexities of the new regulations. The detailed requirements for leak detection and repair (LDAR), including quarterly inspections and rapid repair timelines, adding to the regulatory burden, requiring frequent monitoring and quick response capabilities.

Flaring

The rule requires phased elimination of routine flaring forcing companies to find and implement alternatives, such as routing gas to sales lines or using it for other purposes. This transition will involve additional capital expenditures and operational changes, particularly challenging for

smaller operators with limited resources. The restrictions on flaring, especially for new wells and high-emission existing wells, will require significant operational adjustments and could reduce production efficiency.

Leak Detection and Repair:

The rule mandates extensive monitoring and reporting requirements, including quarterly audible, visible, and olfactory inspections (AVO), and semiannual optical gas imaging (OGI) or EMA Method 21 inspections and innovative leak detection technologies. Compliance with these monitoring protocols will demand advanced equipment and trained personnel, increasing operational costs.

The new rule requires stringent repair timelines for detected leaks (15 to 30 days), and the requirement for immediate investigation and reporting of super emitter events (within five and 15 days, respectively) could lead to operational disruptions. Owners and operators will be able to use sensor networks and aerial flyovers for leak detection, pending EPA approval.

Super Emitter Program:

Under the new rule, the Super Emitter Program allows third parties (organizations certified by the EPA) to use approved remote-sensing technologies, including airborne spectrometers and satellites, to monitor oil and gas facilities, then notify the EPA of potential super-emitter events. The EPA defines a super-emitter event as emissions of 100 kilowatts of methane per hour or more, primarily at specific sites like well sites, production facilities, compressor stations, or processing plants.³⁴ When a super-emitter event is detected, the facility owner or operator must investigate and take necessary steps to ensure compliance with applicable regulations. The industry argues that the program places an additional monitoring burden on facilities. Third-party monitoring for super-emitter events requires resources and coordination, which some operators find challenging and claim that the program expands the EPA's scope beyond its traditional regulatory role by involving third parties and public disclosure. Concern over remote sensing technologies is expressed due to the possibility of false positives or inaccuracies, relying on these data points could lead to unwarranted scrutiny.

Emissions Reduction for Equipment:

The new rule requires a 95% reduction of emissions from storage vessels, well liquids unloading, and process pumps. Prior to the new rule, there were not specific standards for process pumps in terms of methane emissions reduction, and the previous rule did not specifically address emissions from these pumps. Specifically, natural gas-driven diaphragm pumps located at a well site must reduce volatile organic compound (VOC) emissions by 95% by weight or greater through the use of a control device or a closed-loop system. To achieve that, companies will need to invest heavily in new technologies and control devices. This will particularly impact older facilities that may require extensive retrofitting or replacement of outdated equipment.

³⁴ 2024. *Championx-Super Emitters: What are they and why are they important?*. <https://www.championx.com/products-and-solutions/emissions-technologies/blog/super-emitters-what-are-they-and-why-are-they-important/>

Summary:

In summary, the new Methane Rule covering new source performance standards, flaring, monitoring, reporting, super emitter program, emissions reductions for equipment, and leak detection, places the U.S. oil and gas industry at a competitive disadvantage compared to international producers who may not be subject to similarly rigorous standards. This could impact the global competitiveness of U.S. oil and gas exports, potentially leading to reduced market share. While the EPA's Final Rule for Reducing Methane Emissions aims to address significant environmental concerns, it imposes a more punitive approach rather than an innovative one putting substantial financial and operation challenges on the oil and gas industry. The increased costs, regulatory compliance burden, and potential for operational disruptions will have a negative impact on the industry's profitability and efficiency.

Texas filed suit in March 2024 to petition for review. Since then, the suit is proceeding in lower courts while the U.S. Supreme court denied requests for a stay on the rule in October 2024.

Particulate Matter 2.5 (PM 2.5)

TCEQ engages constantly on federal rule makings and actions, often in the form of litigation. The constant federal adjustments to National Ambient Air Quality Standards (NAAQS), often referred to as the moving goal posts, are just one example of types of federal policy decisions that Texas pushes back on through official comments and litigation.

Among the changes to NAAQS are recent lowering of Particulate Matter (PM 2.5) standards by the Environmental Protection Agency (EPA) which TCEQ is currently trying to combat through lawsuit. The new standard would put as many as 13 counties in non-attainment, 10 of those counties being totally new additions to the non-attainment designation. The PM 2.5 rule sets a lower threshold for ambient levels (sometimes referred to as background levels) of particulate matter that can not be exceeded when seeking an air permit. The current standard is 12 micrograms per cubic meter, and the proposed standard is down to nine micrograms per cubic meter. The level is so low, that monitors near South Padre Island and in Kleberg County register PM levels above the new standard, even though there are zero emitting sources in the area. If a local monitor is registering above the new PM standard, permits can not be obtained. For reference, emitters of PM that are affected by the new standard include chemical manufacturers, semiconductor facilities, and anything with a combustion component. TCEQ is currently in litigation over the matter.

TESTIMONY

The Committee held a public hearing on the charge on June 13th, 2024. The Committee heard from two panels of invited witnesses who testified regarding their efforts in combatting federal incompetence, as well as several individual public witnesses. The first panel was comprised of the Office of the Attorney General (OAG), the Texas Commission on Environmental Quality (TCEQ), the Railroad Commission (RRC), and the General Land Office (GLO).

Invited Testimony

Office of the Attorney General

James Lloyd, Deputy Attorney General for Civil (OAG) Litigation, testified first about the Attorney General's role in combatting federal incompetence. Lloyd explained how the Biden Administration's policy decisions have crippled Texas' domestic energy production and weakened our energy independence. Attorney General Paxton has filed 78 cases against the Biden Administration; 31 of those related to environmental overreach in the regulatory space, with 17 of those cases filed in the last six months alone. Some of the agencies that the suits have been launched against include the Environmental Protection Agency (EPA), the Department of Transportation (DOT), the Federal Energy Regulatory Commission (FERC), and the Department of Interior (DOI). Lloyd noted that the OAG was recently granted a preliminary injunction against the EPA, temporarily preventing the agency from implementing rules that expand the definition of waters in the United States. The OAG also received a judgment against DOT's unlawful attempt to regulate emissions from vehicles using Texas highways. Lloyd quoted the District Court, stating that the statutory language itself makes clear that the DOT lacked authorization to promulgate the rule.³⁵

Furthermore, the EPA seeks to impose costly technology emissions standards that burden the oil and gas industry with expansive regulations and prohibitions. The Biden Administration is also attempting to force a transition to electric vehicles by implementing emissions and fuel economy standards that are impossible to meet with combustion engines. Lloyd also illuminated the hypocrisy within the administration, testifying that the restriction on domestic energy production ignores the conservation efforts by the state and private landowners.

Chairman Birdwell asked Lloyd how the policy decisions made by the Biden Administration have impacted the OAG's division of labor. Lloyd highlighted the OAG's efforts in combatting federal overreach, recognizing that their greatest resources are their attorneys. Lloyd testified about the congressional delegation's strong relationship and communication, ensuring that dialogue happens between the OAG and the Texas Congressional Delegation. When Chairman Birdwell asked if he was correct in thinking that the LNG export ban was a punishment on Texas, Lloyd agreed, adding that the executive order does not actually pursue the green agenda any further, but creates wasted resources and results in more emissions when excess LNG is flared. Not only does it contribute to higher emissions domestically, but it will also cause economies in Asia to divert their sources of energy to less favorable natural resources. Chairman Birdwell also asked what the economic impact of the LNG pause is going to be and Lloyd explained that the biggest hit for Texas will be the Permanent School Fund (PSF) which generates millions of dollars per year from oil & gas, directly connected to LNG production; meaning our children of Texas are the first to be hit, followed by the industry.

³⁵State of Texas et al v. U.S. Dep't of Transp. et al, No. 5:23-CV-304-H (N.D. Tex. 2024)

Railroad Commission of Texas

The Honorable Wayne Christian testified next on behalf of the Railroad Commission of Texas (RRC), stating that there is currently an attack on energy by the Biden Administration. Commissioner Christian stated, "Every country that has oil is richer than every country that does not. Every richer country is cleaner than every country that does not have oil." He also mentioned the Net Zero-Carbon Agenda, pointing out that out of the .0004% of the carbon dioxide in the atmosphere, only three to six percent of that is man-made, therefore the man-made portion is such a small component of the CO₂ in the atmosphere. Additionally, Commissioner Christian referred to a statement made by the former 2022 Nobel Prize winner, John Clauser, regarding how the popular narrative about climate science reflects a dangerous corruption of science that threatens the world economy and the well-being of billions of people. Furthermore, he testified that 1,600 scientists came out this past year denouncing a climate catastrophe. Regarding the harm done to Texas, he explained that the Permanent School Fund (PSF) is largely funded by oil & gas, with \$10 million per month this past year being generated into the University of Texas' endowment fund. Not only does oil & gas generate revenue for the PSF and higher education, but it is also 40% of Texas' economy, direct or indirect. Chairman Birdwell inquired about the economic impact of LNG exports ceasing in Texas to which Commissioner Christian explained how natural gas had recently gone down to a negative number, partly due to the increased cost of natural gas from federal regulations and from cutting down the market. The increased cost to the consumer and the decrease in the supply lead to a decrease in tax dollars while creating scarcity in the world market. In closing, Commissioner Christian shed light on the EPA's new Methane rule that has been challenged in court by General Paxton, stating that 80% of the production of oil in Texas is not from major oil companies but from independents. If the Methane rule passes, he stressed that over 10,000 wells will be closed and 30% of our independent producers may go out of business. When asked by Chairman Birdwell about the mechanisms within their respective agencies that are set in place to alert the OAG of any federal malfeasance, Commissioner Christian commended the legal department within the RRC and their assistance to the Attorney General and asserted the Commission's support for the OAG.

General Land Office

Mark Havens, Deputy Land Commissioner with the General Land Office (GLO), testified next about the Commission's regulatory responsibilities and generation of funds. Havens described their fiduciary duty to generate revenue for the Permanent School Fund (PSF), with an overwhelming majority of that revenue coming from oil & gas production on state-owned land. Since the inception of the PSF, GLO has deposited over \$30 billion in the PSF and about \$3 billion in oil & gas revenue in the last two fiscal years alone. He emphasized the legitimate net loss of revenue for the PSF caused by any federal action that limits markets, increases costs, and adds regulatory hurdles, specifically the LNG export pause. Havens used the Waha Hub in Reeves County as an example, explaining that natural gas gets trapped due to the lack of output to get to the coast, which consequently shrinks the market and causes the cost of natural gas to drop. When asked by

Chairman Birdwell about the LNG export pause being a punishment of Texas, Havens responded that 43% of the U.S. natural gas is produced by Texas, so it would be hard to see it any other way.

Dean Zaffirini asked about the impact on the PSF to date to which Havens explained that in FY 23 there was \$340 million based solely on natural gas revenue and that it has been forecasted that there would be a 1-3% drop at a minimum in revenue from the natural gas component. Dean Zaffirini inquired whether there had been an all-time high in distributions to the PSF over the past three years. Havens confirmed that there had been peaks, driven by strong oil prices, but noted that the decline in natural gas prices would result in lower overall funds.

Furthermore, Havens pointed out the harmful effects the LNG export pause has had on the off-shore oil & gas leasing revenue generated by the Gulf of Mexico Energy Security (GOMESA) Act. The GOMESA Act has generated revenue to the states through off-shore oil & gas leasing which is used for coastal restoration and protecting marshes and wetlands along the Gulf Coast. As a result of the LNG export pause, there is now the fewest amount of lease sales in the history of the U.S. In FY 22, there was about \$95 million from GOMESA alone, and should the pause continue there will be a substantial drop in that number.

Another area of federal overreach, as seen by the Commission, is through the Endangered Species Act. In May 2024, the administration listed the Dune Sagebrush Lizard, ignoring Texas' efforts in voluntarily enrolling thousands of acres of land in agreements to put protections in place for endangered species.

Chairman Birdwell asked if any authorities or powers within the GLO or the state legislature could assist the OAG, or if the OAG is the primary—if not the only—mechanism for defending Texas against federal policies. Havens confirmed that the OAG is the primary defense, but noted that the GLO sometimes initiates litigation independently, depending on available resources. He emphasized that whether the OAG or the GLO represents the state, both are fighting the same battle.

Texas Commission on Environmental Quality

John Niermann, Chairman of the Texas Commission on Environmental Quality (TCEQ), testified alongside Kelly Keel, Executive Director of TCEQ on the function of TCEQ and the challenges they face against their federal co-regulators on a daily basis. Chairman Neirmann began his testimony by recognizing that the EPA has been funded with over \$100 billion in federal funds, but that federal funding for TCEQ's environmental programs has been declining. He also clarified that under the EPA's Safe Drinking Water Act, TCEQ utilized federal funds to conduct sampling for more than 7,000 water systems in Texas, alleviating the burden on the utilities. Texas has been proactive in this effort, achieving a 99.9% sample collection rate with errors of less than 1%. While the EPA had consistently approved the use of these funds, the new administration reinterpreted the program, disallowing the service and instead requiring the water systems to handle the sampling on their own. Chairman Neirmann views this administrative decision as a clear indication of the

disconnect between the federal agency and Texas communities. TCEQ has opted to continue the sampling program, recognizing that it is in the best interest of Texans.

Within the last year or so, the EPA has promulgated 32 new or revised air rules. Chairman Niermann described the EPA's actions as legally dubious and clarified that the Clean Air Act was created to control air pollution, not to drive ambient air conditions to background levels. When asked by Chairman Birdwell about mechanisms within the state to combat federal overreach, Chairman Niermann explained that TCEQ provides an important role in commenting on federal regulations, often assisting the OAG by laying the technical and factual predicate for the lawsuits filed. Chairman Birdwell acknowledged Texas' success in surpassing national standards for drinking water safety and asked if the state had achieved similar results in other areas of environmental quality. Chairman Niermann responded by highlighting air quality improvements, particularly the reduction in ozone concentrations over the past 20 to 25 years. In 2000, Houston's ozone levels were at 112 PPB (Parts Per Billion), but in the past five years, they have consistently been below 80 PPB. According to the EPA, Texas has outperformed the nation, achieving a 30% reduction in ozone levels, compared to the national reduction of just 17% over the same period.

Kelly Keel, Executive Director for TCEQ testified next, stating that TCEQ's core functions involve permitting, providing technical support, conducting compliance determinations, and responding to emergency events. Keel explained how the EPA's mandates that have recently been put out and their compliance deadlines significantly overlap, restraining TCEQ from successfully implementing the programs. Keel highlighted multiple rules and standards enacted by the EPA relating to PM 2.5, Ozone, Methane, and Electric Generating Units. She first explained the EPA's revised national ambient air quality standard for particulate matter, which is known as PM 2.5. Kleberg and Cameron County have measured values above the standard, without any significant industrial sources of PM2.5 impacting their monitors. This causes TCEQ to provide extensive analytics to the EPA to compel them to remove those events from Texas' datasets, which stretches TCEQ's capabilities. Additionally, Keel stated that the EPA has implemented two new ozone standards with impractical imposed timelines. She stated that EPA had retroactively designated El Paso as nonattainment, unfairly placing the state at risk of federal sanctions. Every time the EPA adopts a new standard, it must be incorporated into TCEQ's permitting processes. Keel used the revised PM standard as an example, explaining that 120 case-by-case permits under review prior to the revised standard must now restart the process. She also emphasized her concern regarding sanctions caused by the impractical planning requirements put in place by the EPA which could lead to loss of federal highway funding for the state or federal takeover of the plans through a Federal Implementation Plan. Furthermore, Keel explained that the EPA's new methane rule will impact 3700 new or modified oil & gas facilities, and roughly 400,00 active oil and gas wells. TCEQ projects over two million hours of staff time will be spent on completing the necessary authorizations and planning, presenting a large burden for Texas. Paired with the strain on resources, federal funding has remained "effectively flat", proving to be insufficient to implement

new federal rules. The EPA's new Electric Generating Units rule is another example of the complex and lengthy reviews necessary to comply with the permitting modifications.

Senator Alvarado asked which counties are now likely to be designated as non-attainment and Keel listed the following counties: Harris, Cameron, Buoy, Montgomery, Dallas, Kleberg, Webb, Hidalgo, Tarrant, Travis & Ellis. Senator Alvarado also presented information reflecting the health benefits related to the new PM 2.5 rule, which include 4,500 premature deaths avoided, \$46 billion in health benefits, and a 77 return on every tax dollar spent to implement the rule.

Senator Sparks illuminated the situation in West Texas, explaining that as the EPA has increased the goal for reducing particulate matter, they have gotten closer to background levels without any industry present as a result of dust that's blown into West Texas.

When asked by Dean Zaffirini how TCEQ deals with the administration's decisions when their respective Commission disagrees with the policy, Commissioner Neirmann, Commissioner Christian, and Commissioner Havens assured her that their agencies are compliant with the law, while also challenging the actions that they believe are unlawful.

The second panel of invited testimony on this charge included the Texas Oil and Gas Association (TXOGA), Texas Independent Producers and Royalty Owners Association (TIPRO), Texas Association of Manufacturers (TAM), and the Texas Alliance of Energy Producers.

Texas Oil and Gas Association

The panel was led by The Honorable Todd Staples, President of the Texas Oil and Gas Association (TXOGA). Staples testified about the benefits of TXOGA, which produced over 90% of Texas' oil and gas production, as well as his concern with the LNG export pause that is currently in effect. Staples believes that reviewing data and asking questions is a very prudent act, however, he believes this can be done without pausing beneficial global trade with allies, boosting local job share, and the general benefits from the oil and gas industry in the Lone Star State. He believes the ban should be immediately uplifted, and permits be expeditiously reviewed, as the ban does immeasurable damage to the industry and the state. Staples quoted the Shell CEO, "The pause continues to undermine confidence in U.S. LNG, at a time when U.S. allies need reliable and dependable supplies. If the ban isn't lifted, international consumers will seek other means of supply, which disadvantages the United States." He also explained that there are two approval processes with the federal government: one for siting and construction, and the other for the export license. The federal administration has essentially created a roadblock for the state's oil and gas industry. Texas would lose nearly \$200 billion in investments and around 9,000 jobs annually if LNG exports are shut down permanently. Staples' recommendations for resolving the pause include:

- Look at permitting times for LNG projects, to see if there is an opportunity to streamline.
- Continue to guard against obstacles to pipeline and infrastructure development.

- Ensure all taxpayers benefit proportionally from tax reductions stemming from these projects.

Karr Ingham, interim President for the Texas Alliance of Energy Producers, testified on the methane rule and the LNG export pause, stating that the pause is non-sensical from a climate and economic standpoint, as any volume Texas doesn't send to the world marketplace is still going to be demanded. He stressed that other international bodies will meet these demands but in a much less clean matter. Furthermore, Ingham testified on the climate factors behind the LNG export pause, stating the Texas Alliance of Energy Producers partnered with a domestic energy producers alliance, to file suit against the U.S. Securities and Exchange Commission (SEC). The suit was due to the SEC's climate disclosure rule requiring private agencies and organizations to publicly disclose information that was never intended to be subject to disclosure. Ingham's final points in his testimony regarded the methane rule, which he expressed is more harmful to the Texas oil and gas industry than the export pause and SEC rule combined. As a result of the methane rule, Ingham stated that over 60k wells in Texas are at risk, which will cripple the state's inventory. Furthermore, the revenue the wells pump out is insufficient to support cost increases, leading Ingham to call for strong Texas legislative support in defending wells from burdensome regulatory rules.

Texas Independent Producers and Royalty Owners Association

Ed Longanecker, President of the Texas Independent Producers and Royalty Owners Association (TIPRO) testified primarily on the impact of the New Source Performance Standard (NSPS) subpart OOOOb and OOOOc, which directly regulate the oil and gas industry by setting emission standards for both new and existing industry sites. As of May 7, 2024, OOOOb now applies to newer modified facilities, while OOOOc will retroactively apply to all remaining sites, expecting full compliance by spring 2029. Longanecker identified key requirements for the new rules, such as:

- Implementing a form of methane monitoring on every well site
- Retrofitting existing nomadic controllers to zero-emission alternatives such as:
 - compressed air-driven controllers
 - electrically driven controllers
 - nitrogen driven controllers
- Restricting the flaring and venting of associated gas under certain conditions
- Implementing the super-emitter response program, allowing EPA certified third-parties, to detect and report methane emission events emitting above 100kg/hr

Extremely marginal wells, wells that produce less than one barrel per day, will mostly be impacted by the methane rule. Furthermore, nearly 300k wells in the United States, are exposed to becoming uneconomic, almost guaranteeing bankruptcies and orphan wells. The estimated financial impact for all wells in Texas is \$550 million per year, which equates to 22.4 cents per barrel of oil equivalent (BOE). Additionally, each Texas well will take on an added fixed cost of \$2,000 a year. Longanecker's primary concern is that only some producers are able to absorb that cost, while a significant portion of producers are unable to do so. Lastly, analysts agree that the financial impact of the regulations will lead to a 'tsunami' in plugging and abandonment, lost jobs, production, and

tax revenue. In conclusion, Longanecker called for the committee to do everything in their power to maintain the state's pro-business and pro-regulatory environment, while the industry evaluates the future of the oil and gas industry.

Texas Association of Manufacturers

Tony Bennett, President of the Texas Association of Manufacturers (TAM) testified next. TAM member companies employ more than 920,000 Texans, covering roughly 600 large companies while accounting for 11% of Texas' total output. Bennett testified that while the Ozone levels have been reduced by 26%, as well as reducing fine particulate matter by 12% over the last two decades, new regulations are imposing unpredictable constraints on the industry. He stated the following federal interventions have threatened economic growth in the industry:

- Restrictions on liquified natural gas exports
- New methane gas regulations
- New fine particulate matter restrictions
- Net-zero carbon agenda
- More stringent air provisions

Bennett provided some concerns about adapting to these new interventions. The transition to new forms of energy requires substantial investment in new technologies, which can be costly. Furthermore, he described the new rules and regulations on polyfluoroalkyl substance (PFAS) as complicated and far-reaching. PFAS's are used in an array of manufactured products, such as critical components needed for the United States' ambitious semiconductor industry, upon which Texas has led the nation in recent years. Bennett stated that Texas is home to 15 semi-conductor fabricators and component manufacturers. He also expressed his belief that all new regulations must be carefully thought out due to the potential increase in the cost of business, which could result in a loss of jobs and investments in Texas. Bennett concluded by urging the legislature to continue supporting measures that balance economic growth with environmental protection by:

- Advocating for more flexible and economically feasible regulations
- Investing in technologies that support both economic and environmental goals
- Fostering a collaborative approach between state and federal agencies

Ed Longanecker and Tony Bennett suggested implementing a law that provides money to the oil and gas industry in Texas in the form of tax credits, allowing for equipment upgrades that will directly comply with the NSPS subparts while simultaneously lowering emissions.

Public Testimony

The Committee also heard public testimony from the following witnesses.

Geoffrey Tahuahua, President of Associated Builders and Contractors of Texas (ABC Texas), spoke on a specific issue in overcoming federal incompetence: project labor agreements (PLAs). PLAs are pre-hire collective bargaining agreements with one or more labor organizations that establish the terms and conditions of employment for specific construction projects. These PLAs carry significant anticompetitive and inflationary implications that could adversely affect taxpayers, economic development, and the workforce in Texas. Tahuahua states that multiple

studies performed by analysts show that PLAs, when mandated by the federal government, needlessly raise the cost of construction projects by 12%-20%. President Biden's 2022 Executive Order 14063 has caused ABC Texas to see anti-competitive schemes pop up on federal and federally funded projects in Texas. Furthermore, a federal rule in January 22, 2024, implementing President Biden's Executive Order 14063 requires PLAs on direct federal contracts of \$35 million or more. Tahuahua describes this ruling as a direct overreach, as it forces contractors to comply with PLA mandates that require unionized labor and favor union-signatory contractors even though nearly 90% of the U.S. construction workforce does not affiliate with a union. Just in Texas alone, that number increased to 97.8% of the construction workers in Texas. In conclusion, Tahuahua and ABC Texas are calling for the Texas Legislature to consider the negative impacts of federal government PLA mandates and preferences on our state's economy and workforce and support bills like HB 985 that passed in the 86th Session. Furthermore, they recommend the committee further examine the federal overreach into federally assisted projects as well as direct federal contracts where the state is shouldering a percentage of the project's cost.

Hannah Martinez, head of advocacy for Indorama Ventures, provided her public testimony to the committee next, primarily addressing her concern regarding supply chain issues. Indorama Ventures is the largest producer of polyethylene terephthalate (PET) in the world, the primary plastic used for plastic water bottles. Companies such as Coca-Cola, Pepsi, Dasani, etc. are demanding new or recycled PET from Indorama Ventures to use in the assembly of their products. Martinez's issue lies with the federal government's slow nature in responding to their industry needs, forcing Indorama Ventures to purchase PET waste from other countries such as Malaysia and Taiwan. Martinez is calling for the Texas Legislature to implement an effective PET collection system, allowing:

- A secured supply of PET in Texas
- All Texas PET facilities to remain fully operational
- An establishment that Texas is an important supplier of valuable commodities for U.S. manufacturing

Martinez suggested the committee evaluate recycling incentive programs to help encourage Texas residents to recycle and contribute to resolving supply chain issues and keeping landfills down. Furthermore, the private sector struggles to implement recycling incentives without a government regulatory framework in place.

Chris Mahin, Vice President of Sustainability for Knauf Insulation, also spoke to the committee about supply chain issues. Knauf primarily uses recycled glass, or cullet, to manufacture their insulation products. Using cullet reduces process emissions, reduces energy consumption, and extends the life of their furnaces. Mahin urged the Texas Legislature to reexamine how effective the current recycling infrastructure is in valuing these commodities, as they serve a crucial role in their industry. Mahin suggested to the committee to take a collective approach and establish state-wide alignment with these recycling incentives.

The Committee received additional public testimony from several individuals, many from the Houston area, related to environmental quality, federal policies, and the state of emissions in the city of Houston. In addition, advocacy groups such as the Sierra Club, Air Alliance Houston, Environmental Defense Fund, Amnesty International, and Mi Familia en Accion testified on the

charge. Several of the witnesses voiced their concern with air quality, health complications, and climate change. Support was indicated for several federal regulations through the Environmental Protection Agency (EPA), including particulate matter standards, methane provisions, and general decarbonization. At least one witness expressed their desire for Texas and the federal government to cooperate on such matters. Some witnesses also described the economic benefits of a clean environment and a healthy workforce.

POST-HEARING DEVELOPMENTS

Several US Supreme Court cases were ruled upon following the hearing held in June. Because these developments occurred after the hearing, no testimony was received on the matter at that hearing. However, due to the relevance of these decisions to this charge, they were visited briefly with testimony from the OAG during the hearing held on September 17th, 2024.

Chevron Doctrine Overruled by the U.S. Supreme Court

Just over a month after the Committee held the hearing for this charge, the United States Supreme Court overruled the Chevron Doctrine as part of a ruling for two cases, *Loper Bright Enterprises et al v. Raimondo, Secretary of Commerce, et al.* and *Relentless, Inc., et al., v. U.S. Department of Commerce, et al.*

The Chevron Doctrine is referred to as such based on the case in which the doctrine was established, *Chevron v. Natural Resources Defense Council*. The case was heard in 1984, and the Supreme Court ruling instructed courts to rely on a two-part method for interpreting statute when evaluating agency action before them. The first step was to discern whether Congress had directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter. But in a case in which the statute was silent or ambiguous with respect to the specific issue at hand, a reviewing court could not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Instead, at the Chevron Doctrine's second step, a court had to defer to the agency if it had offered a permissible construction of the statute. This allows courts to conclude that Congress had not addressed the question at issue with the necessary level of specificity and that an agency's interpretation was entitled to deference, regardless of the court's opinion. The recent opinion overruling the Chevron Doctrine notes that because of the indeterminate and sweeping nature, the Supreme Court has been forced to clarify the doctrine again and again in attempts to make it workable.³⁶

³⁶ *Loper Bright Enterprises et al v. Raimondo, Secretary of Commerce, et al*, No. 22-451 (2024)
https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf

Now, the Supreme Court has held that the Administrative Procedure Act (APA) (established in 1946 by Congress) is the ultimate law by which courts are required to follow when evaluating agency action.

“Chevron is overruled. Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires. Careful attention to the judgment of the Executive Branch may help inform that inquiry. And when a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it. But courts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous.”³⁷

The Doctrine has allowed federal agencies to flip-flop and impose different rules each time a new administration takes over, leaving judges with little choice but to defer to the changing interpretations of agency officials. As we found during our hearing on Federal Incompetence, federal agencies continue to stretch statutes and states continue to push back.

Corner Post Case Ruling – Changing the Statute of Limitations for the APA

In addition to the overruling of the Chevron Doctrine, the Supreme Court also made a change in the Statute of Limitations for the APA in the *Corner Post, Inc. v. Board of Governors of the Federal Reserve System* case. In the Corner Post case, the merchant, Corner Post, Inc., petitioned against the Board of Governors of the Federal Reserve System regarding the fee regulations set for the amount payment networks such as Visa and Mastercard charge merchants on transactions. The truck stop and convenience store, Corner Post, argued that the regulation set by the Board in 2011 allows for higher fees than the statute permits. However, the District Court dismissed the suit because the default six-year statute of limitations after final agency action regarding suits against the United States had expired. The Eighth Circuit affirmed the District Court dismissal. In its decision, the Supreme Court held that a claim under the Administrative Procedures Act does not start accruing the six-year statute of limitations until the plaintiff is injured by final agency action. The general reasoning is that a plaintiff is required to show on the outset of the case that they were actually injured by an agency action, creating a cause of action allowing a suit to be brought. Therefore a plaintiff can’t file suit until they suffer the injury.

The dismissal was reversed and the case remanded.

New injuries could raise new suits involving agency overreach that could have been protected in some manner by Chevron Doctrine or previous statute of limitations standards.

³⁷ Loper Bright Enterprises et al v. Raimondo, Secretary of Commerce, et al, No. 22-451 (2024)
https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf

OAG Testimony Regarding Supreme Court Developments

Lanora Pettit, Principal Deputy Solicitor General, gave an update regarding the two main cases: *Loper Bright* and *Corner Post*. Deputy Pettit began with the overturning of the Chevron Deference, which has been the governing administrative law for the past 40 years. Pettit stated that the court had gradually been cutting back on Chevron over the last 10-15 years, concluding that Chevron is not consistent with the language of the Administrative Procedure Act or the role of a federal court to determine the law. Although agencies can no longer use ambiguity to justify their interpretation and ultimately determine the law, some deference remains with the agency like findings of fact. This case is expected to impact environmental regulations and the way agencies address factual uncertainties such as the way that an agency models, or the discretion and exercise of judgment about types of chemicals and their effects on humans and their environment. The level of discretion federal agencies will have over factual uncertainties is being litigated in several cases in the D.C. Circuit. Deputy Pettit also stated that the OAG has not seen significant impacts due to the lack of reliance on the Chevron Deference over last eight years or so in federal agency preparation for the overruling. With that said, the OAG has amended their strategy over time to address the changes in federal agency strategy. Deputy Pettit then went on to discuss the *Corner Post* case, which established a new standard for when parties challenge federal regulations, focusing on injury rather than the timing of the rule's enactment. Previously, the default rule under the Administrative Procedures Act was that the statute of limitations was six years. Therefore, cases that would have relied on the failings of the Chevron Doctrine would have been outside the statute of limitations. Deputy Pettit explained that circumstance had affected a number of cases in the past because a federal agency might create a rule and then not do anything with it for a decade. The agency could then come back after the statute of limitations and implement the rule resulting in injury to the state. This was the case in *Texas v. Rettig* where it cost the state half a billion dollars. Claims can now be brought as long as the injury occurred within the last six years, providing more accessibility for challenges and bringing some teeth to the *Loper Bright* opinion that overruled the Chevron Doctrine. Chairman Birdwell summarized that Chevron Deference being overruled means that Congress has to actually do its job rather than rely on experts extrapolating what congress meant, presumably resulting in better laws and rules. Additionally, Deputy Pettit explained that another case, *FDA v. Alliance for Hippocratic Medicine*, results in Texas needing to better explain the injury. Further discussion between Chairman Birdwell and Deputy Pettit highlighted that these cases impact the Federal Legislature rather than the Texas Legislature because Texas already has roughly the same rule in which Texas courts decide what the law means and gives respect, not deference, to an agency's interpretation. This ultimately changes the dynamics for the Office of the Attorney General as suits are brought against the federal government.

CONCLUSION

Recent environmental regulatory policy decisions made by the Biden Administration are a direct reflection of federal incompetence and their disregard for Texas's economy. As the Committee learned from testimony given by state agencies and industry stakeholders, the relationship between the state and the federal government is strained due to the Administration continuously stretching regulatory rules and statutes. The Texas Railroad Commission (RRC) and the General Land Office (GLO) discussed the impact on the Permanent School Fund (PSF) related to the Liquefied Natural Gas (LNG) export pause. The LNG export pause will negatively impact the funds for Texas schools since the oil and gas industry largely contributes to the PSF. The administration has also stepped outside of its authority to impose its Net-Zero Carbon agenda when administering overly burdensome policies as it relates to Particulate Matter, New Source Performance Standards, Super Emitter Programs, etc., ultimately punishing Texas by doing so, despite significant reductions in most regulated air quality contaminants.

Not only are these decisions harmful to Texas, but they do not effectively pursue the green agenda. For example, LNG supply chain disruptions lead to increased flaring, and as long as the pause impacts increased export capacity, there will be more flaring than necessary. Additionally, restricting the global use of Texas liquefied natural gas pushes other countries to rely on fuel sources that are considered dirtier. The incompetent policy decisions made by the federal government also extend to Environmental Protection Agency (EPA) regulations and rule making. The Biden Administration's "Net-Zero Carbon Agenda" has proved to put a strain on the resources at TCEQ and the OAG, adding to the immense regulatory burden. With such stringent timelines and demanding rules, federal funding for these programs is insufficient for state agencies, requiring Texas to fill the gaps. The administration's attempt at driving ambient air conditions to background levels does not reflect the intended purpose of the Clean Air Act. Instead, it will halt responsible industry growth and forces Texas to push back at every opportunity. It's important to note that Texas's significant progress in reducing ozone concentration surpasses the overall nation. The new rules promulgated by the EPA continue to punish our state despite real results and accomplishments.

Texas's primary approach to combat federal malfeasance is through the Office of the Attorney General (OAG), with assistance from state agencies. This year alone, the OAG has filed 78 cases against the Administration, 31 specifically targeting issues of environmental regulatory overreach.³⁸ Due to the efforts of the OAG, the state has been successful in getting injunctive relief in some cases. Texas state agencies testified on their successful and engaging relationship with the OAG, constantly joining forces in combatting federal incompetence. When the OAG resources are stretched too thin, state agencies are forced to take legal action on their own. Of interest, the recent

³⁸ Lloyd, James. 2024. *Deputy Attorney General for Civil Litigation, Attorney General's Office* (June 13).

U.S. Supreme Court decisions have indicated a larger interest in reigning in the overreach of the federal executive branch.

Texas has made significant progress in emission reductions throughout the state, despite the federal government continuing to move the goalpost and regulating down to levels of emissions of chemicals that exist without man-made sources contributing to them. The state constantly works towards meeting standards and will continue to do so as a result of properly and legitimately passed clean air regulations. However, due to bad policy handed down through the sidestepping of the legislative process, and with increasingly less consideration of state input, Texas must stand up for itself and good policy practices.

RECOMMENDATIONS

Based on the information received on this charge, the Committee recommends the following:

- The Legislature should continue to support the Office of the Attorney General as our primary defense mechanism against federal incompetence.
- The Legislature should continue to support state agencies as they attempt to comply with overbearing federal mandates with less federal resources being provided to them.
- Individual members of the Legislature should seek to further engage with relevant state agencies regarding the impacts of federal incompetence on their constituents' lives and businesses. When engaging in federal rulemakings, agencies benefit from real world, state level experiences and damages to best communicate their position to federal agencies.

3. Protecting Local Taxpayers: Examine current use and imposition of local option hotel occupancy taxes. Make recommendations to enhance accountability and increase transparency in the use of these funds.

INTRODUCTION

The Committee received a similar charge in the previous interim, in which it looked at the imposition and use of local hotel occupancy taxes and also carefully considered the qualified hotel project (QHP) program. As a result of those efforts, the Legislature made significant improvements related to transparency for local hotel occupancy taxes and the efficacy of the QHP program. The charge issued for the 88th Interim does not contemplate the QHP program in which the state is a partner, but rather focuses on the local administration of HOT collection and usage. This gave the committee the opportunity to visit and monitor the transparency measures of which the legislature provided full visibility last session. In addition, the committee was able to focus on ensuring hotel occupancy tax dollars are being used appropriately and in accordance with the tax code. As Chair of the Natural Resources and Economic Development Committee, Senator Birdwell has consistently focused on precise usage of hotel occupancy taxes and related bills, as well as upholding the integrity of the original legislative direction for these chapters. It is imperative that the Legislature does not increase or expand hotel occupancy taxes to the point that HOT revenue becomes a slush fund to replace local general revenue as opposed to the true economic development tool that it is. It is through this lens that the committee took up this charge.

BACKGROUND

HOT Collection

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 (HOT) 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. In order to do so, a city needs to enact a local ordinance.

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 2024, 86 Texas counties have legislative authority, and most of those counties exercise that authority according to the Texas Hotel and Lodging Association (THLA).

Hotel occupancy taxes (HOT) are collected from hotel guests when paying for lodging. The HOT is remitted by the hotel to the city, county, and state on a regular basis. Although the Texas Comptroller's Office is not directly involved in the collection of the local share of hotel occupancy taxes, cities and counties sometimes use the same reporting timeframes and forms used by the Texas Comptroller when collecting the state share hotel occupancy tax. This allows hotels to follow a consistent payment pattern. The Texas Comptroller's timeframes are as follows: Hotels

owing less than \$500 in state hotel occupancy tax for each calendar month, or \$1,500 for a calendar quarter, report and remit tax on the 20th day of the month following the end of the fiscal year quarter. All other hotels file monthly state hotel occupancy tax returns by the 20th day of the following month. If the 20th day falls on a weekend or bank holiday, the return is due on the next business day.

The state and local HOT is imposed on any person who pays for the use of a room in a hotel, including corporations, organizations, and other legal entities. There are exemptions to the imposition, such as permanent residents, certain governmental employees, costs of food, etc., in which the HOT does not apply. The hotel room must cost \$2 or more per day for the local hotel occupancy tax to apply, and \$15 or more per day for the state hotel occupancy tax to apply.³⁹

Hotels are statutorily defined as “a building in which members of the public obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, or bed and breakfast.”⁴⁰ The definition specifically excludes a hospital, sanitarium, nursing home, dormitory or other higher education housing, and oilfield portable units.

The state HOT imposition rate is set at a static six percent of the price paid for a room in a hotel. Revenue from the state portion is deposited in the state treasury to the credit of the general revenue fund. An amount equal to one-half of one percent of that revenue is dedicated to be used for media advertising and other marketing activities of what is now know as the Texas Economic Development and Tourism (EDT) Office within the Office of the Governor (Statute still indicates the revenue goes to the Texas Department of Commerce, an abolished predecessor of EDT). EDT markets and promotes Texas as a premier business location and travel destination.

Most cities are authorized to levy up to a 7 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.

As previously mentioned, counties are individually authorized on a case by case basis, so the maximum HOT rate a county can impose depends on the authorizing legislation. County rates range from as low as one percent to as much as seven percent. Due to the variation of rates of cities and counties, and the static state rate, the statutory cap plays an important role in ensuring the combined rates don't get out of hand.

Texas statute limits the maximum hotel occupancy tax rate to no more than 17 percent when the state, city, and county hotel taxes are combined.⁴¹ In most cases, only the largest cities in Texas have a combined hotel tax rate that exceeds 15 percent.

³⁹ See [Tex. Tax Code § 156.051](#), [Tex. Tax Code § 351.002](#), and [Tex. Tax Code § 352.002\(a\)](#).

⁴⁰ See [Tex. Tax Code § 156.001](#)

⁴¹ See [Tex. Local Gov't Code § 334.254\(d\)](#)

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.

Local HOT Revenue Use

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.⁴²

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)
- Signage directing the public to sights and attractions that are visited frequently by hotel guests

The determination by local governments as to how much they want to invest in each of the authorized expenditure categories is a matter of discretion of the local governing body. In many tourism areas, there is often an advisory board or committee that is established by the local government and this entity provides recommendations on which entities to fund with local hotel tax and at what level.

Hotel occupancy tax revenue expenditure decisions are typically considered as a part of the local governmental entity’s budgeting process, with supplemental expenditures made throughout each

⁴² See [Tex. Tax Code § 351.101\(b\)](#), [Tex. Tax Code § 352.1015\(e\)](#) and [352.1031](#)

city and county fiscal year. Local hotel occupancy tax revenue expenditures are subject to the Texas Public Information Act and the Texas Open Meetings Act.

In several cases, cities and counties partner with tourism and convention industry organizations to expend HOT revenue. Local governments are required to contract with those entities, with requirements regarding advance approval of budgeting, periodic reporting, and fiduciary duty standards. Such entities are also required to maintain the county hotel occupancy tax revenue in a separate bank account that may not be commingled with any other account or funds.⁴³

Examples of tourism and convention organizations include destination market organizations, convention and visitor bureaus, chambers of commerce, and public-private partnership organizations like Houston First.

In some instances, HOT revenue is passed through the city and given to a separate governmental entity by contract for expenditure, such as the Galveston Island Park Board.⁴⁴

HOT Transparency

The municipality and county report to the Texas Comptroller is due on March 1st of each year, and it must contain the following information:

1. The hotel occupancy tax rate imposed by the city or county;
2. The amount of hotel occupancy tax revenue collected during the preceding fiscal year;
3. The amount and percentage of hotel occupancy tax revenue allocated by the municipality or county for each use authorized by the Tax Code; and
4. The total amount of unspent hotel occupancy tax revenue (i.e. budget surplus).

The Tax Code requires the Texas Comptroller to prescribe the form for the municipalities and counties to use in providing the hotel occupancy tax reports, and the Comptroller makes the reported information available to the public via the Texas Comptroller's website. Additionally, to help assist local government comply with the reporting requirements, SB 1420 (88R) by Birdwell provided that municipalities and counties may use up to either \$1,000 or \$2,500 (based on population levels) of local hotel occupancy tax revenue to offset the local governmental entity's costs associated with complying with the reporting requirements. Prior to SB 1420, there were several gaps in reporting including missing requirements for some of the authorized uses of HOT and for counties.

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 showing the data from 2023, only 457 cities submitted reports to the Texas Comptroller, even though there are 1,220 incorporated cities within Texas. This is up 2 cities from the 455 that were reported in 2022. It is unclear how many additional cities levy HOT or even have a hotel, so it is hard to say how many cities remain to come into compliance with the reporting requirement.

⁴³ [Tex. Tax Code § 351.101](#) and [Tex. Tax Code § 352.1015](#)

⁴⁴ [Tex. Tax Code § 351.105](#)

However, the expanded reporting requirements that are required as a result of SB 1420 (88R) by Birdwell is giving the public several more data points to consider as proper use and good governance are weighed. The expanded data points include: Allocated amounts of HOT funds towards ALL authorized uses of HOT, the unspent HOT revenue from the previous fiscal year, and the total unspent HOT revenue. Prior to SB 1420, there were several gaps in the reporting requirement, resulting in only certain authorized uses of HOT being reported and only a glimpse at the full picture of local HOT collection and use.

The reporting data for 2023 was due to the Comptroller on March 1st, 2024. This data was posted on the Comptroller's website on June 12th, 2024. The data is posted in aggregate form without any analysis required of the Comptroller, and any computation or filtering can be done by someone who downloads the data. Requiring the Comptroller to present the data in a more searchable and categorized manner, such as the Chapter 380 Local Agreements Database, is something the Legislature could consider.

TESTIMONY

The Committee held a public hearing on June 13th, 2024, and heard testimony from a panel of invited witnesses. These included representatives from the Office of the Comptroller, the Texas Hotel and Lodging Association (THLA), the Texas Travel Alliance (TTA), and Texans for the Arts.

Invited Testimony

Office of the Comptroller

The first witness to testify was Mr. Will Counihan, Director of Data and Transparency in the Office of the Comptroller. Counihan spoke to the implementation of the changes made under SB 1420 (88R), including the additional data points and the level of response from local jurisdictions regarding the reporting requirement for hotel occupancy tax (HOT) collection and expenditure. Counihan testified on the Legislature's efforts over the past few Sessions to require improved guidelines for reporting from cities and counties. SB 1221 (85R) by Watson required municipalities to report the HOT rate imposed, any HOT imposed through a venue project tax, the amount of revenue collected, and the amount and percentage allocated for six primary uses of HOT: Convention and visitor centers, delegate conventions, tourism and convention advertising, arts, historical restoration and preservation, and signage for sights and attractions. In the 87th Session, SB 1655 by Birdwell required counties to submit the same annual report. Finally, in the recent 88th Session, SB 1420 by Birdwell expanded the requirements for municipalities and counties to report the amount and percentage of revenue for **each** use (as opposed to the six primary uses from previous bills), the total amount unspent from the previous year, the amount of revenue unspent of the current year, as well as expanding the reporting window by several days. Local jurisdictions are required to fill out a form created by the Comptroller to submit this information. In adding the several additional uses of HOT funds, there are now up to 32 different categories for

cities and 30 for counties. The written testimony provided by Counihan indicates that local governments collectively reported 16 new uses of the 50 total new categories collected across cities and counties.

Counihan also testified on the response rate from cities and counties. Specifically, the following breakdown indicates the year over year reporting totals since 2021:⁴⁵

- 2023 FY Reporting: 457 total
 - 424 municipalities reported
 - 33 counties reported
- 2022 FY Reporting: 455 total
 - 420 municipalities
 - 35 counties
- 2021 FY Reporting: 452 total
 - 413 municipalities
 - 39 counties

Even though there is a requirement that these entities report of the Comptroller, Counihan testified that the agency knows there are entities out there that are not reporting to them, and there is no penalty for not reporting.

Texas Hotel and Lodging Association

The next witness to testify was Mr. Justin Bragiel, General Counsel, Texas Hotel and Lodging Association (THLA). Bragiel spoke to the importance to their industry and association that the industry subject to the tax has as much data about how municipalities and counties are collecting and utilizing HOT revenue. The tax is collected locally and expended locally and, while that information is subject to the Texas Public Information Act and Open Meetings Act and is available to the public, there was no central state repository for this information until 2017. The information that was recently made available from the Comptroller data collection disappointed the association regarding the number of cities and counties that did report the data. Now that they have the list of cities and counties that did report, THLA's goal to reach out to each city that did not report and figure out why they did not report. THLA will be working with the Texas Association of Counties (TAC) and Texas Municipal League (TML) to try to get increased reporting on usage of local HOT revenue.

Texas Travel Alliance

The third witness to testify was Amanda Garcia, Chief Public Affairs Officer for the Texas Travel Alliance (TTA). Garcia informed the committee of the different types of organizations that are encompassed by the travel industry, including attractions, art organizations, entertainment venues,

⁴⁵ Written testimony submitted by the Office of the Comptroller to the Senate Committee on Natural Resources and Economic Development on June 13th, 2024.

accommodations, destinations, and more that are primarily small businesses that contribute to the economy significantly. Garcia testified that the travel industry generated \$5.4 billion dollars in 2023 in state tax revenue amounting to 7.3% of state all state revenue. TTA appreciates the Legislature continuing to examine proper use of local option HOT and working to improve transparency on the issue. Texas statute clearly spells out the usage of HOT in accordance with the express purpose of directly enhancing and promoting tourism and the hotel and convention industry. Without that specificity, TTA is concerned that cities and counties may use HOT for portions of budgets that don't comply with that framework. When cities need additional revenue, the proper avenue is sales and property taxes and HOT cannot and should not be used to fill holes in the general budget as this diminishes the ability of occupancy tax dollars to maximize marketing returns to the community. Garcia encouraged the committee to ensure that the current statutory language is adhered to and, if necessary, consider creating additional regulations to ensure that cities and counties comply as the committee determines the proper use of local HOT. Garcia also testified that hotel occupancy tax that complied with the statutory framework contributed to direct travel spending of \$94.8 Billion in Texas, indicating that travelers spent \$180,365 per minute in the state, resulting in an economic impact of \$193.8 Billion to the Texas economy In 2023.

Texans for the Arts

The final invited witness was Ms. Fiona Bond, President and Board Chair of Texan's for the Arts. Bond testified that for many communities, the 15% of HOT that can be deployed for the arts represents the single largest source of local government arts investment. That dedicated revenue stream is crucial for non-profit arts organizations, offering a powerful validating stamp of approval that can be leveraged to bring in further grants or other philanthropic support. In fact, according to Bond, it is such a vital and strategic use of HOT funds that Texan's for the Arts has an entire website HOT toolkit with dozens of case studies showing strategic and successful use of the HOT funds for the Arts. Bond highlighted three specific points. First, the transparent and strategic use of HOT for the arts is an investment, not an expense. Second, the investment of HOT resources in arts sparks a positive feedback loop that drives tourism and directly benefits the hospitality industry exactly as intended. Lastly, any kind of investment in the arts delivers a return on investment that cascades far beyond the benefits of economic development. Studies like the 2023 Arts and Economic Prosperity 6 (AEP6) study⁴⁶ conducted across the US by American's for the Arts demonstrate the remarkable return on investment that HOT delivers. In Waco, they did granular research that was able to show that for every dollar of HOT invested in their community four dollars in local sales tax revenue for the locals and slightly more revenue for the state coffers is generated. At the state level, \$380 million in state sales tax are cascaded by the use of HOT for the arts. In Waco, the art festival showed that \$12,000 in HOT funds for the city allowed them to leverage sponsorship and grants to produce an event with a budget over \$100,000 that attracted 24,000 visitors over the weekend. The festival showcased 60 mural artists, over 100 artisanal vendors, 100 musicians, fashion designers, filmmakers, over 60 local business sponsors and

⁴⁶ <https://aep6.americansforthearts.org/>

generated a direct economic impact in the community of \$4 million. Bond indicated this type of story has parallels across all senate districts such as in Sen. Kolkhorst's district the Rockport arts festival typically doubles the size of the city over a three-day period with 10,000 visitors. Bond continued to explain that when HOT supports the arts, it ignites a cycle of positive impact and those dollars spark concerts, festivals, public art, and vibrant programming that transforms Texas cities into desirable destinations. Visitors linger and that in-turn helps build the cycle that feeds the hotel occupancy tax development. The Deep in the Heart Film Festival made Waco a destination for independent film makers for the first time, and six years down the road, those film makers return to continue making movies in Waco. One of the movies just made as a result won an award in Austin, which means Waco now has award winning film makers, actors, producers, and directors which Bond says the city would not have if it could not have spent that HOT revenue on that kind of economic development. Beyond dollars, the arts shape future workforce and character of communities and one of fifteen Texans are employed in a creative career category and they believe the transformation impact in education is investing in our most valuable resource, which is our children.

Dean Zaffirini asked the Comptroller's office what the impact has been from the three bills related to reporting for HOT. Counihan answered that the biggest changes has been in the specificity of the data but revisited the response rate not being at the level desired. Dean Zaffirini asked what the Legislature could do to incentivize greater participation. Counihan explained that there is no penalty for not responding to the report, but that he is no advocate of penalties. If the Legislature were to ask, the office of the Comptroller could provide a list of entities that are not reporting. Bragiel explained previous discussions he has had regarding incentivizing reporting and how last Session, SB 1420 provided a carrot, as opposed to a stick, that allows cities and counties to retain a small amount of HOT revenue to comply with the report. Bragiel further explained that THLA would like a little more time, maybe one more fiscal year, to work with the cities and counties to get the reporting numbers up before the association advocates for penalties. Bragiel echoed suggestions that a lack of staff resources and knowledge base available to counties could be an impact on the lack of full reporting considering the small amount of local staff that encounter HOT subject matter. Bragiel did say that their organization and partner organizations like TAC and TML can do a better job to get the word out to those responsible for providing the reports.

Dean Zaffirini brought up the usage of the dedicated funds as the greatest controversy related to HOT. She asked if THLA has any evidence of municipalities and counties using any dedicated funds for purposes other than for those which were intended. Bragiel responded that yes, they are aware of such, and when that happens, their association makes contact with the local officials and informs them of their interpretation of the statute compared to the local budget information and the perceived misuse and ask them to take corrective action with regard to the budget with a record of 100% on compliance after contact. Often what they find is that the city or contact may not have understood the requirements for the use of HOT revenue despite the fact that the association performs thousands of hotel tax trainings every other year. Bragiel indicated that an option for

enforcement is to file a lawsuit, however that is not their modus of operations. The report the Comptroller gets is critical to identify cities and counties that may be misusing HOT. When that is not available, THLA relies on hotel property owner members of the community that become aware of misuse contacting THLA who then contacts the local jurisdiction. He emphasized that members pay attention because hotel tax rates are high and using hotel tax revenue in a way that generates more tourism activity for the community is critical for the business and residents of the communities.

Dean Zaffirini also asked if the Legislature should look anew at the list of approved uses to which Bragiel responded that every Session, there are proposals filed, usually at the request of local communities to expand the use of HOT revenue and Legislators evaluate whether any of the proposal are worthy of pursuit. Last Session, THLA provided a template to evaluate HOT bills. From THLA's perspective, their primary concern is that any use of HOT revenue will generate more tourism activity for the community which is the original purpose of the local hotel tax when it was first enacted in 1967 and remains the compromise that exists today. Dean Zaffirini mentioned the fact that most HOT bills are bracketed and asked if the approved list should be looked at in a more coordinated way statewide with more input towards the list. Bragiel responded that there have been new uses that have been approved statewide, sometimes under a certain population threshold, but individual counties may have a very specific request of the Legislature such as a particular facility that is unique to the county. THLA tries to engage in negotiations with the local officials to ensure that the facility will have a requisite amount of tourism activity, and as such sometimes it is appropriate to consider a bracketed bill. That said, THLA absolutely considers using HOT for every city and county for new purposes and if a particular use seems to apply broadly to the state, THLA would support and help draft to maximize return on investment for communities.

Public Testimony

The Committee also heard from two public witnesses on the charge.

First was Ms. Mandy Roane, the Administrator for the City of Marfa. Roane discussed the restrictions of Hotel Occupancy Taxes and how Marfa would like to expand upon those statutorily-defined purposes. She described Marfa as a community located in Far West Texas and the county seat of Presidio County-the second poorest county in Texas. Marfa is home to roughly 1,700 people and is considered a world-wide mecca for modern art, open skies and mystery lights. Roane explained that while Marfa is such a small and remote town, the city brings in roughly \$700,000 per year in HOT. With these funds, they maintain multiple robust advertising campaigns, aid with upkeep for local historical buildings as well as staff and maintain a visitors center that sees over 6,000 people per year. While it is clear that they are dependent on the tourism industry and its economic impact, it's also very apparent to citizens and visitors alike that there is a physical impact from their tourism numbers. Despite the city's best efforts at maintenance, multiple multi-million dollar tax notes and a dedicated streets plan, roads are potholed—some beyond the repairs attainable

by their streets department and portions of the wastewater system date back to World War II. Roane explained that while they appreciate and embrace the visitors who come from all over the world, the added numbers increase the stresses on infrastructure and they would like the Committee to consider expanding the use of HOT funds to encompass repairing streets and other infrastructure that are close to and serve the three hotels and 115 short-term rental locations. She explained that the city has a forty to three visitor to resident ratio throughout the year. The number of tourists they have each year have a staggering impact on the infrastructure systems that were not designed for those purposes. Roane explained that the city is currently using the HOT funds in the way they are currently intended and those funds are doing their job because Marfa continues to grow its number of annual visitors, and they are reaching out to tourists in record numbers. However, she commented, all of the advertising in the world won't help people to enjoy driving down our streets or allow their wastewater system to easily handle a weekend when the population doubles. As a small, fiscally responsible town they are always looking for creative solutions to their problems and believe that allowing small municipalities to use a small portion of their HOT funding to make their towns more accessible for tourists would be a pragmatic decision.

Senator Blanco, who represents the city of Marfa, discussed the uniqueness of the city to help contextualize their circumstance. Roane explained that the average household income for Marfa is under \$30,000 while the rest of the state is around \$72,000. In addition, being an art mecca, the tourism industry is largely composed of non-profit organizations, rather than entertainment based tourism. Marfa has ten million dollars worth of property on the tax rolls that do not get taxed because they are non-profits.

Senator Birdwell asked Ms. Roane how they determine the visitor to resident ratio. Roane responded that it is difficult to track, however they pull together info from visitors that go to the visitor center, third party tracking applications, and local foundation visitor numbers to make conservative estimates on the total number of visitors.

The final witness was Mr. Randall Ham, Executive Director for Odessa Arts. Ham described the challenges associated with Odessa including access to entertainment activities and employee retention considering the transient work population. Over the last ten years, through the increased investment of HOT funds towards cultural tourism, they are attempting to encourage the oil field and energy workers who stay in hotels four days a week then fly home to spend more time taking advantage of tourism type activities. Ham described their Jazz Society as the longest running jazz party in the world from a hotel in the Permian Basin, and have seen a lot of transient workers take advantage of the entertainment opportunity. Ham cited a 2019 economic impact survey, explaining the arts and culture sector generated \$6.1 million in activity in Odessa with an investment of only \$700,000 in HOT funds. Since 1978, Odessa Arts has administrated the HOT funds in the form of cultural tourism grants on behalf of the city. They work with their grantees throughout the process to ensure compliance and transparency through accurate reporting. On average, Odessa Arts awards \$200,000 each year to a dozen cultural agencies, ranging from symphonic music to visual arts. Regardless of discipline, each grantee must demonstrate a direct impact on hotels in Ector

county and submit quarterly reports on the use of their funds and hotel partnerships they have created.

Senator Birdwell noted the common factor between Marfa and Odessa is the low density permanent population with a surge of visitors or workers, and there is a legitimate difficulty in bracketing a bill to help these cities without opening a potential new unique HOT fund use to every other city and county in the state.

CONCLUSION

The Legislature has taken important steps to ensure that hotel occupancy tax (HOT) collection and administration is done appropriately at the local level. Over the past several sessions, bills have passed to ultimately cover local reporting on the full breadth of allowable uses of the tax. The need for public and legislative oversight over the local use of these taxes remains paramount. It is becoming clear that, in some instances, this economic development tool has generated revenue levels to the point that several cities and counties continue to advocate for expanded HOT uses to supplant activities that would otherwise be carried out using their general revenue. However, local reporting is not at the level it should be. Several cities and counties continue to fail to report, despite the Legislature providing an incentive to make the reporting easier by allowing them to use a portion of HOT funds to cover the cost to report. The data provided by the Comptroller's office indicates a very small increase in cities reporting and a decrease in counties reporting.⁴⁷ The Texas Hotel and Lodging Association (THLA) indicated that it may be too early still to see the positive impact of the incentive passed in the 88th Session. Even so, THLA, committed to assist the Comptroller's office in determining which cities and counties are failing to report, and in a combined effort they were able to put together a list of cities and counties that did not report. The results showed 51 non-compliant counties and 226 non-compliant cities. Now that these local jurisdictions are known, efforts can be made to bring them in to compliance. THLA, Texas Association of Counties (TAC), and Texas Municipal League (TML) have committed to efforts to get their members to report, including newsletters, notices, and other methods. Further, the data provided by the Comptroller shows that 34 of the new reportable uses are not being utilized by cities and counties. While this indicates that there are potentially unnecessary authorizations in statute, the lack of cities and counties submitting reports leaves this assessment incomplete. There could be cities or counties using any number of the 34 new uses in which the Comptroller's office did not receive any indication of use.

Every city in Texas is authorized to impose and spend local hotel occupancy taxes (HOT). Counties are authorized to impose and spend local HOT on a case by case basis, and bills to authorize them are often passed so long as they do not violate the statutory rate cap. Every Session, however, there

⁴⁷ Cities who reported increased by seven in FY 2022 and four in FY 2023. Counties who reported decreased by four in FY 2022 and FY 2023.

are bills filed to expand the allowable uses of HOT beyond the statutorily defined purposes for which municipalities and counties can spend the revenue. In some cases, these are expanded uses that have been granted over the years and are typically accepted by the Legislature as falling within the general umbrella of “promoting tourism and the convention and hotel industry.” An example is the allowance to finance the construction of sports complexes, which has been granted by the Legislature several times. Best practices when authorizing such an expansion include ensuring that the facility is designed to host a significant number of out of town participants, such as regional and statewide tournaments. Additionally, measures are included to ensure that the amount of revenue allowed for such an expense does not exceed the amount of increased hotel tax revenue that can be attributed to the sporting events.

Conversely, several bills are filed that would allow a totally new purpose for HOT revenue expenditure, such as public parks, infrastructure, or initiatives like river security for river floating activities. Bills such as these have to be carefully considered. If the Legislature decides to expand on the allowable uses to things that do not directly promote tourism and the convention and hotel industry, the tax moves closer to replacing general revenue for cities. These taxes were never intended to replace local general revenue and have been successful as an economic development tool due to careful stewardship. Efforts to expand HOT towards general revenue for cities and counties could turn HOT into just another tax, instead of a tool that has proven to help drive tourism which in-turn drives an increase in sales and use tax revenues. In fact, if HOT were to turn into a replacement for general revenue, it would simply represent an extra tax burden on particular industries (tourism, hotel, and convention) without any particular justification for those industries deserving an extra tax. Further, if a city or county has an excess of hotel tax revenue that they are unable or unwilling to spend to promote tourism and the hotel and convention center industry, they should consider reducing the tax rate they are imposing. The combined tax rate cap is 17% the cost of a room in a hotel, which is not a small amount considering current room rates and inflation levels. It is imperative that hotel occupancy taxes are treated as the economic development tool for which they were designed. This tool is not a patch to fund local government operations, but rather a tool to bring visitors to a community so they shop at local businesses, eat at local restaurants, and generally increase outside expenditure on a local community.

With that said, the Committee is certainly empathetic to local jurisdictions that encounter issues such as those presented by Marfa and Odessa. Tourism is typically viewed as a positive development for a city or county. After all, tourists spend money that helps local business and contributes to sales and use taxes. In some cases, however, periodic influxes of tourists or temporary residents can cause strains to the local infrastructure. It can be difficult for local governments to find the funds to support the infrastructure to host large events that attract tourists that would generate more funds. Given the concerns outlined in this conclusion, finding another tool or approach to tackle those issues is most desirable. There are several tools that exist that could help in those situations: tax increment financing, city or county venue project taxes, sports and community venue districts, county development districts, local economic development

agreements under Chapters 380 and 381 Local Government Code, public improvement districts, municipal management districts, event trust funds, and more that have specifically been designed to enhance infrastructure.

RECOMMENDATIONS

Based on the information provided, the Committee recommends the following:

- Continue to monitor the level of hotel occupancy tax (HOT) reporting made by local governments to the Comptroller's office for the next fiscal year to determine if there is any improvement from the increased focus from the Comptroller, the Texas Hotel and Lodging Association, the Texas Association of Counties, and the Texas Municipal League. If there is no improvement in the next reporting period, the Legislature should consider additional measures to increase reporting, such as clawing back a percentage of local hotel occupancy taxes.
- In the event that reporting levels increase, consider removing from statute unnecessary or unused authorizations that remain. This will help ensure the integrity of the hotel occupancy tax chapters is upheld and allows the Legislature to more effectively make decisions when amending those chapters.
- Continue monitoring the information obtained from local government reporting of hotel occupancy taxes. In particular, examine instances where local governments have collected large amounts of hotel occupancy tax revenue and are not utilizing those funds. Consider the need to implement a mechanism to discourage the improper collection of HOT revenue if it is not intended to be used under authorized conditions.
- Ensure that legislation regarding HOT that is passed directly promotes tourism and the hotel and convention center industry so that this tool remains an economic development tool, not a replacement for general revenue.
- Require the Comptroller to present reported HOT data in a more searchable and categorized manner, such as the Chapter 380 Local Agreements Database. This would assist interested parties in evaluating the data and therefore assist in holding local governments accountable when the revenue is misused.

4. Texas History: Review the historical site district designation and how such designations contribute to cultural preservation, tourism, and community identity. Report on what impact this historical designation would have on property values, site preservation, and educational opportunities within certain districts including, but not limited to, the San Jacinto Battlefield, the Alamo complex, Washington-on-the-Brazos, and Goliad.

INTRODUCTION

The General Land Office, Texas Parks and Wildlife Department, and Texas Historical Commission each play crucial roles in managing and protecting various historic sites across the state. The preservation of Texas history through historic site preservation and education offers substantial benefits, including cultural preservation, tourism enhancement, and reinforcement of community identity. Key sites like the Alamo, visited by over 1.5 million people annually, generate substantial tourism revenue, supporting local economies. Goliad State Park, with nearly 49,000 visitors in 2022, contributed \$2 million to the state economy, while Fort Leaton State Historic Site's 5,500 visitors added nearly \$900,000. These sites not only safeguard Texas's rich heritage but also drive economic growth, support local business, and create jobs, demonstrating that historical preservation is a sound investment for the state. Legislative actions have empowered THC to acquire and manage new historical sites more effectively, ensuring financial stability and allowing for commercial activities to support these sites. The initiatives and collaborations, including the maintenance and repair of the USS Battleship Texas, contribute significantly to maintaining Texas's rich historical heritage while fostering educational opportunities and economic benefits for communities. Texas has a vibrant history, and its commitment to preserving that heritage is commendable. As our population grows and communities expand, challenges in balancing development with the preservation of these iconic sites become more complex, and understanding the state's role in this honorable task of historic preservation is invaluable. During the committee hearing, representatives from various agencies, including the GLO, TPWD, and THC provided insights into historical preservation efforts. They discussed the significant challenges posed by ongoing development, emphasizing the need to balance progress with the protection of important cultural historic sites, setting the state for more robust preservation strategies.

BACKGROUND

Texas Historical Commission (THC)

The THC serves as the State Historic Preservation Office (SHPO) as required by the National Historic Preservation Act of 1966 (NHPA). THC's mission is to survey, record, preserve, restore and mark all phases of Texas history. The agency administers state and federal tax credit programs

for the rehabilitation of historic buildings. The agency also commemorates diverse topics through historical markers, telling the story of Texas and documenting underrepresented topics in Texas history. The THC preserves and operates 38 state historic sites across Texas. While the Alamo is managed by GLO, THC is responsible for permitting any work done to the Alamo and any other landmarks in the state of Texas.

Some historical sites under THC include:

- Casa Navarro State Historic Site, San Antonio, TX: Explore the life of influential leader Jose Antonio Navarro.
- Confederate Reunion Grounds State Historic Site, Mexia, TX (East of Waco): A gathering place for history events and reunions.
- Eisenhower Birthplace State Historic Site, Denison, TX (North of McKinney): Birthplace of President Dwight D. Eisenhower.
- Fannin Battleground State historic Site, Victoria, TX: Memorializing soldiers who fought in the Texas War for Independence.

Federal Designations

Federal Designations are managed by the National Parks Service and include the National Historic Landmarks (NHL) Program and the National Register of Historic Places (NR). National Historic Landmarks are places of exceptional importance to the nation's history, such as sites with strong associations with significant events or individuals, or those that represent a particular building method or have potential to yield innovative information through archeology. All NHLs are automatically included in the National Register, which is the official list of historic structures in the U.S. and includes buildings, sites, districts, structures, and objects. These designations offer legal protections and may make property owners eligible for preservation funds and federal historic tax credits.⁴⁸

State Designations

At the state level, historic properties are often listed on state registers. State designations can provide regulatory protection from state government actions and may determine eligibility for state funding, tax benefits, or other incentives. The criteria for state designations vary but generally align with the principles of the National Register, focusing on the property's significance to state history, architecture, or culture.⁴⁹

THC administers a national register of historical places in coordination with the National Park Service, which includes about 1000 sites in Texas. THC highlighted three levels of designation:

⁴⁸ 2024. *National Trust for Historic Preservation-Historic Designations 101*. <https://savingplaces.org/stories/preservation-tips-tools-how-to-save-a-place-apply-for-historic-designation>

⁴⁹ Ibid.

State Antiquities Landmark

A State Antiquities Landmark (SAL) is the highest level of historical designation offered by the State of Texas and receives legal protection under the Antiquities Code of Texas.⁵⁰ This designation is reserved for properties that are deemed to have significant historical or architectural importance. To qualify as an SAL, a property must be listed on the National Register of Historic Places and located on non-federal public land, such as state, county, or city property.⁵¹ Once designated, a property cannot be removed, altered, damaged, salvaged, or excavated without a permit from THC.⁵² This designation provides legal protection under the Texas Antiquities Code and ensures that the property's historical value is preserved for future generations.

Recorded Texas Historical Landmark

The Recorded Texas Historical Landmark (RTHL) designation is awarded to historic structures that are significant for their architectural integrity and historical associations. The RTHL designation process includes the purchase and display of a historical marker, which must have "Recorded Texas Historical Landmark" stamped at the bottom to signify its status.⁵³ This designation offers a limited amount of protection and recognizes the importance of preserving Texas's architectural history.

Historic Texas Cemetery

The Historic Texas Cemetery (HTC) designation is a program developed by THC to address the issues of destruction, neglect, and illegal removal of historic cemeteries. Every county in Texas has at least one cemetery that has been designated as an HTC. This designation is the first step toward the preservation of these important historical sites.⁵⁴ The HTC designation is an official recognition of family and community graveyards, and it becomes part of the recorded history of historic cemeteries worthy of recognition due to their historical associations. The recognition provides a measure of legal protection ensuring that the cemeteries' historical significance is acknowledged and maintained.

Nominations and designations fall under federal jurisdiction. After conducting research, THC forwards the findings to the national level for review by the U.S. Department of the Interior's National Park Service. While TCH accepts nominations from individual historic preservation groups, the final decision on which sites are included in the national register rests with the Department of the Interior. Even if THC sends a negative recommendation for nominating a site, the Department of the Interior still uses the research conducted by THC for their decision.

Historical districts are often a collection of old buildings, particularly found downtown or in old neighborhoods with historical significance. THC believes that historical homes would not diminish

⁵⁰ 2024. *Texas Historical Commission-State Antiquities Landmarks*. <https://www.thc.texas.gov/preserve/designate-historic-properties/state-antiquities-landmarks>

⁵¹ 2024. *Texas Historical Commission-Designate Historic Properties*. <https://www.thc.texas.gov/designate-historic-properties>

⁵² 2024. *Texas Historical Commission*. <https://thc.texas.gov/review/state-project-review/antiquities-permits>

⁵³ 2024. *Preservation Texas-Historic Designations*. <https://www.preservationtexas.org/saveaplace/historicdesignations>

⁵⁴ 2024. *Texas Historical Commission-Historic Texas Cemetery Designation*. <https://www.thc.texas.gov/preserve/designate-historic-properties/historic-texas-cemetery-designation>

home values around the neighborhood and actually see it as a positive value add. It's only when an owner of one of these historical buildings makes too many changes that it loses its historic value or meaning. Even with an RTHL designation, it does not stop owners, only limiting them from destroying or remodeling a landmarks historic significance. Having a SAL designation could only delay any potential remodels or demolition of landmarks with any historic significance.

House Bill 2719 by Rep. Ashby, sponsored by Sen. Zaffirini

HB 2719 passed in the 88th Legislature granting THC authority to acquire new historic sites, eliminating the restrictive statutory list of designated sites for spending. Although the listing method was removed from statute, HB 2719 still requires financial assurances prior to the agency making a site acquisition. Therefore, the legislature will not be placed in a position where it needs to retroactively finance any site the historical commission acquired with the assumption that the state would foot the bill in the next session. Lastly, HB 2719 allowed THC to engage in e-commerce for merchandise sales at historic sites.

Previously, when a historic site became available, THC's only option for acquisition of a historical site was through donation, even if funds were available to purchase said site. Additionally, the legislature limited the spending of sporting goods sales tax dollars to specific sites listed in statute, which created a funding problem when new historic sites became available.

Texas Historic Courthouse Preservation Program

House Bill 1341 passed in 1999 by the 76th Legislature and was signed by Governor George W. Bush to create the Texas Historic Courthouse Preservation Program (TCHPP) as a significant initiative aimed at preserving and restoring historic county courthouses in Texas. The THCPP awards grants up to \$10 million to eligible counties through a biannual, competitive application process that helps fund restoration work, ensuring that the iconic structures are preserved.⁵⁵ Additionally, the THCPP provides a Courthouse Stewardship Program that provides tools, technical assistance, and training to all Texas counties to preserve their courthouses. The Stewardship Program holds workshops to educate, and train county facility managers and other courthouse stewards on best maintenance practices. The workshops held are funded through an annual grant from the Texas Land Title Association (TLTA).⁵⁶

The General Land Office

While the General Land Office (GLO) primarily serves school funding, veterans, and the environment of Texas, the GLO also preserves and manages state lands (including historic sites), natural resources, and important documents and records. Some notable historical sites under the GLO include:

- Acton State Historic Site, Granbury, TX: The burial site of folk hero Davy Crockett's second wife Elizabeth Crockett.

⁵⁵ 2024. *Texas Historical Commission-Courthouse Grant Program*. <https://thc.texas.gov/preserve/grants-tax-credits-and-funding/courthouse-grant-program>

⁵⁶ 2024. *Texas Historical Commission-Courthouse Stewardship Program*. <https://thc.texas.gov/preserve/preservation-programs/courthouse-preservation/courthouse-stewardship-program>

- Barrington Plantation, Washington, TX: The final home of Anson Johns, the last president of the Republic of Texas, now a Living History Farm.
- Bush Family Home, Midland, TX: Associated with two U.S. presidents, a first lady, a vice president, and two state governors.
- Caddo Mounds, Alto, TX: A village and ceremonial center built by ancestral Caddo over 1,200 years ago.
- Fanthorp Inn, Anderson, TX: A 19th-century stagecoach stop.

Archives

Established in 1837, the General Land Office (GLO) Archives consist of land grant records and maps dating back to the 16th century. These documents detail the passage of Texas public lands to private ownership. The GLO Archives and Records are home to more than 35.5 million documents and 45,000 maps. These records are stored in state-of-the-art archival vaults with controlled temperature, humidity, and lighting to ensure their preservation. The GLO is a vital resource for surveyors, genealogists, lawyers, historians, and educators working on diverse projects across Texas.

The GLO also plays a crucial role in conserving historic maps and documents signed by Texas heroes like Stephen F. Austin, Sam Houston, and William B. Travis. Notably, the GLO's document and map conservation efforts are funded through the state, grants, and public donations.

The Alamo

The GLO's biggest historical focus is the preservation of the Alamo and its surroundings. Originally owned by the State and managed by the Daughters Republic of Texas, the Alamo's management was later transferred to the GLO in 2011 after a state law was passed, and signed by Governor Rick Perry. Since GLO took over management of the Alamo in 2011, they have made significant improvements at the Alamo, with a vision to preserve its surroundings as a testament to Texas history. However, the agency staff, observing the current area around the Alamo, often described it as having a "sideshow atmosphere." This atmosphere has seen some changes over time, with neighboring tenants gradually vacating and the state stepping in to acquire nearby buildings. These now vacant structures hold promise for the future, as they are set to be transformed into museums. These museums will not only share the Alamo's rich history but will also feature other attractions relevant to the site. This transition aims to further enrich the visitor experience and deepen the understanding of the Alamo's historical significance.

The GLO collaborates with the city of San Antonio to expand their management scope. In order to further their goal of preserving the Alamo the GLO and the City of San Antonio intervened against construction of a Ferris wheel in the sightline of the Alamo. By statute, the GLO must work with the city, and currently have a memorandum of understanding (MOU) to develop the Alamo's surroundings. The GLO's relationship with the city seems to ebb between friendly and adversarial.

Among efforts to preserve the Alamo's history, the GLO secured a 100-year lease to reclaim the plaza surrounding the Alamo through a Ground Lease and Management Agreement for the Alamo Plaza. Lease terms are for two parcels (Parcel A & Parcel B) lasting 50 years, commencing January

1, 2019, for Parcel A, and July 1, 2021, for Parcel B, both ends coterminous. GLO may automatically renew the lease for two additional twenty-five year terms by providing written notice to the City of San Antonio no later than 180 days before the expiration of the then current term. The long-term lease for Parcel B will go into effect when design approval of a museum that repurposes the Crockett and Woolworth buildings and funding for the museum and visitor center is identified. If either of the conditions have not occurred by January 1, 2026, then the City of San Antonio shall have no further obligation to lease Parcel B. This effort includes preserving the Cenotaph, which is owned by the State. Completing its construction in 1939, the Cenotaph is located on the North end of the Alamo Plaza. According to tradition, the Cenotaph marks the spot where the slain defenders of the Alamo were piled after the battle and burned in funeral pyres. The monument also bears the names of the men who died at the Alamo as well as depictions of William B. Travis, Jim Bowie, Davy Crockett, and James B. Bonham.

The GLO has spent a large investment of around \$400 million on the Alamo in order to implement their goal of preserving Texas history. More than 1.5 million people visit the Alamo each year, making it the most visited destination in the State of Texas.⁵⁷

Site District Designation

The GLO imagines a site district designation as something that could resemble a management or improvement district, with a board controlled by the GLO and with the authority to determine development surrounding the Alamo.

Texas Parks and Wildlife Department

The Texas Parks and Wildlife Department's (TPWD) mission is to manage and conserve the natural and cultural resources of Texas and to provide hunting, fishing and outdoor recreation opportunities for the use and enjoyment of present and future generations.⁵⁸

TPWD has about 90 sites that people can visit, and all sites have some measure of historic value and history to them. TPWD has teams made up of archeologists and historians in place to make the best efforts to ensure that no harm is done to any of these sites. Careful consideration is taken when construction on these sites is needed to prevent any accidental destruction of potential artifacts or burial grounds.

Some historical sites under TPWD include:

- USS Battleship Texas: A battleship used in WWI and WWII
- Fort Leaton State Historic Site, Presidio, TX: A well preserved 19th-century adobe fort.
- Goliad State Park and Historic Site, Goliad, TX (SW of Victoria, TX): A tribute to the heroic actions of six Marines during World War II.

⁵⁷ 2024. *Alamo Trust*. <http://www.thealamo.org/alamo-trust>

⁵⁸ 2024. *Mission & Philosophy*. <http://www.tpwd.texas.gov/about/mission-philosophy>

USS Battleship Texas

The USS Battleship Texas is the last remaining battleship used in both World War I and World War II and is a major focus for TPWD and the legislature. TPWD currently owns the USS Battleship Texas, which is undergoing repairs as part of preserving Texas history.

According to TPWD, two rounds of allocations of funds were made in order to repair the USS Battleship Texas. The first round (\$35 million), made by the legislature in 2019 (SB 500 86th Legislature), focused on fixing the surface of the ship, allowing it to be moved from San Jacinto to Galveston. The second allocation of funds (\$25 million) will focus on completing any outstanding repairs and securing the battleship to the pier. Currently, the battleship is undergoing steel work, removal and replacement of the ship's deck and superstructure/aft fire control restoration, along with painting of the topsides. Last August (2023), the Battleship Texas was relocated to Pier D at the Gulf Copper shipyard in Galveston where it was dry-docked for \$60 million worth of hull and superstructure repairs, funded by the state. Previously, it was located in La Porte, Texas near the San Jacinto Monument where it served as a museum ship and memorial, allowing visitors to explore its historic decks and learn about its role in WWII.

The passing of Senate Bill 1511 during the 86th legislature allowed The Battleship Texas Foundation (BTF) and the TPWD to enter into a memorandum of understanding (MOU) for a term of 99 years allowing BTF to operate and maintain the battleship on behalf of TPWD and the State of Texas but giving TPWD full oversight. Since then, BTF has been responsible for the preservation, maintenance, and operations of the ship, aiming to transform the ship into a self-sufficient, floating museum. While the battleship is closed for tours during the repairs, the Foundation is developing new touring opportunities for when it reopens. The ship will remain at the Gulf Copper Shipyard until its new home is ready, with the final details of its permanent location still being finalized.

Goliad State Park and Historic Site

Goliad State Park and Historic Site, managed by the Texas Parks and Wildlife Department (TPWD), has 63 overnight sites and 3 miles of trails for visitors. The historic park is situated along the San Antonio River, about thirty minutes southwest of Victoria, TX, and traces its roots back over 250 years to the establishment of mission Espiritu Santo by Spanish missionaries and soldiers. The park's museum provides valuable insights into mission life of the time. Additionally, visitors can explore other attractions such as General Ignacio Zaragoza's birthplace, the ruins of Mission Rosario, and El Camino Real Visitors Center.

In 2022, Goliad State Park welcomed 48,677 day and overnight visitors. Most of them visiting from metro areas like Houston-Sugar Land-Baytown, other Texas metros, and San Antonio. According to a 2018 economic impact study by Dr. John Crompton of Texas A&M University, the park contributed \$1,970,796 to the Texas economy, supported 29.1 jobs, and generated \$40,184 in sales taxes.

Fort Leaton

Fort Leaton State Historic Site, situated in Presidio County, Texas, is a preserved frontier fort with a rich history. Built in 1848 by frontiersman Benjamin Leaton, it originally served as a private residence before being adapted into a fortress. Leaton used the fort as a trading post and when Presidio County was established in 1850, Fort Leaton became its first seat of government. In 1967, it was deeded to the state of Texas and opened to the public in 1978 as a Texas Historic Site. Visitors can explore the adobe walls, learn about its past, and participate in educational programs, living history exhibits, guided tours, and the annual Posada, a border Christmas celebration. In 2022, the Fort hosted 5,509 day and overnight park guests, contributed \$887,347 to the Texas economy, supported 10.3 jobs, and generated \$15,073 in sales taxes.

TESTIMONY

The Senate Committee on Natural Resources & Economic Development held a hearing on the charge on June 13th, 2024, and heard from agencies, local jurisdictions, and interested parties.

Invited Testimony

Texas Historical Commission

John Nau, Chair of the Texas Historical Commission (THC), alongside Executive Director Joseph Bell, testified on the Commission's mission, established over 70 years ago, to identify and protect historic sites across Texas. Nau emphasized THC's role in turning historical assets into economic benefits, supported by state leadership. Key programs highlighted included the Historic Tax Credit program, which has revitalized 500 buildings across 65 cities, generating \$4.4 billion in spending, and the courthouse restoration program, which has restored over 70 courthouses and contributed to many downtown areas being revitalized. Heritage tourism, supported by THC's heritage trails program, was also noted as a significant economic driver across Texas counties.

Texas Parks and Wildlife

Rodney Franklin, Director of State Parks for Texas Parks and Wildlife (TPWD), testified on the agency's stewardship of state parks designated as historic sites. TPWD manages 88 sites across Texas, including natural areas and historic landmarks like Civilian Conservation Corps structures and Waco Tanks' prehistoric pictographs. The agency operates with 1,400 staff and volunteers, equivalent to 200 full-time employees. Franklin highlighted six sites, including Fort Leaton, Goliad, and Battleship Texas, as key historic sites providing educational and recreational opportunities. These sites function like small cities with their own infrastructure and public safety measures. TPWD also offers services such as historic research, preservation, and archaeological excavation. Economic impact studies showed \$891 million in sales from 2000 to 2018 in counties near state parks, with growth expected as visitation rises. Franklin emphasized the parks' role in heritage tourism, attracting visitors nationwide.

Dean Zaffirini inquired about six TPWD park sites, including Palo Pinto Mountains and Devils River South Unit, and their potential economic impact. Franklin noted TPWD is collecting data and will provide projected economic impacts once the parks open. Coordination between TPWD and the Texas Historical Commission (THC) ensures unified management and communication. Franklin also updated the Committee on the Battleship Texas, which is under a 99-year lease with the Battleship Texas Foundation. Legislative funds allowed for major hull repairs, moving the ship from San Jacinto to a dry dock in Galveston. Now in a wet dock, the deck is undergoing repairs, with completion near. The Foundation is negotiating with the Port Authority and Wharves Board to establish the ship as a floating exhibit in Galveston, focusing on historical education and long-term preservation funded by visitor revenue.

Senator Alvarado asked TPWD about factors for choosing a permanent location for the Battleship Texas. Franklin emphasized the need for a stable, secure location that can withstand environmental challenges, such as hurricanes. Economic viability is also key, as the location must attract enough tourism to sustain ongoing operations. Nau highlighted successful examples like the USS Alabama and USS North Carolina, noting that the previous location at San Jacinto had low visitor numbers due to limited surrounding attractions.

Dean Zaffirini solicited advice on resolving a controversy in her district regarding a mass shooting site. Some believe it should be designated a historic site, while others want it demolished to erase the memory. John Nau, Chair of the Texas Historical Commission (THC), acknowledged the differing views and suggested adding a marker to present alternative perspectives. He emphasized the importance of a visitor centers ability to provide educational context and offered further discussion on solutions, highlighting the benefits of consistent messaging and visitor engagement.

Texas General Land Office

Jeff Gordon, General Counsel for the Texas General Land Office (GLO), testified on preserving the Alamo. He noted the \$400 million appropriation led by the Lieutenant Governor and the GLO's responsibility for the Alamo since 2011, when control shifted from the Daughters of the Republic of Texas. Gordon outlined the three pillars of the Alamo Plan: preserving the 300-year-old church and barracks, reclaiming the mission site and battlefield, and building a visitor center and museum. Challenges include urban development pressures in downtown San Antonio. Strategic property acquisitions have removed incompatible attractions, like Ripley's Haunted Adventure, and vehicular traffic has been limited around Alamo Plaza with the assistance of the city. The GLO also contested a Ferris wheel project near the Alamo. Looking forward, Commissioner Buckingham plans to advocate for a historic district surrounding the Alamo to prevent future urban encroachment. Gordon stressed the state's investment in making the Alamo one of the top historical destinations in the nation, driving economic growth and preserving its significance.

City of San Antonio, City Manager

Lori Houston, Assistant City Manager for San Antonio, testified on the city's historic preservation efforts, focusing on the Alamo Plan. She noted her family's deep Texas roots, introducing her daughter Millie, named with inspiration from General Sam Houston. Houston has led the Alamo project since 2015, following a memorandum of understanding (MOU) with the Texas General

Land Office (GLO), emphasizing strong collaboration between the city, GLO, and stakeholders. San Antonio's historic downtown districts, including the Riverwalk and Pearl Brewery, contribute \$20 billion to the local economy. The Alamo Plan, launched in 2015, prioritizes the Battle of 1836 as the site's most significant event while providing broader historical context. Major actions include street closures, like Alamo Street in 2018, to reunite the battlefield and museum site, and leasing the battlefield to the GLO for enhanced management. Houston highlighted regulatory gaps threatening the site's integrity, citing the halted Ferris wheel project near the Alamo as an example. She praised the partnership between the Texas Historical Commission, the GLO, and the city, and reaffirmed San Antonio's commitment to preserving the Alamo for future generations.

Chairman Birdwell inquired about the transfer of the Alamo's management from the Daughters of the Republic to the GLO. He acknowledged the positive outcomes from this change, particularly regarding preservation efforts. Birdwell mentioned past legislative proposals related to the Alamo, including one that would have granted the GLO eminent domain powers, which he opposed. He emphasized the importance of maintaining a cooperative relationship between the state and the city to avoid perceptions of the state as a bully or the city as an obstacle. While expressing satisfaction with the current dynamic, Birdwell asked if the city has any concerns about the state's intentions to "recapture" certain aspects of the Alamo, seeking clarification on what exactly the GLO aims to recapture and whether the city opposes any of these efforts.

Houston addressed the questions first, emphasizing the strong partnership and community involvement in the Alamo project. In 2015, the City of San Antonio formed a committee with THC, GLO, and other stakeholders to create a vision and guiding principles for the project, which were adopted by the city council and the Alamo Trust. A key principle was to reclaim the Alamo footprint, which was crucial to all partners. Houston explained that the city utilized eminent domain, in partnership with the GLO, to recapture necessary property, reflecting a unified decision by the community. She added that San Antonio maintains a collaborative approach, ensuring alignment with THC and other partners, fostering a strong relationship without significant issues. Gordon added that when the state took over the Alamo in 2011 and GLO entered into a Memorandum of Understanding (MOU) with the city in 2015, the goal was to recapture the entire battlefield footprint to convey the complete story of the Alamo. Gordon clarified that this effort was not about acquiring eminent domain authority but rather about historical accuracy and comprehensive storytelling. He highlighted significant progress, such as the display of the 18-pounder cannon and the documentation of key events, like Crockett's fall. According to Gordon, the collaboration has built trust and maintained civil dialogue, resulting in a successful partnership. Now, the battlefield area is under a 100-year lease managed by the GLO, allowing visitors to fully understand the historical events that transpired at the Alamo.

Chairman Birdwell referred to earlier testimony by Mrs. Houston regarding a Ferris wheel and mentioned a concern raised by Commissioner Buckingham. The concern centered on whether regulations around the Alamo, similar to height restrictions in Washington D.C., might become too stringent. Birdwell questioned if the GLO might be overreacting by trying to regulate the visibility from the Alamo complex, potentially causing issues beyond the immediate area. He inquired if there was any concern from either party that the state might be going too far with its regulatory efforts surrounding the Alamo. Mrs. Houston emphasized the strong trust and collaboration between the GLO, the city, and the Alamo Trust. She highlighted the leadership of

Kate Rogers at the Alamo Trust, as well as Gordon and Adrian Piloto at the GLO, which has fostered this cooperative relationship. Regarding the Ferris wheel proposal by a private developer, she explained that it never received approval because the city, in collaboration with its partners, prepared for a public hearing where major organizations like the Conservation Society, the GLO, and the Alamo Trust planned to oppose it. Faced with this opposition, the developer withdrew the proposal. Houston noted that existing processes worked effectively, and while there were some gaps in the view shed ordinance, these will be addressed. The overall respect for collaborative efforts deterred the developer from pursuing the project further.

Chairman Birdwell stated that the Committee and the legislature recognize the high functioning state of current operations and do not want to disrupt this process. He emphasized the importance of ensuring proper roles, functions, and relationships. Based on the testimonies from Mrs. Houston and other witnesses, it appears that everything is working well. After Birdwell's comments, Nau added that the new visitor center will tell the complete story of the Alamo, including events leading to the Texas Revolution and its aftermath, such as the Battle of San Jacinto and events at Washington on the Brazos. He believes that this comprehensive narrative will increase visitation to related sites that previously lacked a coordinated message. Nau expressed gratitude to the GLO and the city, acknowledging that their efforts are crucial for enhancing the significance and visitation of these historic sites. Gordon echoed Houston's points, highlighting the need for long-term planning for a project under a 100-year lease. He pointed out that current city officials won't be around forever, necessitating a role for the state in development decisions. He clarified that the state's involvement wouldn't exclude the city but would ensure continued oversight and involvement in surrounding developments. This is important, as much of the land is privately owned and while eminent domain should always be the last resort and exercised rarely, the GLO does not have eminent domain authority anyway. Therefore, there is a continued need for collaborative discussions about future developments.

In response to Chairman Birdwell's concerns about federal involvement at the Alamo and the potential encumbrances and restrictions that come with federal funding, Houston clarified that they do not want any federal funding for the Alamo project. She mentioned federal partnerships, particularly with the National Parks Service, which is engaged with the city's missions and the World Heritage designation. The GLO confirmed that they have not received any federal money for the Alamo project, although the Parks Service manages other missions. The GLO acknowledged that while the city coordinates more with the federal government, they are cautious about federal funds due to the potential strings attached from their experiences with other projects.

Senator Kolkhorst questioned the panel and followed up on Chairman Nau's earlier points regarding Commissioner Buckingham's suggestion for additional protective measures, such as view corridors around the Alamo. She acknowledged the challenges posed by changing city councils, commissioners, and legislatures, which can impact long-term protection strategies. Kolkhorst reflected on whether such protections might set a precedent, comparing it to the view corridor protection for the Texas State Capitol, which faced potential changes due to a proposed bill from the University of Texas. Senator Kolkhorst emphasized the need for the community to consider sustainable policies for preserving historic sites in urban areas, despite rapid growth and the potential for redevelopment. She pointed out that, while city councils have tools to protect these sites, those tools are subject to change. Therefore, Senator Kolkhorst suggested that the

committee should deliberate on creating robust, enduring protections for significant historic sites like the Alamo to prevent their loss amid urban development and asked the panel for follow-up on this matter. In response to Senator Kolkhorst's question, Gordon from the GLO acknowledged the complexity of implementing extensive protections around the Alamo. He expressed the need to balance restrictions and avoid regulatory takings that could infringe on landowners' rights, stating that the GLO is sensitive to these legal concerns but is open to collaborating with the committee to explore models from other states to develop new protections. Gordon also offered to assist in finding a solution that preserves the site's integrity without overly restricting property owners.

Chairman Birdwell asked Mrs. Houston how San Antonio distinguishes the economic development impact of the Alamo from that of general conventions and events in the city. He emphasized the need to differentiate the Alamo's specific contributions to economic development from the broader economic activities generated by San Antonio's status as one of the largest cities in the country. Mrs. Houston explained that San Antonio balances the economic impact of the Alamo by tracking visitor numbers and understanding their motivations for visiting. They utilize surveys conducted by Visit San Antonio and hotel data to determine whether visitors are in the city for conventions or tourism. State funding enhances the Alamo experience, encouraging longer stays, which significantly contributes to the local economy as visitors with disposable income spend money in the city. She expressed pride in their efforts to provide extensive activities at the Alamo, attracting more visitors and boosting economic development. Chairman Nau added to Mrs. Houston's response, highlighting the importance of improving visitor experiences at the Alamo. He noted that two presidential homes in Ohio average a visit duration of 28 minutes, while the average visit time at the Alamo is only 18 minutes due to a lack of instructional context. Chairman Nau emphasized that a visitor center with comprehensive exhibits and information would significantly increase the time visitors spend at the Alamo, enhancing their overall experience and engagement.

Dean Zaffirini asked the panel if they could attach a specific economic multiplier to historic site projects. Chairman Nau (THC) responded, noting that while it's easier to track economic data from visitor centers and gift shops, broader impacts from activities like hotel stays and restaurant visits are harder to quantify. He emphasized that well-developed visitor centers, like at the Alamo, attract more visitors, boosting local economies indirectly. Houston added that San Antonio conducts economic impact studies on key sites, noting that the city's Spanish colonial missions, excluding the Alamo, attract 1.2 million visitors annually, contributing \$98.3 million to the local economy and supporting 1,500 jobs. She also highlighted workforce development programs for historic preservation skills. Franklin (TPWD) agreed with the need to understand the economic impact of their sites, noting TPWD's written testimony on the matter and plans to update their data.

The panel clarified that funding for preservation comes from both public and private sources. Gordon mentioned GLO partnerships with nonprofits like the Alamo Trust Inc. and the Remember the Alamo Foundation, which have raised over \$50 million. Nau highlighted how private sector donations funded visitor centers at national parks like Gettysburg and Grand Teton, a model also being implemented at Texas sites like Washington on the Brazos. Houston and Nau stressed the importance of public-private partnerships for these projects, with public buy-in being crucial for fundraising and engagement. Franklin echoed the importance of partnerships, noting that the Texas Parks and Wildlife Foundation is helping raise funds for the visitor center at Palo Pinto Mountain

State Park. This approach allows TPWD to leverage resources and achieve project goals with the support of donors.

Senator Alvarado asked the panel about a benefit study on the statewide economic impact of state parks and how often it's conducted. Franklin responded, noting a significant increase in park visitation due to the pandemic, which boosted economic impact. He explained that pre-2018, visitation levels were lower, and while they've slightly decreased post-pandemic, they remain high. Franklin also mentioned that the surge in visitors highlighted areas for improvement beyond funding, including park efficiency. Before the pandemic, accessing state parks without reservations was common except for popular sites like Enchanted Rock or Garner State Park. However, increased visitation during the pandemic led to the implementation of a reservation system, which provided more assurance to visitors. Nau added that local visitation among THC sites also surged during the pandemic as families sought outdoor activities, which strained park facilities but proved beneficial overall. Senator Alvarado remarked that a silver lining of the pandemic was that people rediscovered parks in their own state, with the hope that high visitation levels would continue. Senator Alvarado then asked about creating a template to measure the economic impact of historic sites, comparing it to the economic studies done for sporting events like the Super Bowl. Chairman Nau noted that measuring economic impact is easier for urban events but more challenging for rural historic sites. He emphasized the importance of developing a template and said they could collaborate with major universities to create a tool for this purpose. Senator Alvarado highlighted the importance of such a tool for legislative budgeting.

Regarding the Courthouse Preservation Program, Chairman Birdwell mentioned that various courthouses in his district had been renovated thanks to the program and noted that Comanche County was competing for a slot to have their courthouse renovated. Birdwell raised questions about the program's intent, asking whether it was designed to renovate each county's courthouse only once, if the program would terminate once all counties had undergone renovation, and how many counties remain to be renovated, along with the future plans for the program once all 254 counties are completed. Nau explained that the program was originally created to preserve the largest collection of Victorian architecture in public courthouses in the U.S., with its success extending to other architectural styles. He noted that while the Commission does not have a definitive answer on the program's future due to its incomplete status, and legislative and community support has been critical. The dedication ceremonies reflect the pride local communities have in their restored courthouses, from grade school children to nursing home residents. The initial focus was on courthouses built from the 1800s to about 1920 due to their unique architecture, and Nau expressed hope for the program's continuation as it is considered a signature initiative for the state. Joseph, the THC Executive Director, added that 78 courthouses had been completed, with 70 remaining in the program. While Nau expressed that his successor would be best to discuss the future of the program, Birdwell emphasized the need to set the conditions prior to Nau's departure.

Senator Hughes praised the preservation of courthouses, particularly emphasizing the significance of his district's courthouse in Marshall. He also expressed gratitude for the efforts to preserve the international border marker.

Chairman Birdwell raised concerns about the financial challenges faced by rural counties like Falls County in maintaining law enforcement, emphasizing the importance of state assistance through SB 22 to support these areas. He compared this to the complexities in decision-making when both the Historical Commission and Parks and Wildlife have jurisdiction over a site, highlighting the need for coordination when conflicts arise. Birdwell questioned how these disputes are resolved, and whether they must be escalated to the governor's office if agencies have opposing views, drawing a parallel to the military concept of "unity of command" to stress the need for clear authority and decision-making in both law enforcement and historical preservation. Nau explained that conflicts typically arise when determining which historic parks should be managed by Parks and Wildlife versus the Historical Commission. This decision was based on the need for policing, as Parks and Wildlife has law enforcement capabilities. Sites requiring significant policing, like Hueco Tanks in El Paso, remained with Parks and Wildlife, while predominantly historic sites were transferred to the Historical Commission. The decision was influenced by the allocation of the sporting goods sales tax. Nau stated there have been no significant community issues since this division, to his knowledge and experience. Franklin added that TPWD has a strong, collaborative relationship with THC. While there have been issues to address, they have always managed to resolve them through communication and coordination. This ongoing partnership, including working with the state historic preservation officer on various projects, has allowed them to navigate challenges effectively due to their long-standing relationship with THC.

Senator Kolkhorst noted the precedent of protecting the Texas Capitol, which takes precedence over city plans and surrounding landowners' desires, including state institutions like universities. She then posed a question to Chairman Nau regarding the Alamo becoming the primary historic site in Texas. She expressed hope that it would inspire visitors to explore other significant historical locations, such as Goliad, Gonzales, Washington on the Brazos, and San Felipe de Austin. She also referenced the Bob Bullock Museum, pointing out that it initially lacked mention of Washington on the Brazos despite its importance. Kolkhorst asked if there was an opportunity to integrate this and other historical sites into the museum's narrative, especially as it undergoes future renovations and recreations, to tie in with ongoing investments in Texas historic sites. Nau explained that when the Bullock Museum was built, there was a specific focus on the history it would present. At that time, the Alamo and other historic sites in Texas were not as developed in their storytelling capabilities as they are now. He suggested that the Preservation Board, along with the Texas Historical Commission and other relevant agencies, should be involved in future planning to tell a more comprehensive story of Texas history. Nau agreed with Kolkhorst's direction and proposed that broader coordination would improve the museum's narrative to include significant historical sites like Washington on the Brazos.

Following Nau's answer, Senator Kolkhorst highlighted the potential for the Alamo, upon completion, to become one of the most visited historic sites, possibly even in the United States. She noted the unique opportunity presented by Austin's Bullock Museum to drive visitors to the Alamo and other historic sites in Texas. Kolkhorst suggested that this could be achieved through better coordination, potentially mandated by statute, to ensure collaboration between the museum and historic sites. She emphasized the importance of strategic investments, as mentioned by Senator Alvarado, stating that it is essential for the state to ensure these investments support both the Alamo and other significant historical locations to maximize their impact.

Chairman Birdwell acknowledged Senator Kolkhorst's points about the lack of information and highlighted the absence of mention of the Texas Rangers at the Bullock Museum, along with the lack of promotion for the Texas Rangers Hall of Fame Museum in Waco.

Public Testimony

Following the invited testimony on this charge, the Committee heard public testimony.

Victor Reta, the Historic Preservation Officer for Socorro, Texas, testified about the importance of the newly designated Rio Vista Farm National Historic Landmark. He highlighted the site's role in the Bracero Program, which brought Mexican guest workers to the U.S. from 1951 to 1964, comparing its significance to Ellis Island and the Alamo. Reta emphasized that preserving and promoting Rio Vista Farm would boost local tourism, support businesses, and enhance the area's cultural and economic vitality. He also noted that the historic rehabilitation project is expected to generate significant economic activity, including job creation and support for local startups. The project aims to preserve the stories of Bracero workers and foster community pride while contributing to a robust local economy.

Senator Blanco acknowledged the significance of Rio Vista Farm as a key part of the Bracero Program during World War II. In response to a question from Senator Blanco about how the state could help preserve this important historical site, Reta explained that they are exploring public-private partnerships and seeking state and federal grant funding to preserve Rio Vista Farm. He noted that the cost to rehabilitate one building is \$800,000, but their city only receives about \$3,000 a year in hotel occupancy tax dollars. Therefore, they are relying on state funds for capital construction, while the city can manage and maintain the programs once the buildings are established. Reta further added that the Mission Trail in El Paso, which includes Socorro among other cities, is an integral part of the region's cultural and historic heritage. He highlighted that the trail features significant missions, including the one in Socorro, which is a major tourism attraction hosting local festivals and events. Reta noted that they work closely with both the THC and local partners to support and promote these historical sites, including Rio Vista.

Lastly, Mr. Robert Battaile provided public testimony expressing frustration over efforts to preserve local history. He detailed the historical significance of James Manor, noting that he came to Texas with Sam Houston in 1832 and contributed significantly to the area's development. Battaile expressed the challenges he has faced in protecting important historical sites such as cemeteries and homesteads, which are threatened by new development, and emphasized the importance of preserving these sites as integral to the Manor's identity and history.

CONCLUSION

The Committee hearing underscored the intricate relationship between the preservation of Texas' historic sites and the need to accommodate the state's burgeoning population. As urban development increasingly encroaches on these significant locations, the challenge lies in maintaining their cultural integrity while fostering economic growth. Testimonies revealed that historic preservation transcends the mere protection of structures; it is fundamentally about

conserving the stories and values they embody. Collaborative initiatives involving state agencies such as the Texas Historical Commission, Texas Parks and Wildlife Department, and the General Land Office, as well as local communities and private stakeholders, are vital for effectively navigating these complexities.

Moreover, the economic advantages of historic sites, particularly through tourism were highlighted as key motivators for preservation efforts. Successful management strategies, exemplified by the General Land Office and San Antonio's approach to the Alamo, demonstrate that preserving history can actually bolster local economic development. Moving forward, a commitment to sustainable policies, through long-term planning, and ongoing investment will be essential for ensuring these invaluable sites are safeguarded for generations to come. The Committee's emphasis on enhancing visitor experience and fostering a cooperative management approach indicates a promising future for Texas's rich historical landscape.

RECOMMENDATIONS

Based on the Committee's discussions and testimonies, the following recommendations by the Committee can help ensure the continued preservation and economic vitality of Texas' historic sites:

- The Legislature should continue support and funding for state agencies responsible for safeguarding Texas' historic assets, including the Texas Historical Commission, Texas Parks and Wildlife Department, and the General Land Office. These agencies play a pivotal role in maintaining and restoring historic sites, and their efforts must be adequately resourced to meet growing demands.
- To ensure proactive measures in protecting historic sites, it is essential that these agencies maintain an open line of communication with the Texas Legislature, particularly as urban expansion begins to encroach on historically significant areas. Early and transparent communication will allow for a timely intervention and the implementation of strategies to protect these locations from development pressures.
- Lastly, the Committee recommends that the Legislature take additional action, when necessary, to protect, support, and restore major historic sites across the state. These steps should be guided by the recognition of the economic impact historic sites have through tourism, and their contribution to local economies. Prioritizing legislative efforts to safeguard these sites will ensure Texas' cultural and historic heritage remains intact for future generations, while also promoting sustainable economic growth.

5. Cement Production Plants: Examine the impacts of permanent cement production plants on local communities. Make recommendations to ensure they are strategically situated and uphold community standards while also fostering economic development

INTRODUCTION

When this charge was received in April, 2024, it was followed a few days later by a letter from the Lieutenant Governor to the Texas Commission on Environmental Quality (TCEQ) regarding a proposed cement production facility in Grayson County that is relatively close to wafer and chip manufacturers and local communities.⁵⁹ Concerns have been raised at this site and other cement production sites regarding the impacts of such facilities on particular populations and industries. Lieutenant Governor Patrick held a town hall on April 15th and subsequently communicated in his letter to TCEQ the resident's concerns raised regarding air quality, water quality, and the accuracy of numbers considered by TCEQ in the application. Additionally, Lieutenant Governor Patrick noted the potential economic impact on the community and semiconductor manufacturing industry in the area, particularly the development of a new plant, GlobalWafers, who testified before this Committee. Black Mountain is the cement production plant that is currently in the permitting process in Grayson County. The proposed facility is on the edge of the city of Dorchester, and is seeking to fulfill an identified need for cement production to serve the Dallas-Fort Worth area.

The Committee invited expert witnesses to inform members on the permitting process, relevant industries, and the concerns that ultimately put this charge in front of the Committee. Prior to the hearing, Chairman Birdwell sent a letter to each member describing the permitting process for cement production plants and explaining how that process was different than the process for concrete batch plants and other facilities that are related to the concrete lifecycle. In remaining faithful to the charge before the Committee, discourse was kept within the scope of cement production plants and the permitting mechanisms under which they fall and not other types of facilities that garner public attention but are ultimately outside the scope.

BACKGROUND

Cement is the primary ingredient in concrete. It is created by applying intense heat in a kiln to limestone to create a very fine, powdery substance. This substance is often considered the “glue” that combines water and aggregates to create concrete as described by several witnesses. There are eleven cement production plants in Texas,⁶⁰ and a new permit application has not been submitted

⁵⁹ <https://www.ltgov.texas.gov/2024/04/16/lt-gov-dan-patrick-sends-letter-to-texas-commission-on-environmental-quality-tceq-chairman-jon-niermann/>

⁶⁰ Written testimony submitted by the Texas Commission on Environmental Quality to the Senate Natural Resources and Economic Development Committee, September 17th, 2024

in some time until the application for a site in Grayson County. Each of the existing permits have been renewed or amended over the years.⁶¹ Typically, aggregate operations such as quarries are attached to cement production plants due to the economics of transporting raw limestone to a production plant. Therefore, plants are located where there is adequate quantity and near-surface formation of limestone.

Permit Mechanisms

Cement production plants are a Major New Source Review (NSR) permit, specifically a Prevention of Significant Deterioration (PSD) when in an attainment⁶² area. This type of air permit primarily focuses on the kiln, but it also takes into account all emission sources at the site, including aggregate operations. Stand alone aggregate quarry operations typically only have the rock crusher needing to be permitted for air impacts, with sometimes additional water, waste, and hazardous material permits. If a quarry is located in an aquifer zone or designated watersheds, official best management practices are required to be followed along with other permitted facilities in the zone. Major NSR permits are fully delegated from the Environmental Protection Agency (EPA) to TCEQ with EPA retaining the final approval. Cement production plants are a “named source” meaning EPA has identified them as major pollutants, therefore requiring this kind of permit. The permit itself regulates Clean Air Act⁶³ emissions (NOx, VOC, PM, Sulfur Dioxide) at the major level, and is not specific to a particular industry other than the fact that it is named. The NSR permit uses modeling (typically takes 60-90 days) based on emission amounts and the size of the location to determine the protectiveness of public health and neighbors. Protectiveness is based on Clean Air Act criteria known as the National Ambient Air Quality Standards (NAAQS). Modeling is based on EPA and TCEQ guidance. Once built, plants are subject to Title V operating permits with regular reporting and monitoring. The Title V permit is a 45-day permit process at the end of the PSD process.⁶⁴

Applicants for all permits (from the most basic, permits by rule, to the biggest, major NSR/PSD) can get an expedited review. Expedited review is an additional surcharge that funds additional resources for the agency such as overtime and additional staffing. There can be dedicated staff paid out of the charge. The surcharge is tiered based on the permit type/level. TCEQ is required to stay within statutory guidelines regardless of expedited resources. The expedited review does not jump the queue of permit applications but allows them to be worked on simultaneously with other queued permits. The speed of the process still is largely determined by quality of the application.

SB 2196

In the 88th Regular Session, SB 2196, relating to the identification and mapping of aggregate production operations by The University of Texas Bureau of Economic Geology (UT BEG), was passed and signed into law. BEG is the State Geological Survey of Texas that serves the public by conducting objective, impactful, and integrated geoscience research on relevant energy, environmental, and economic issues. The bill asked BEG to conduct a study to identify locations

⁶¹ Ibid.

⁶² Attainment means the area is within the National Ambient Air Quality Standards as set by the Environmental Protection Agency through the Clean Air Act. An area that does not meet the standards is subject to being classified as non-attainment, resulting in more stringent air emission controls and regulations.

⁶³ 42 U.S.C. §7401 et seq. (1970)

⁶⁴ <https://www.tceq.texas.gov/permitting/air> and <https://www.tceq.texas.gov/assistance/industry/aggregate-production>

in this state suitable for aggregate production operations and existing land uses or planning policies of political subdivisions that could result in a location becoming incompatible with use as an aggregate production operation. In addition, BEG would be required to develop and maintain a database that maps the locations identified so that the information is accessible to political subdivisions and update the study and map at least once every ten years. However, funding was not made available to BEG to implement the bill, so the agency was not required to do so. BEG does have information previously collected that will be described in the testimony portion of this report.

TESTIMONY

The Committee held a hearing on the charge on September 17th, 2024. The first panel of witnesses included invited testimony from the Texas Association of Manufacturers (TAM), the Texas Commission on Environmental Quality (TCEQ), the University of Texas Bureau of Economic Geology (UT BEG), and the Cement Council of Texas (CCT).

Invited Testimony

Texas Association of Manufacturers

First to testify was Tony Bennet, President and CEO of the Texas Association of Manufacturers (TAM). As an association that has members from both the chip manufacturing industry as well as the cement production industry, TAM has a unique ability to give a fair overview of the nature of the issues between the relevant industries that the Legislature will try to balance.

Bennett testified that TAM promotes and protects a pro-growth business environment that ensures a strong manufacturing sector and a competitive Texas. Texas' 20,000 manufacturers directly employ more than 924,000 Texans and account for over 11.9% of the state's total economic output.

Bennett explained that the cement industry provides a fundamental element that makes up our state's vast infrastructure, including our highways, bridges, housing, pipelines, dams, industrial and municipal plants, and more. For many years, Texas has been a net importer of cement to keep pace with our dramatic growth.⁶⁵ Foreign sourced cement from Egypt, Turkey, Vietnam and other countries helps fill the domestic supply gap. Any disruption in the cement supply chain ripples through our economy and is inflationary across many other industry sectors. The most expensive cost driver for cement is transportation, so cement production plants have specific siting requirements for the industry to remain viable. At the top of the list are sufficient aggregate supplies, rail access, and proximity to regional growth and development.

Bennett testified that it is his understanding that the reason this agenda item is being discussed stems primarily from the recent announcement of a new cement production facility near Sherman in Grayson County. In addition to public comments regarding air quality issues, community and business leaders have expressed concerns about the impact of the proposed cement facility on the

⁶⁵ According to the Portland Cement Association's written testimony, Texas imported 6.1 million metric tons of cement in 2023. Additionally, the Precast Concrete Manufacturer's Association submitted written testimony which indicates Texas consumes 32% more cement than we produce.

county's rapidly expanding semiconductor industry. This sector has been a key employer in the Grayson County area and has provided thousands of high paying jobs there for many decades. Recently, announced semiconductor investments in the county total \$35 billion and will provide an estimated 4,700 direct jobs. The concern centers around the sensitive nature of silicon wafer manufacturing and today's precision tools required to produce the world's most sophisticated microchips.

Regarding the relationship between semiconductor fabricators and aggregate operations, he explained that semiconductor fabricators must be built with vibration-absorbing foundations. Uncontrolled vibration causes semiconductor damage and decreases performance. Even minute vibrations can negatively impact microchip quality, delaying or complicating research, development, and manufacturing. Any increase in bedrock vibrations may affect the fabricator's foundation, the photolithography tools, and other critical production equipment. Of primary concern is the close proximity of the cement plant site to the cluster of existing and proposed multi-billion-dollar semiconductor fabricators – a distance of only a few miles. Geologic vibrations caused from various methods used to quarry limestone onsite is of chief concern. In response to a question from Senator Hancock, Bennett explained that as the rise in sophistication of the chips and their manufacture process continues, vibrations mentioned as well as thunderstorms and traffic have to be mitigated.

Bennett further testified that semiconductor industry expansion in the Sherman region is critical to ensuring a geopolitically dependable supply of essential microchips. America's technological leadership depends on the ability to excel across the entire spectrum of these technologies. Both federal and state incentives are being used to reshore semiconductor manufacturing back to the states, including Texas, from Asia as a matter of national security. Texas continues to lead the nation with 15 existing or announced semiconductor component manufacturing facilities. Site selection requirements for semiconductor facilities at a minimum must include reliable and affordable power, adequate water sources, and an abundant and skilled workforce – from the university-level professions to the technically trained and skilled trades.

In closing, Bennett expressed hope that the situation can be resolved without harming either sector, the necessity of accurate information from both sectors, and the fact that each sector is critical to the Texas economy.

Texas Commission on Environmental Quality

Next to testify was Texas Commission on Environmental Quality (TCEQ) Chairman Jon Niermann. Niermann explained that Texas is growing which means there is demand for cement and cement production raises concerns for local communities. Many of the concerns are outside of TCEQ's legal authority such as location siting, inconveniences, noise, and other factors. For the concerns that are within the agency's authority, we are mainly talking about air quality. Cement production plants have significant emissions that come from material handling, crushing, milling, combustion in the kiln and chemicals introduced to control pollution. The emissions from these plants trigger major source permitting under the federal Clean Air Act. Permitting is on a case by case basis and involves substantial public process and technical review. The technical review includes air dispersion modeling which models emissions from the plant together with other sources in the surrounding area and this gives us a complete understanding of the possible worst case air impacts and it also leads to permits that are demonstrated to protect public health and the

environment. Modeling is important because it allows the agency to understand what the cement production plants would do to the surrounding area in terms of air impacts prior to construction. The technical review in the permit process looks at the control equipment technology to ensure compliance with state and federal laws. Typically, best available control technologies (BACT) are required for major sources. The review combines the emission calculation provided by the applicant, the representation of the controls, the permit limits requested, and an agency double check of the applicant's calculations before running them through the air dispersion modeling. The dispersion model includes the emissions from the maximum permitted amount in the application, other sources in the area, and the background concentrations of pollutants which are run in the model to determine if there are any areas that exceed the health based standards. If the standards are not met, the facility would need to go back and improve on their controls and processes to improve the application. In addition to air modeling, TCEQ requires air monitoring to confirm the permit protectiveness. Given the work that goes in to the permits themselves, Chairman Niermann is confident that they comply with the requirements of state and federal law and are protective of public health and the environment.

Regarding compliance and enforcement, of which Dean Zaffirini inquired, Chairman Niermann testified on TCEQ's three lane approach. First, regulated entities have the responsibility to police themselves. Second, the state has a role and finally the third piece is the public. The regulated entity has very stringent monitoring, reporting and record keeping requirements. For monitors on the plants, continuous monitoring of several pollutants is conducted by a variety of equipment constantly watching and recording emissions. Also, baghouse pressure serves as a monitor when intercepting particulate matter. If pressure is lost, there may be a failure that is creating an opportunity for particular matter to escape into the atmosphere. Additionally, ammonia slip is something that is watched carefully. Ammonia is introduced in a pollution control device through a process called selective noncatalytic reduction (SNCR). The process uses ammonia to pull nitrogen oxides from the exhaust stream which combats the ozone precursor. Some of the ammonia does not bind and is therefore introduced into the exhaust stream. These are just a small fraction of what is monitored and recorded at a facility. EPA maintains a database of different control technologies that TCEQ consults when permitting. Emissions events are required to be reported as well as six-month deviation reports to TCEQ and EPA. In addition, the entity is required to certify its compliance annually. TCEQ is responsible to follow up on reports, inspect every 24 to 36 months, and investigate complaints made by citizens. Standing compliance investigations are announced ahead of time unless the entity is classified under TCEQ's compliance history rules as a poor performer in which case the investigation visits are not announced. Citizen complaint investigations are also not announced. Chairman Niermann explained that citizens play an important role in protecting our environment and if a citizen sees something, it is important to say something. Regarding the eleven cement production facilities operating in Texas, most do not have a pending enforcement actions, but five do. All eleven of the facilities are classified as satisfactory or high performers. TCEQ takes enforcement action on any violations and continues to engage with the facilities to keep them in compliance.

In response to a question from Dean Zaffirini regarding TCEQ's use of data regarding health effects on neighbors, including children, and people who work at cement production plants, Chairman Niermann explained that the agency does not generate that kind of epidemiological or occupational safety data. However, the agency does use relevant studies with that information in the occasional circumstance when they are developing toxicological standards. The agency does

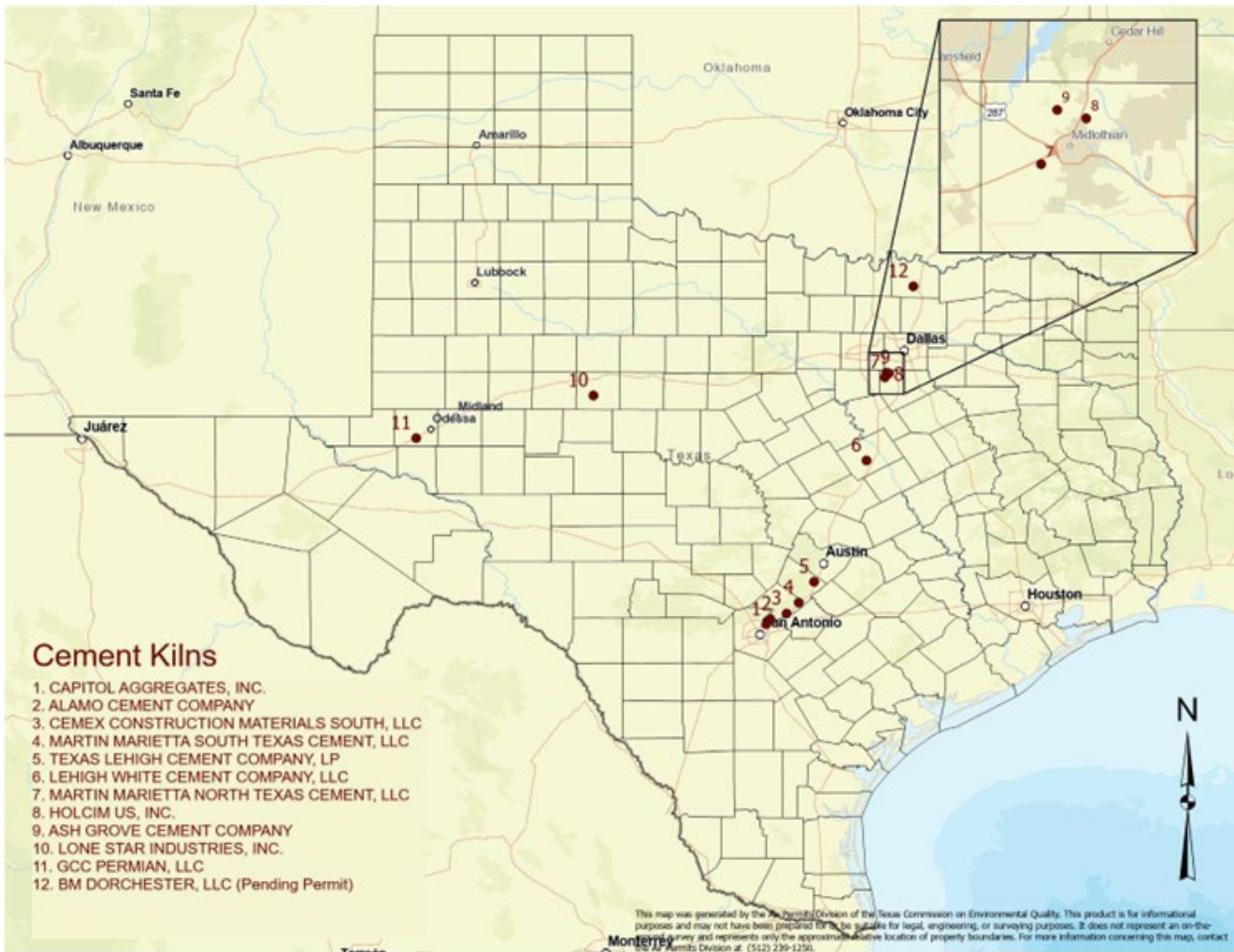
not have authority over occupational standards. When addressing the protectiveness of public health in relation to permitted facilities, federal and state standards such as the National Ambient Air Quality Standards (NAAQS) are developed with health-based standards that are sensitive to subpopulations including children. If a pollutant does not have federal or state standards, TCEQ would use the same approach to develop a standard that is sensitive of subpopulations. Those limits are brought to bear in the permitting and compliance work.

In response to a question from Senator Hancock regarding the cross-section of cement production plants and chip and wafer manufacturers, Chairman Niermann testified that TCEQ does not have regulatory authority over vibration or seismic activity. Additionally, while dust may be a concern, TCEQ regulates particulate matter only to a public health and safety standard, not to a manufacturing spec.

Chairman Niermann explained that quarries, roads, mines, and blasting are excluded from the Texas Clean Air Act and therefore not permitted by TCEQ. Emissions from moving heavy machinery, blasting, and basic excavation are not covered by TCEQ. However, TCEQ does have authority over the rock crusher that may be located at the quarry. When a rock crusher at a quarry is collocated with a cement kiln, they are permitted under the same major source air permit.

In response to a question from Senator Alvarado regarding setback among air permitted facilities, Chairman Niermann explained that there are some cases where there are some specific setbacks for various authorizations including concrete batch plants and rock crushers but not for major source permit because the protectiveness is achieved in a different way, principally through air dispersion modeling. His understanding of the history of setback distances is that they have been established by the Legislature in statute.

In addition to the testimony, TCEQ provided a list and map of Cement Kilns in Texas, including the pending permit in Grayson County known as BM Dorchester, LLC. Chairman Niermann indicated that based on the information he has, he does not think the Black Mountain permit could be issued until Fall, 2025.



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Chairman Niermann also explained that each of the eleven currently permitted facilities were permitted in counties that were in attainment for NAAQS. This is indicated by the type of permit obtained, the Prevention of Significant Deterioration (PSD) permit. Since then, both Bexar County and Ellis County have tipped into non-attainment for the ozone standard. With respect to particulate matter (PM), currently there are no PM issues. While TCEQ is entering into the process of redesignating areas of the state based on the newest PM standard issued by the federal government, TCEQ does not anticipate any of the counties in which the eleven facilities are located to have an issue being in attainment for the standard with the exception of Ellis County where they do not have enough data to be able to tell yet. Following a question from Chairman Birdwell, Chairman Niermann provided clarity that the change in status of Ellis County from attainment to non-attainment was not a result of the existence of the cement production plants based on what TCEQ has seen. Rather the growth in population and increased level of mobile source emissions such as vehicle traffic. In fact, TCEQ has promulgated rules to tighten the limits on the cement production plants to help achieve compliance with the ozone standard in Ellis and Bexar counties regardless of the continually moving federal standards.

⁶⁶ Written testimony submitted by the Texas Commission on Environmental Quality to the Natural Resources and Economic Development Committee, September 17th, 2024.

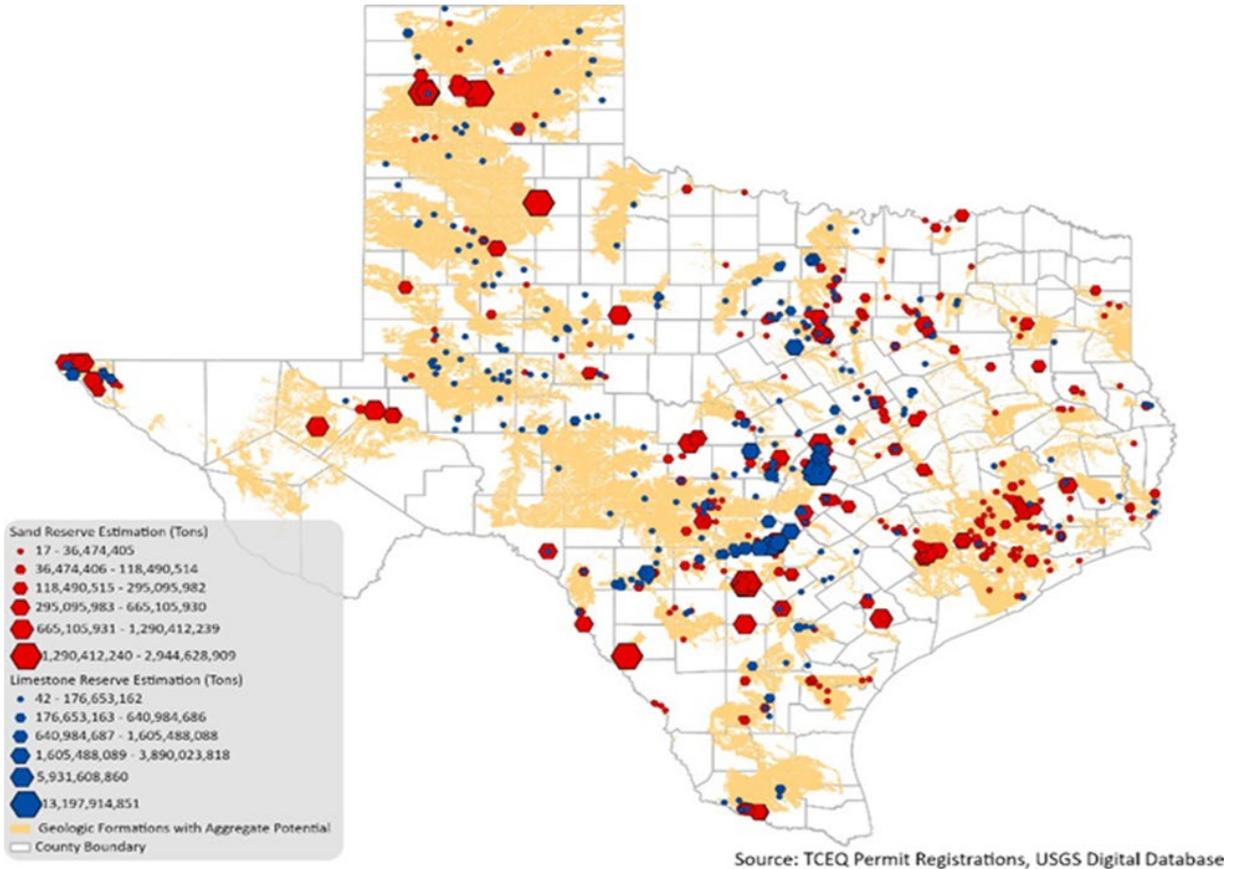
University of Texas Bureau of Economic Geology

Next to testify was Brent Elliot, Associate Research Professor and Economic Geologist with the Bureau of Economic Geology (BEG). As mentioned in the background, BEG serves as the state's geologic survey.

Elliot provided three handouts to the Committee: a Bureau Fact Sheet, Aggregate Resources of Texas Analysis, and Cement Resources of Texas Analysis. Elliot explained that the Aggregate Resources handout, includes a map that shows a high-level distribution of aggregate producing operations around the state including sand, gravel, limestone and other crushed rock material (Map 1) as well as a map that shows the volume of production that corresponds with the producers (Chart 1). These two maps indicate trends and productions over the past decade, leading to what BEG predicts to be a trend of increasing need for aggregate materials including cement production. The handout further represented a study done nearly a decade ago showing population trends by county across the state (Map 2) as part of analysis done to understand where the greatest need for aggregate materials was going to be since the need tends to follow population growth. He explained that the Dallas-Fort Worth metroplex, Houston metroplex and San Antonio essentially form the aggregate triangle of greatest need in Texas with the size of the triangle comparable to the size of the state of Arkansas. The last map on this handout represents an unpublished study that indicates the predicted aggregate resource potential for new aggregate production (Map 3). This particular map is useful in looking at where the aggregate resources are located and the potential for deeper study in those areas to avoid metroplexes overgrowing resources that will need to be used before there is no longer access to them.

Note that for visibility considerations, only specific portions of the handout are represented here. Additionally, the color version of the report can be found by navigating to the Natural Resources and Economic Development 88th Session Standing Committee page in the following webpage: <https://www.senate.texas.gov/cmte-archives.php>.

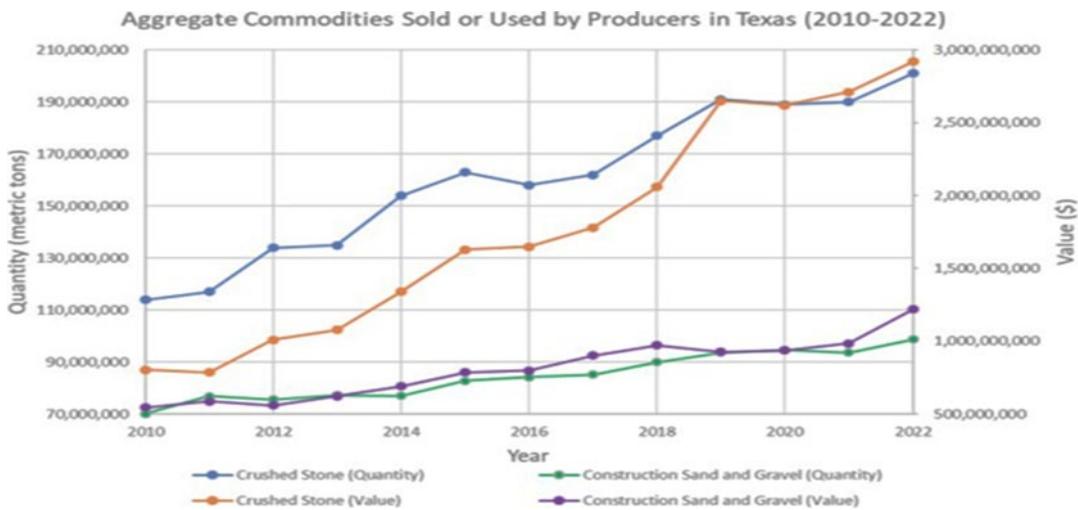
Map 1:



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⁶⁷ Written testimony submitted by the Bureau of Economic Geology to the Natural Resources and Economic Development Committee, September 17th, 2024.

Chart 1:



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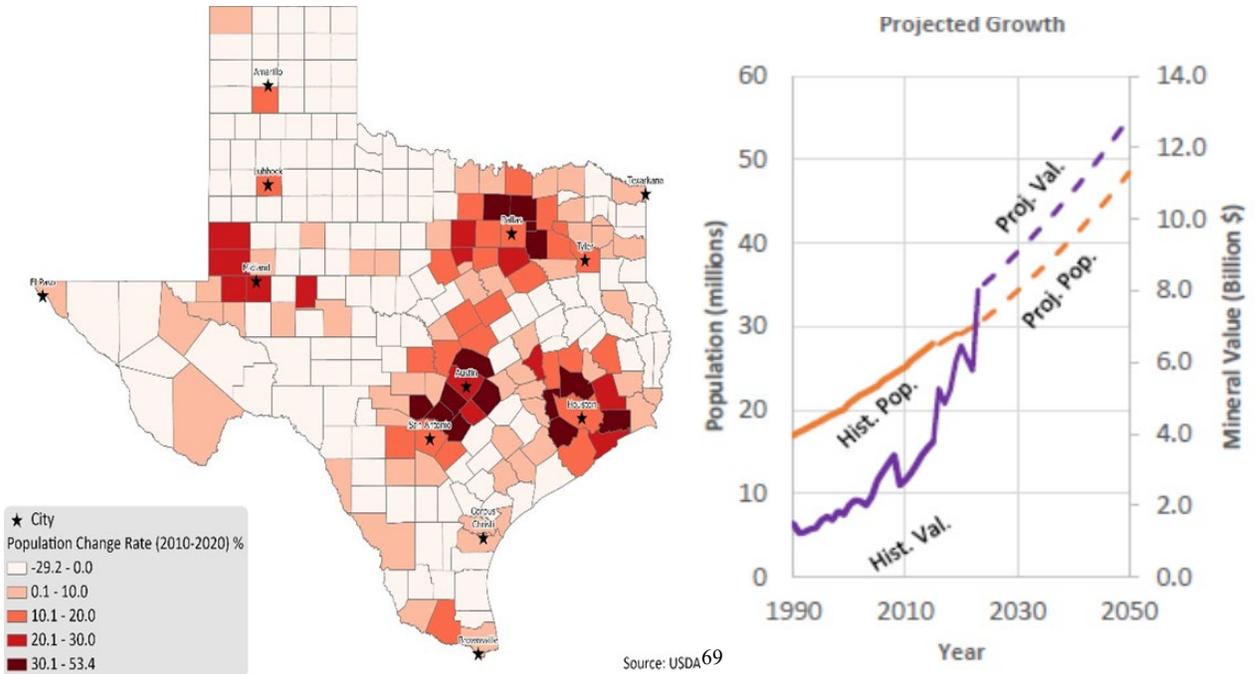
Chart 1 is accompanied by the following statements from the handout: “Production and valuation of aggregate material has increased significantly over the last 10 years (National Minerals Information Center). Aggregate material supply has increased by 58% and valuation has increased by more than 300%. Population growth and infrastructure development are primary factors in determining aggregate industry growth and have shown consistent growth since the recession in 2008.”

⁶⁸ Written testimony submitted by the Bureau of Economic Geology to the Natural Resources and Economic Development Committee, September 17th, 2024.

Map 2:

Aggregate Resource Development and Projections

Resource demand has been shown to follow long-term population growth trends. To account for trends in demand for aggregate resources, and factor the increased potential for growing markets (and decreasing potential for shrinking markets), a statewide classification of annual population growth shows where demand for resources is most critical. The USGS reported an average U.S. annual per capita consumption of aggregate materials to be 8.7 metric tons, and Texas is estimated to consume 261.3 million metric tons in 2024.

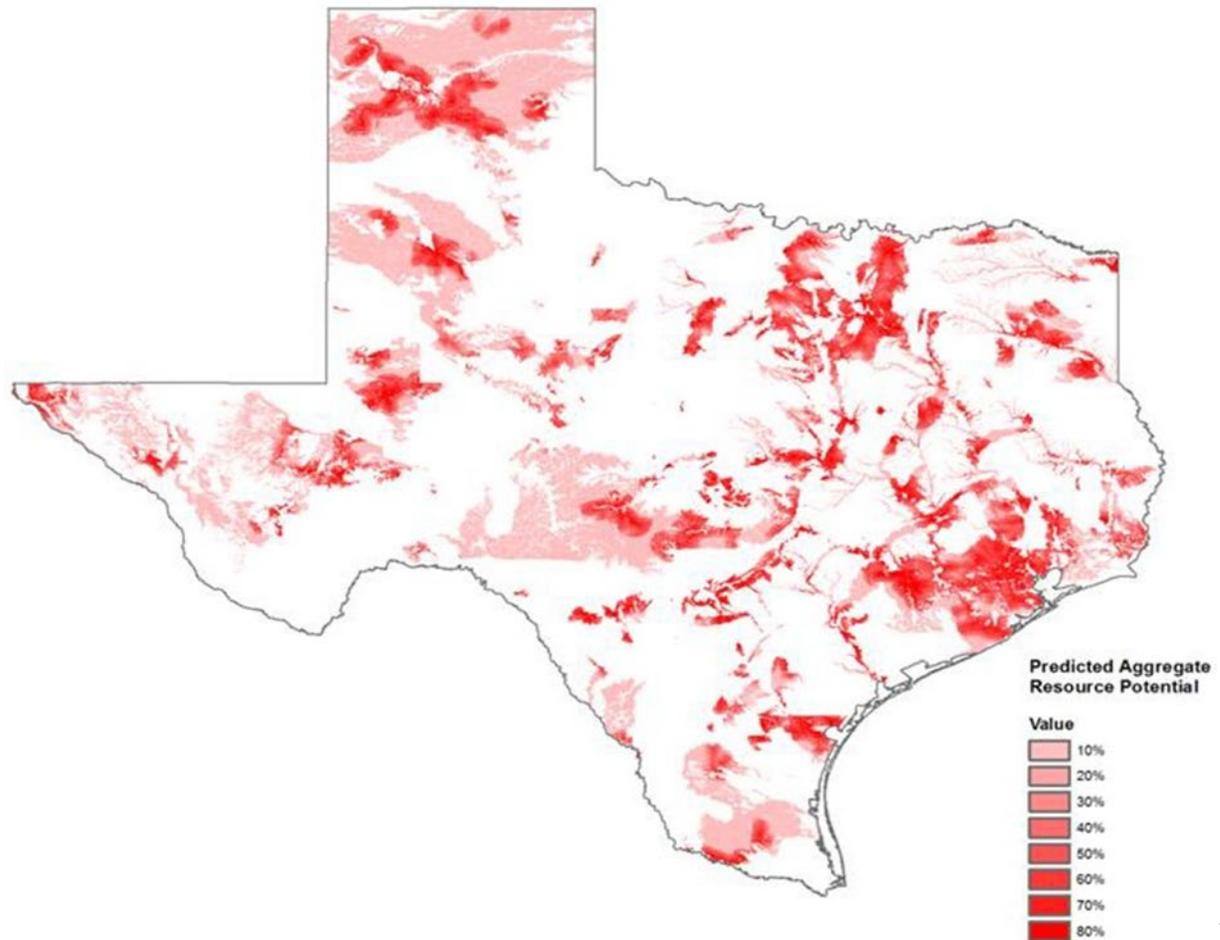


Source: USDA⁶⁹

⁶⁹ Written testimony submitted by the Bureau of Economic Geology to the Natural Resources and Economic Development Committee, September 17th, 2024.

Map 3:

- Projected population growth and resource demand based on population growth rates, historic per capita consumption, and transportation infrastructure development help identify where the critical need for resources is expected of the next 25 years.



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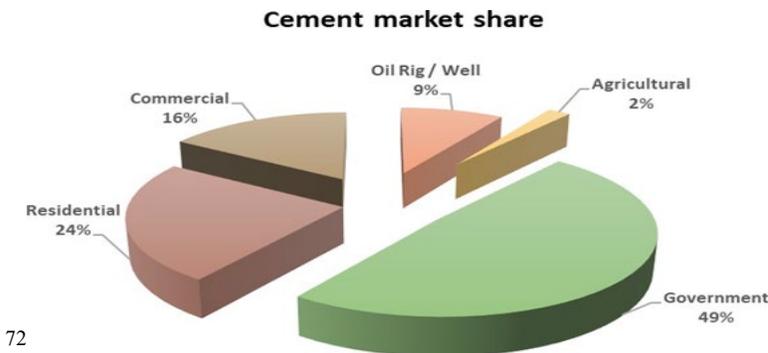
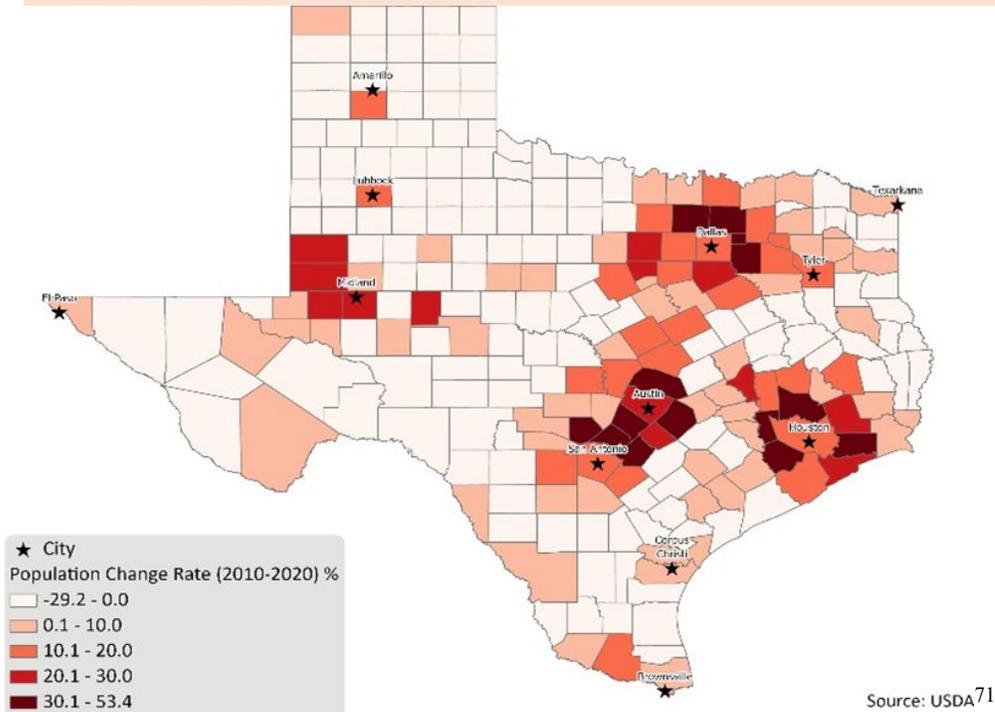
This map is accompanied with the following statements in the handout: “The use of spatial regression modeling provides a dynamic and interactive tool to aid in resource development decision making. BEG develops models using known resource site information, economics, and geological formation knowledge, integrating factors that influence cost and demand – primary transportation infrastructure and population growth rates by county. The weighted regression model developed in this study provides a broad predictive map for identifying a range of favorability for new sand, gravel, aggregate, and crushed stone resource development areas in the State of Texas.”

⁷⁰ Written testimony submitted by the Bureau of Economic Geology to the Natural Resources and Economic Development Committee, September 17th, 2024.

Professor Elliot also described the Cement Resources of Texas handout that shows where the production is and where the need will be in the next ten years or so. The following maps come from that handout.

Cement Resource Development and Projections

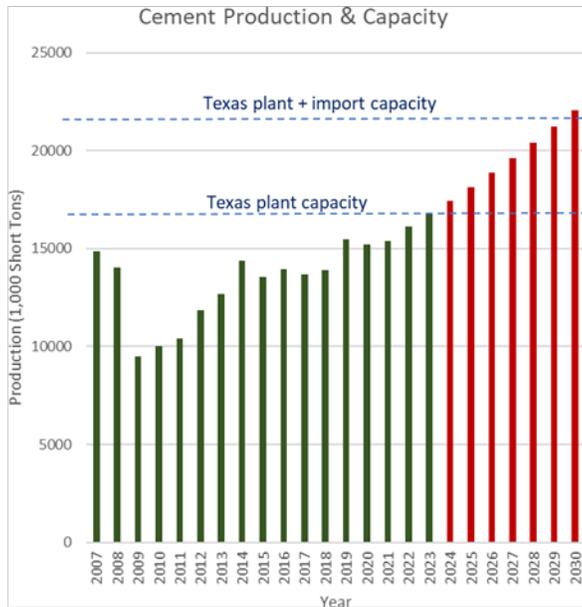
Cement demand has been shown to follow long-term population growth trends. To account for trends in demand for cement resources, and factor the increased potential for growing markets (and decreasing potential for shrinking markets), a statewide classification of annual population growth shows where demand for resources is most critical. The average U.S. annual per capita consumption of cement products is 0.40 short tons, and Texas (0.68 tons per capita) is estimated to consume almost 23 million short tons in 2024.



⁷¹ Written testimony submitted by the Bureau of Economic Geology to the Natural Resources and Economic Development Committee, September 17th, 2024.

⁷² Ibid.

- **Projected population growth and resource demand based on population growth rates, historic per capita consumption, and transportation infrastructure development help identify where the critical need for resources is expected of the next 25 years.**



Texas produces more than 1.5 million tons of cement each year. Texas plant capacity is about 1.7 million tons and projected to be exceeded by 2024. Texas plant capacity and imports are expected to be surpassed by 2030 at current production and import rates.

Expanded road and bridge construction projects, building construction in growing regional markets, and oil and gas well completions and plugging projects in the energy sector will all require additional cement production.

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After Professor Elliot explained the handouts, Senator Birdwell noted Senator Hancock’s bill, SB 2196, and mentioned that it did not get funded as described in the background of this report. Professor Elliot testified that very little can be done for that initiative without funding, explaining that most of BEG’s funding comes from grant sources such as federal grants or consortium and foundation efforts. Some of the aggregate information given in the handouts came from funding from the Center for Transportation Research with Texas Department of Transportation (TxDOT) and the Cockrell School of Engineering joining. Professor Elliot testified that they have identified the staff that would be necessary to accomplish the mapping under SB 2106 as described in the background portion of this report, and if funding were made available, they would be prepared to do so. Elliot explained that their work is based on good science, and they strictly provide information to the public and industry on what they are able to research. Additionally, in response to a question from Senator Alvarado, Professor Elliot indicated that BEG could estimate how many additional cement production plants in Texas would be needed in coming years and where they would need to be located.

Chairman Birdwell articulated that based on the maps provided by BEG, the highest potential for aggregate production is in the State’s two biggest urban cores, underscoring the importance of knowing where those resources are located.

⁷³ Written testimony submitted by the Bureau of Economic Geology to the Natural Resources and Economic Development Committee, September 17th, 2024.

Cement Council of Texas

Last to testify on the panel was Andrew Pinkerton, Executive Director of the Cement Council of Texas (CCT). CCT has supported the cement industry since 1982 and represents cement manufacturers and shippers in Texas.

Pinkerton testified that the cement industry generates over \$16.2 billion in economic contribution to the state, including \$240 million in tax revenue. Cement companies operate 11 cement plants in Texas. Between what those plants produce and what is imported, there are over 22 million tons of cement shipped each year that is used to sustain our modern way of life by building Texas communities and infrastructure. Cement is critical not just for Texas, but for the entire nation. It connects communities, supports trade, and ensures safety. The Texas cement and related industries employ over 20,000 people in high-paying jobs with a payroll of over \$1.2 billion.

Texas cement plants have been operating for an average of 54 years and as long as 73 years. According to Pinkerton, these producers are active members of their communities, investing in their people, providing well-paying careers, and giving back in meaningful ways. From hosting school field trips at their plants to providing funding and support to local communities and nonprofits. Cement manufacturers find creative ways to engage with their local communities, educating them on the important role cement plays in their everyday lives.

Regarding the product itself, Pinkerton explained that cement is the second most used substance in the world, only behind water. Cement has long been recognized for its versatility, resilience, safety, and cost-effectiveness, offering lower life-cycle costs to the taxpayer. It is a durable construction material that can stand up to severe Texas weather events like wildfires, tornadoes, hurricanes and freezing temperatures. Cement is an essential component in nearly all building construction and public works projects, including roads, bridges, dams, airports, rail, ports, hospitals, schools and military bases as well as helping to supply energy across the state. Infrastructure projects underway today are working to relieve congestion, increase movement of commerce and goods and create new energy networks and sources. With over 9,000 TxDOT projects under construction or starting soon, and over 7,500 starting in the next 4 years, access to cement is critical to completing these projects on time and on budget. Pinkerton testified that our economy is on a stronger path, and these infrastructure investments help relieve pressure points that drive supply shortages and inflation. Cement products are quite literally, the building blocks of the Texas economy. They keep us moving at the speed of business.

Pinkerton further explained that unlike other businesses, cement producers are limited to where natural forces have deposited the materials they use. Because of high transportation and environmental costs, producers normally are unable to move the vast amounts of cement produced over long distances. The Texas miracle continues to bring over 1,000 people per day to Texas, putting population and industry closer to established cement plants. Mapping deposits of these critical natural resources will give data to governments, regulators and industry allowing them to better plan the development of our state.

The cement industry has been leading the way in creating more sustainable building materials. To deliver these materials, while reducing greenhouse gas emissions, CCT's members are making significant capital investments in improving their fuel and energy efficiencies, installing emission control devices, and incorporating technologies that help produce lower carbon intensive products.

These improvements contribute to the long-term sustainability of their facilities and the communities they serve.

Pinkerton testified that while many of the plants are in different areas and operate differently, each make significant investments to identify and address any health risks for those working for or living near a facility. Safety is at the forefront of everything they do for their employees as well as the community as a whole. Additionally, in response to questions from Chairman Birdwell, Pinkerton explained that kilns are typically located near aggregate resources and include a quarry to minimize environmental impact. Transporting aggregates to a distant kiln would make cement production economically unfeasible, as it couldn't compete with the cost of importing refined cement from other states or countries.

Public Testimony

GlobalWafers

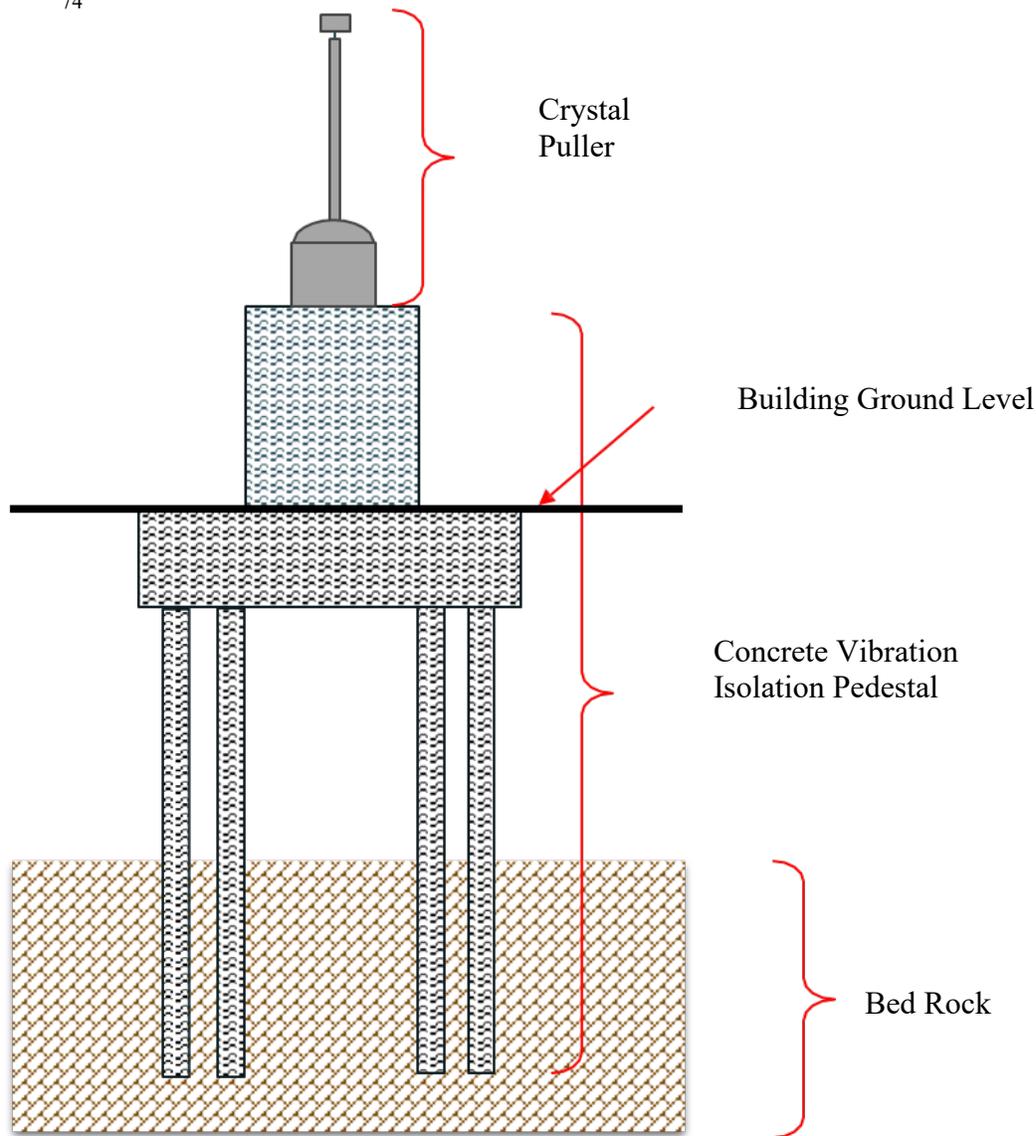
Wyatt Watson, the Engineering Director at GlobalWafers America, outlined the unique process of their silicon wafer production, emphasizing the difference between chip manufacturers and wafer production that employs a unique sensitive crystal pulling technique. This process, involving melting polysilicon in a quartz crucible and slowly solidifying it to form large, 850 pound crystals, requires strict control over vibrations. Therefore, their equipment is built on isolated monolithic concrete platforms that are individually secured by driving a series of concrete piers directly into the bedrock beneath them. Unlike some of the other semiconductor industries, they do not have the ability to introduce active or passive dampening mechanisms in their process. Watson expressed significant concerns regarding potential nearby mining operations in Sherman, Texas, specifically vibration disturbances to the bedrock that could disrupt their delicate manufacturing process. Chairman Birdwell raised GlobalWafers public comments to TCEQ regarding the Black Mountain permit application. In those comments, GlobalWafers asked TCEQ to not approve this permit and requested a 90-mile buffer radius around their facility in Sherman. Watson explained that the company does not have a clear answer to how far away is far enough. The technology was developed through empirical evidence from 50 years of coexistence with the nearest mining operations 90 miles away. However, this request was met with skepticism from the Committee, with Chairman Birdwell highlighting the impracticality of such a large buffer given existing industrial activity within that range, including possible mining operations in southern Oklahoma.

Chairman Birdwell emphasized the need for data to support a buffer zone claim and suggested that both parties – GlobalWafers and Black Mountain – should engage in a discussion to mediate the situation and find a workable solution as the two had not held discussions at the time of the hearing. Watson acknowledged the importance of this discussion and noted that the facility would soon be able to collect vibrational data to better inform the committee's concerns with the buffer zone. Senator Hancock emphasized the need for any company to engage with an entity with which they have a concern. Chairman Birdwell recognized the need for a balanced approach to ensure both industries can coexist without detrimental effects on semiconductor production. It should also be noted that Chairman Birdwell indicated during testimony from the first panel that Black Mountain had removed blasting from their permit application.

In GlobalWafers' written testimony, the company indicates that the United States is 100% dependent on foreign sources of 300 millimeter wafers for advanced chips, which is what they intend to produce. Additionally explained in written testimony, while the monolithic platforms are extremely effective at preventing all vibrations from the surrounding buildings, highways, and businesses from impairing the crystal growth process, it is unable to protect their crystal pullers from vibrations coming directly through the bedrock. If constant, damaging vibrations were to occur on the bedrock to which GlobalWafers' 100+ pullers are anchored, it would halt silicon wafer production and potentially render the pullers unusable.

The following is the representation of the monolithic platforms provided in GlobalWafers' written testimony.

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⁷⁴ Written testimony submitted by GlobalWafers to the Natural Resources and Economic Development Committee, September 17th, 2024.

Elected Officials and Candidates

The Honorable Jill Dutton, Texas House Representative, District 2, testified about the challenges her rural district faces due to urban encroachment and the permitting process for Permanent Cement Production Plants. Representative Dutton emphasized her commitment to both economic growth and the property rights of her constituents and highlighted her recent experience with TCEQ, where a permit was approved despite strong community opposition demonstrated at a public hearing with 600 attendees. Representative Dutton called for improvements in TCEQ's permitting process, advocating for the inclusion of a "community check box" to consider local input before permit approval. She also supported granting TCEQ the authority to deny permits and suggested increasing staffing and incorporating community modeling to assess the impact of concrete businesses on local communities.

The Honorable Reggie Smith, Texas House Representative, District 62, began his testimony by describing the significant economic developments in Grayson County, particularly regarding Texas Instruments, which has been in the County since 1966 and eventually branched off to create Globatech. The County has about \$36 billion worth of investments between both companies in connection with wafer fabrication. He testified that this investment represents the largest corporate investment in Texas history and is crucial for both the local economy and national security, given the current wafer shortage exacerbated by reliance on imports from Taiwan and South Korea. He also highlighted concerns about the kiln being constructed near the community of Dorchester, Texas, emphasizing its proximity to local residents and the First Baptist Church. He urged the committee to consider the impact of this plant on the community as they craft legislation, noting the ongoing development at both the semiconductor plants and the kiln. He warned that any setbacks could threaten job creation and economic growth in the region, which is set to bring thousands of jobs to the area, and that anything detrimental would be a huge economic loss, not only for his district but for the state of Texas.

The Honorable David Smith, Mayor of Dorchester, expressed his concerns to the committee regarding the proposed cement kiln near his community, detailing concerns such as visible emissions, the long permitting process, and the potential negative impacts on local business, including a nearby farm with significant investments in trees. Mayor Smith emphasized that TCEQ needs legislative support to improve the permitting process, noting that if the plant had a "clean" application it would have been done in the typical six months, and not nearly three years. He criticized the project's location, stating it poses threats to the school, church, and residential areas nearby. Mayor Smith also called for legislation regarding clearer zoning and environmental impact assessments, arguing that the past measures have not adequately protected Dorchester from industrial encroachment. Mayor Smith concluded by inviting further discussion and stressing the importance of rigorous environmental studies related to the kiln's potential emissions.

The Honorable Bruce Dawsey, Grayson County Judge, expressed his support for industry but voicing strong concerns about the proposed location for the cement kiln in his County. He emphasized that the county is not against concrete or growth, but believes the proposed site is unsuitable due to potential vibrations that could harm nearby facilities like GlobalWafers and Texas Instruments, which have invested billions into the region. Judge Dawsey explained that vibrations from mining operations, even if not involving blasting, could disrupt the stability of the limestone bedrock essential for the manufacturing processes at these facilities. He highlighted the risk of damaging silicon ingots during production, which operate continuously and cannot tolerate

any vibrations. He called for regulations to ensure better communication between new industrial developments and local governments, suggesting that had the kiln's developer consulted with local leaders, they might have been advised against that location. Additionally, Judge Dawsey advocated for buffer zones between different types of industries to protect existing businesses and developments in the area, noting that over 21,000 new developments are planned or under construction within five miles of the proposed kiln. He concluded his testimony by expressing his preference for importing cement from abroad rather than jeopardizing local industry or relying on China or other countries for wafers.

Shawn Teamann, Deputy Mayor of Sherman and Mayor Elect voiced his concerns to the committee regarding the proposed kiln near Sherman, the county seat of Grayson County. He emphasized that the project's proximity to the city limits, particularly in a highly populated area, is the primary reason for his testimony. Teamann highlighted Sherman's anticipated growth, stating that around 20,000 residences are located in areas impacted by the permitting process, and that the city is slated to grow significantly over the next five years due to the chip businesses and their economic impact. He highlighted that GlobalWafers and Texas Instruments have invested approximately \$2 billion in the region, noting that GlobalWafers alone contributes about \$33 million annually in local tax revenue, essential for funding infrastructure improvements. He expressed concerns that the kiln's location could jeopardize these investments and the future of Sherman's economy, potentially leading to substantial financial repercussions for the community. Teamann called for legislation that considers population density for specialized industries when assessing new projects, advocating for guidelines that would inform developers about appropriate locations for facilities like the cement kiln, given the unique and delicate nature of the operations at GlobalWafers.

The Honorable Lisa Swint, city council member from Garden Ridge, expanded the discussion beyond the proposed cement kiln to address the broader impacts of aggregate production on small towns. She highlighted that Garden Ridge, a small community near San Antonio with a population of about 5,000, is surrounded by multiple quarries, including a major site planning to expand. She also noted that the expansions raise significant quality-of-life issues and pose economic challenges for the town, which relies on ad valorem taxes due to its limited commercial activity. Developers interested in the area are deterred by concerns about dust, blasting, and heavy truck traffic – approximately 10,000 trucks per month traveling through the city - which could hinder the city's efforts to diversify its tax base through new developments. She expressed frustration with the lack of regulatory control over air emissions and road conditions from quarries, especially as the major quarry expands outside city limits. Councilmember Swint further advocated for holding companies accountable for road damage and expressed her frustration with TCEQ for insufficient setback regulations, suggesting that setbacks should be based on property lines rather than equipment locations, to better protect nearby residents. She also emphasized the need for increased citizen input regarding new operations and highlighted her work with the EPA on a citizen air monitoring program to address air quality concerns. Her testimony concluded with calling for better regulations and community engagement to mitigate the impacts of aggregate production on small towns like Garden Ridge.

Shelly Luther, a candidate for House District 62, testified in support of increasing TCEQ's enforcement capabilities regarding the proposed kiln that is in her district. She highlighted her experience attending a TCEQ public meeting where she discovered that the agency could not

address community concerns beyond air quality. Although she is typically opposed to government regulation, she acknowledged the need for specific oversight in this case due to planning issues relating to the proximity to the GlobalWafers facility, TCEQ's enforcement ability, and other issues she experienced being outside of TCEQ's purview. Additionally, she proposed implementing a buffer zone and expressed her commitment to work on these issues in the upcoming legislative session.

Additional Public Testimony

Lisa Washington testified next, highlighting health risks associated with cement crushing, specifically the release of silica particles that can lead to silicosis, an incurable lung disease. As a cancer survivor residing near a cement facility, she described her experience and her community's extensive efforts to comply with TCEQ processes when opposing a permit for a new facility in her community. Washington expressed frustration with TCEQ, stating that their protective standards are outdated and reliance on citizens to self-report violations is inadequate. She urged the Legislature to conduct a comprehensive review of the cement and concrete industry's regulatory practices, with a specific focus on TCEQ's mission to safeguard public health. She called for the drafting of new legislation to enhance oversight and suggested that TCEQ be required to retroactively evaluate permits issued in the past five years, particularly those deemed flawed.

Dan Washington followed his wife's testimony, also expressing his concern about cement quarries located near homes and schools in his community. He informed the committee of his community's mobilization against this industry through their formation of Friends of Union Valley LLC. He outlined specific recommendations for TCEQ, including timely public disclosure of compliance histories, consideration of motions to overturn permits, and updates to protective reviews in accordance with new EPA standards.

Adrienne Shelly from Public Citizen testified to the committee regarding his concerns with what cement kilns can burn. He noted that while hazardous waste burning has ceased, kilns are still allowed to burn tires, which he claims releases chlorine gas and dioxins that are not adequately covered by national ambient air quality standards. He also criticized TCEQ for its limitations in permitting processes, noting that the agency does not consider the location of facilities or community opposition when issuing permits. He stressed that it is a systemic issue within TCEQ, not specific to the cement industry, and that the agency should be granted more authority to evaluate the broader impacts of permits.

Mark Friesenhahn, a farmer and longtime Texan, expressed concern over the negative effects of Aggregate Production Operations (APOs), particularly concrete production plants (CPPs) and nearby quarries. He highlighted issues such as particulate emissions, heavy water usage, risks to groundwater contamination, noise and light pollution, and increased truck traffic on local roads. Friesenhahn emphasized that these impacts needed to be managed carefully to preserve Texas's environment and living standards, especially as the state experienced significant growth. While he acknowledged the need for both industry and development, he called for the implementation of "best management practices" to balance industrial needs with community standards. He supported fostering economic development while addressing the environmental and community challenges caused by APOs. Additional comments made by Mark Friesenhahn expanded on points raised by Chairman Birdwell regarding Aggregate Production Operations (APOs), specifically addressing best management practices (BMPs) and the impact of blasting. Friesenhahn explained that Texas

lacks regulations under the Surface Mining Control and Reclamation Act (SMCRA) for aggregate mining, though it applies to uranium and coal mining in the state. He emphasized that his team had submitted over 100 BMP recommendations to the Texas Commission on Environmental Quality (TCEQ), including specific practices for blasting. Friesenhahn discussed the importance of a "blasting optimization team" and how certain technologies can minimize the impact of seismic vibrations and air overpressure from blasting. He noted that companies like in Garden Ridge already use advanced techniques, such as sine wave cancellation, to reduce off-site impacts. Friesenhahn mentioned that occasionally, even with these measures, his house, built on 52 deep piers, is affected by blasting. He suggested that companies should work together to further optimize blasting practices and reduce the impact on surrounding communities and sensitive industries, like semiconductor manufacturing.

Testifying next was Milann Guckian, a retired oil and gas operations technician and president of the Preserve our Hill Country Environment (PHCE) Foundation. As a resident of Comal County, she addressed concerns over the negative impacts of the APO industry on communities, the environment, and the economy in Texas. She noted that Lieutenant Governor Dan Patrick had tasked the committee with examining the effects of Grayson County's Black Mountain cement plant and limestone quarry, but Guckian focused her testimony on the Vulcan limestone quarry in Comal County. Guckian explained that her organization, alongside local residents, had fought for seven years to challenge Vulcan's air permit, going through all Texas Commission on Environmental Quality (TCEQ) protocols and the court system, only to have the Texas Supreme Court deny their petition. Without legislative intervention, she warned, Grayson County might face a similar situation. She outlined several issues that were inadequately addressed in Vulcan's air permit, including air particulate emissions, water quality and quantity, economic impacts like property devaluation, reduced tax valuations, and the costs incurred by citizens during the permitting process. She also mentioned blasting, seismic activity, increased traffic, and light and noise pollution, which she expressed were not properly regulated. Guckian highlighted that Vulcan's operations were located within the Edwards Aquifer recharge zone, a critical water source for the region, and noted the potential risks to interconnected waterways and endangered species habitats. She compared the impacts of the Black Mountain operation in Grayson County to those faced by Comal County and emphasized the need for legislative action to address these widespread concerns. She concluded by stating that her written statement contained a list of recommendations for the committee to consider.

Jack Olivier, a retired geologist and resident of Comal County, testified next and also expressed concerns about the proposed 1,500-acre Vulcan limestone quarry. Olivier highlighted the importance of the Edwards Aquifer, which supplies groundwater to over 2.5 million people from San Antonio to San Marcos. He explained that the site is situated in an area with a high density of caves, including Bracken Cave and Natural Bridge Caverns, which are interconnected with the aquifers below. Olivier pointed to a 2017 test well on the Vulcan site that encountered an 80-foot lost circulation zone, proving that the cave-prone zone extends under the entire site. He also referenced a 2010 dye trace study conducted by the Edwards Aquifer Authority (EAA), which showed that groundwater flow paths are interconnected both vertically and horizontally, making the area vulnerable to contamination even without visible sensitive features. As further evidence, he cited a 2000 diesel spill in New Braunfels, where over 2,000 gallons of diesel leaked, and small amounts were detected miles away in local springs. Olivier warned that Vulcan's proposed nine mining pits, some near caves, could exacerbate these risks, especially with the blasting involved,

which could fracture the rock further. He criticized TCEQ's best management practices for requiring only a 25-foot separation between the quarry pit floor and the groundwater level, stating this was inadequate to protect the aquifer, given the site's natural faults and fractures. Olivier concluded by urging the TCEQ not to approve the Vulcan quarry until more scientific investigations were conducted and recommended, they consult the Edwards Aquifer Authority, as they are the experts on the matter.

James Doyle, a retired geologist from Comal County, raised concerns about the proposed Vulcan Quarry and its potential to contaminate the Edwards and Upper Trinity aquifers, particularly with nitrate pollution. He explained that the quarry is located over the Edwards Aquifer recharge zone, and contaminants from surface activities, such as ammonium nitrate fuel oil (ANFO) used in blasting, could reach the groundwater via crossflow between the aquifers. Doyle also raised concerns about the separation of the quarry floor and the aquifer. He further explained that ANFO, the primary explosive used in limestone mining since the mid-1950s, is a known groundwater pollutant. Approximately 30% of ANFO remains unconsumed during blasting, making it highly soluble and prone to leaching into the aquifer. Doyle linked the rise in nitrate levels in the Edwards Aquifer to the increased use of ANFO rather than urbanization, which is often cited as the cause. He showed that nitrate levels have significantly increased since the 1960s, coinciding with large-scale ANFO use, and that wells near quarries exhibit higher nitrate levels than those in more urbanized areas. Doyle concluded by recommending that BMPs be revised to include stricter requirements for blasting practices, particularly to reduce nitrate pollution, and to ensure that pit elevation is based on accurate, site-specific data from the shallow Upper Trinity Aquifer, rather than outdated historical estimates. He stressed that underestimating the water levels at Vulcan's site could put nearby wells at increased risk of contamination and exacerbate nitrate pollution in the aquifer.

Chris Hopmann, a Comal County resident with 40 years of industrial experience spoke regarding the Vulcan Quarry and its potential impact on the community and surrounding environment. He acknowledged the relevance of the issues being discussed in relation to Grayson County but emphasized that the problems Texas faces, including quarry operations and cement plants, stem from a lack of coordinated efforts by state agencies. Hopmann stressed the importance of prioritizing people's health, living conditions, and the environment over financial considerations when balancing the benefits and harms of such operations. He skipped over the topic of blasting, acknowledging that it had already been discussed, and instead focused on the financial and environmental impacts of the proposed Vulcan Quarry. He noted that this quarry is located over two major aquifers and that, with 12 to 15 other quarries already in the area, there is no need for another one. He emphasized the risk to Texas' water resources posed by approving such a project. Hopmann criticized the Texas Commission on Environmental Quality (TCEQ) for its role in approving permits, claiming that the permitting process does not take logical considerations into account. Despite opposition from local municipalities, county commissioners, judges, and the Comal Independent School District, permits for the Vulcan Quarry were approved without substantial public input. Hopmann argued that the TCEQ appears to work more for the benefit of applicants than for the people affected by these projects. He ended his public testimony by urging the committee to put a pause on the project, asserting that the process had not been conducted correctly. He warned that Texas must better prepare for the impacts of growth, comparing it to running out of water due to poor planning, and stressed the need for a system that accurately considers long-term consequences for the community and environment.

Josh Marr, a candidate for County Commissioner in Grayson County, spoke on behalf of the current Commissioner, who was unable to attend due to an injury. Marr emphasized the rapid growth of communities near Grayson County and the importance of attracting major businesses like Texas Instruments and GlobalWafers, which are investing \$45 billion to bolster the U.S. semiconductor market and create over 4,500 direct jobs. He highlighted how these facilities would contribute to national security by reducing reliance on Asian imports. Marr expressed concerns about the proposed Black Mountain Dorchester cement production limestone mine, located within three miles of the semiconductor facilities, noting that it could introduce uncertainty and potentially render one of these facilities unusable. He explained that the success of attracting these businesses was partly due to Grayson County's clear air status and a 40-year history of seismic stability, both crucial for the semiconductor industry. He also mentioned the ongoing construction of 21,527 residential units within five miles of the proposed plant, arguing that its proximity could significantly devalue these properties. While acknowledging the need for construction materials as the county grows, he urged that concerns about the proposed mine should not be perceived as an attack on the concrete industry, noting that concrete must be mixed close to where it is used. Marr discussed the issue of vibrations caused by mining operations and their potential impact on the semiconductor facilities, likening it to ripples created by a rock dropped into a lake—the further away from the source, the less impact it has. He suggested that further research is needed to determine the safe distance from the GlobalWafers facility to mitigate vibrations and proposed the idea of creating a buffer zone around the existing silicon industry, given that there is only one silicon wafer manufacturing plant in Texas. Marr advocated for more comprehensive research and data to inform decisions, suggesting that limestone areas further away from critical facilities could be designated for future cement operations.

Dr. Laura Hunt testified, introducing herself as a pediatrician and the director of Midlothian Breathe. She emphasized that Midlothian was the cement capital of Texas, housing three different plants, which gave it the highest density of cement kilns in the country. In her ten years living there, she noted that the challenges faced in Grayson County were not new or unique but had recently gained attention due to economic and national security concerns related to a specific project. Dr. Hunt expressed her belief that her local community was not adequately protected while living near these plants. She disagreed with claims that the plants contributed significantly to the community, arguing that they acted as "sacrificial lambs." She pointed out that the plants collectively employed only about 500 people and were consistently underpaying their property taxes. Attempts to communicate with the plants had been met with dismissive responses, indicating a disconnect between the plants' interests and those of the community, according to Dr. Hunt. She raised concerns about the air dispersion modeling used to determine the siting and setback requirements for the kilns, labeling it as highly suspect. Independent consultants had highlighted issues with the modeling, which sometimes relied on meteorological data from locations as distant as Corsicana, Texas, or even Louisiana. Lastly, Dr. Hunt revealed that the ambient air quality monitor in her area had been down for the past 18 months, leaving the community "flying blind" regarding their air quality. Upon further inquiry by Chairman Birdwell, Dr. Hunt further explained that information was available on the TCEQ website, indicating that the monitor was offline due to construction issues in the area, which had led to a need to relocate the monitor. Dr. Hunt confirmed that the monitor's status was related to an industrial park development. Chairman Birdwell acknowledged Dr. Hunt's concerns about the lack of monitoring who noted that the monitor in question is the closest one to the cement plants, while other monitors are located further north. Dr. Hunt expressed frustration, stating that the community had repeatedly been told the

monitor would be up in “three more months,” and highlighted the potential implications for non-attainment areas. Chairman Birdwell reassured Dr. Hunt that the issue would be addressed promptly, indicating that the TCEQ Chairman Niermann was present and would take note of the concerns raised so that they could be promptly addressed.

Cyrus Reed, representing the Lone Star Chapter of the Sierra Club, presented his testimony which was accompanied by a ten-page handout containing further details. He began by addressing the Chairman of the Texas Commission on Environmental Quality (TCEQ), asserting that the agency did have some regulations concerning aggregate production operations (APOs). He noted that certain APOs were required to register annually with TCEQ and mentioned previous instances where TCEQ had intervened to enforce best management practices, particularly in response to concerns about flooding in the San Jacinto area and to protect the Brazos River in the John Graves Scenic Area. Reed discussed the emissions from cement production facilities, particularly nitrogen oxides (NOx) and particulate matter (PM 2.5), emphasizing the need for these facilities to decrease emissions in light of new ozone standards. He suggested that TCEQ be provided with tools to assess the cumulative impacts of production facilities in relation to their surroundings. He referenced legislation filed by Senator Miles, including Senate Bill 1920, which aimed to establish a three-mile zone for major permits, advocating for a process where TCEQ would consider cumulative impacts in their evaluations. Addressing concerns about carbon dioxide emissions and global warming, Reed acknowledged that the process of creating clinker from limestone naturally releases CO₂. He proposed that production methods could be improved for efficiency, recommending the use of dry processes over wet ones. He also suggested replacing some limestone with alternative materials to lower global warming emissions and reduce the environmental impact of quarry mining. In his ending remarks, Reed noted that many of the best facilities were already implementing best management practices, such as storing dust in containers rather than leaving it exposed. He indicated that he had further recommendations to share but chose to allow other speakers to contribute. In a discussion between Cyrus Reed and Chairman Birdwell, they addressed the complexities surrounding the Texas Commission on Environmental Quality's (TCEQ) decision-making process regarding cumulative impacts of cement production facilities. Chairman Birdwell expressed concerns about the potential for TCEQ to shift from a strictly scientific to a more subjective, politically influenced approach when considering factors beyond environmental concerns, such as public sentiment and vibrations associated with these facilities. Reed acknowledged the challenge of balancing factual evidence with the consideration of cumulative impacts on local communities. He suggested that TCEQ should be empowered to examine not only the proposed site but also alternative locations and methods, such as different procedures for rock crushing and the choice between dry and wet processing, while still adhering to factual standards. Chairman Birdwell then raised questions about how to guide the cement production industry, particularly in the context of known limestone reserves and urban development in Texas. He considered the possibility of designating certain areas, similar to potential protections for the semiconductor industry in Grayson County, to prioritize cement production while being mindful of urban expansion and resource availability in West Texas.

Cliff Kaplan, secretary of the grassroots coalition Texans for Responsible Aggregate Mining, addressed the committee regarding various aggregate production operations affecting communities across Texas. He highlighted that the coalition includes members from twenty-five organizations in 47 counties, representing both populous and rural areas impacted by issues related to rock quarries, cement plants, gravel mines, and more. Kaplan emphasized the lack of regulation in

limestone mining, which he described as a long-standing issue known to those affected by these industries. He indicated weaknesses within TCEQ, including challenges related to enforcement, monitoring, and public participation in the permitting process. He cited a recent case in Comal County, where an applicant announced an air quality permit application in a newspaper far removed from the impacted community, suggesting that such actions reflect the behavior of bad actors who should be incentivized to act responsibly. He noted the importance of understanding aggregate production in comparison to other states and countries, expressing a desire for further exploration of this issue. He mentioned successful precedents from other regions and industries, such as the San Jacinto Basin and lignite and coal regulations, which could serve as models for regulating mining. Kaplan proposed that counties could have a more significant role in the siting of quarries, similar to their involvement in landfill placements, suggesting that local input is essential. Lastly, he discussed the market power of the Texas Department of Transportation (TxDOT) as a major consumer of aggregate products, proposing that TxDOT could incentivize better practices within the industry to promote responsible behavior.

Larry Linenschmidt, speaking as an individual and as the Executive Director of the Hill Country Institute, expressed his concerns regarding cement production and its impact on public health during his testimony. He highlighted that, while cement is essential for economic growth, it is also a significant source of pollution, including harmful emissions and noise that adversely affect the health of Texans. Linenschmidt invoked biblical principles, referencing Matthew 25:40, to emphasize the moral obligation to care for vulnerable populations, particularly those living near cement plants. He proposed that cement facilities should be required to be located at least three miles away from residential areas to protect community health and prevent adverse health outcomes associated with pollution. He argued against allowing expansions of existing plants within this radius, emphasizing that such pollution disproportionately affects pregnant women, children, the elderly, and others. He noted that if the cement industry were considered a country, it would rank as the third-largest emitter of carbon dioxide globally, following the U.S. and China. He urged the committee to prioritize decarbonization efforts in cement production, stressing an urgent need to address climate change. He recommended that TCEQ be allocated \$2 million to develop a state climate action plan.

Mayor David Smith, testified again, this time in his capacity as a representative of Quality Grain. He spoke briefly about the community impacts of the proposed cement facility in Dorchester on a grain storage facility located in close proximity. He referenced a handout that contained email correspondence with the Texas Department of Agriculture (TDA) regarding the facility's plan to release 20% water vapor into the air, as this could significantly affect the conditioning of their grain that is reliant on low humidity and the north wind. He noted that the cement facility's operations could lead to issues such as spoilage and the dry grain soaking up the new moisture. Highlighting the economic importance of the facility, he mentioned its production of significant quantities of food products, giving an example of 50 to 70 million McDonald's biscuits and five to seven million pizzas. He ended his public testimony by emphasizing the need to consider the potential community impacts of the facility, thanking the committee for their attention to the matter.

Lastly, Tiffany Broyles, testified on her own behalf and as a board member of a private school cooperative meeting at First Baptist Dorchester. She expressed concern about the proximity of a proposed facility to the school and emphasized that this issue had not been adequately recognized.

Broyles noted her perception that the cement industry was not present at the hearing to represent their own economic interests. Chairman Birdwell asserted that it was ultimately up to the individuals and companies to decide whether to send representatives, however a representative from one of the cement plants was present for most of the hearing, and the Cement Council of Texas provided testimony to represent the industry at large upon invite. He emphasized that his priority as the committee chairman was to ensure an informative hearing and that was accomplished. Broyles clarified that she was not questioning or disrespecting the hearing, or the information provided but wanted to express her perception that there was a lack of presence from the industry while community members were passionately appealing for protection.

CONCLUSION

The Committee learned quite a bit about semiconductor manufacturing, cement production, and the public's concerns related to the cement industry. The invited witnesses provided significant context to the relevant industries, and several individuals from the public conveyed their experiences. The Committee received valuable info about the permit process for cement production plants, the role of TCEQ and what types of concerns fall under their regulatory authority as well as some of the issues that do not. Some particular areas may not have been made fully clear during the hearing, so this conclusion includes some additional information in an effort to provide complete context of the hearing.

Regarding TCEQ's role, it should be noted that while TCEQ does not regulate the excavating of the aggregate material, the agency does have regulatory authority over emissions from rock crushers, kilns, or any other significant air emissions that might need permitting. Additionally, quarries are subject to additional permits separate from the Major New Source Review (NSR) air permit. In certain circumstances, cement kilns, quarries, and other types of aggregate production operations may need to obtain a water quality authorization from TCEQ. Cement kilns typically discharge wash water, process wastewater, non-contact cooling water and others. Facilities operating a cement kiln may be required to obtain an individual water quality permit to authorize discharge into or adjacent to waters in the state to control discharges of pollutants. Texas Pollutant Discharge Elimination System (TPDES) permits, and other state permits are developed under Texas Water Code Chapter 26, which authorizes TCEQ to set requirements in a permit. In addition to the individual TPDES water quality permits, TCEQ has three statewide general water quality permits available for cement kiln activities: 1.) Concrete Batch Plant General Permits may be issued when batching is done on site of a cement production plant. 2.) Stormwater Multi-Sector General Permits may be issued when the facility falls under the Occupational Safety and Health Association (OSHA) Stand Industrial Classification (SIC) code. This would require a Stormwater Pollution Prevention Plan that includes best management practices as well as additional limitations. 3.) Stormwater Construction General Permits are authorized allowing discharge of stormwater and certain non-stormwater discharges from construction activities that disturb greater than one acre of soil. Construction activities that disturb five acres or more also require Stormwater Pollution Prevention Plans, best management practices, and TCEQ prior authorization.⁷⁵

⁷⁵ Additional information provided to Natural Resources and Economic Development Committee staff following the hearing on September 17th, 2024.

Regarding blasting, TCEQ does not regulate the implementation of blasting excavation methods as discussed during the hearing. However, the Mine Safety and Health Administration⁷⁶ (MSHA) within the U.S. Department of Labor plays a role in blasting regulation, along with OSHA. According to their website, MSHA carries out the provisions of the Federal Mine Safety and Health Act of 1977 as amended by the Mine Improvement and New Emergency response Act of 2006 which include regulations surrounding blasting. According to the cement industry, MSHA has the ability to come on site of a quarry and inspect blasting records. Additionally, according to the cement industry, the now abolished U.S. Bureau of Mines established the “z curve” that is the industry standard for maintaining safe blasting practices to prevent damage to structures. It is unclear if there is enforcement related to the “z curve,” and it may be appropriate to further investigate if a reference in state statute and permitting could ensure appropriate controls are being followed in Texas.

Additionally, anyone who creates an environmentally hazardous circumstance is subject to enforcement by TCEQ and local authorities. Should a person or entity release unsafe chemicals or emissions into our environment, witnesses should contact TCEQ to determine if investigation is warranted.

Several concerns were raised about the protectiveness of the permitting process, including requests for buffer zones around air permitted facilities. While the Legislature has implemented buffers or setbacks in certain instances, they are typically done in a political capacity, not as a scientific measure as indicated by Chairman Niermann. As the Committee learned from testimony, the Major New Source Review (NSR) permit standards are federally delegated and designed to ensure protectiveness at the property line indicated in the permit using sophisticated, scientific dispersion modeling. Therefore, a setback must be a function of political nature, not scientific nature which is the role the Legislature has asked TCEQ to retain and execute. Giving TCEQ political discretion reduces scientific reasoning in the equation and dissolves the agency’s ability to remain impartial and permit based on environmental and health considerations. That said, the Legislature has created a permit for concrete batch plants called an enhanced control permit. This permit trades the opportunity for a contested case hearing with permit conditions that fall outside of environmental and health considerations, but rather neighborly considerations. Such controls include mandatory public hearings, distance requirements, 100 foot buffers for all equipment, paved roads and other controls that benefit the surrounding community beyond a health and safety measure. Quarries do not have an optional enhanced control permit at this time. The Legislature could consider exploring the possibility to create an incentive for quarry applicants to obtain a new permit such as this if created. It should be noted, however, that this opportunity may not exist for Major NSR permits like cement production facilities because they are federally delegated and given on a case-by-case basis. Removing the contested case requirement for a Major NSR is likely not possible.

Regarding the intersection of cement production and semiconductor industries, the new circumstance presented in Grayson County illuminates the issues. It is clear that there are real concerns with the proximity of aggregate operations to wafer manufacturers like GlobalWafers that utilize a bedrock-based platform to prevent surrounding vibrations that are not able to reach the bedrock at an impactful level. On one hand, we have a very important product in which the

⁷⁶ <https://www.msha.gov/>

United States is 100% dependent on foreign countries to produce.⁷⁷ The 300 millimeter wafers are an increasingly important component in the semiconductor supply chain and represent a significant investment in the state and the nation, prompting proposed federal CHIPS act incentives for GlobalWafers. Once operational in 2025, the production will be continuous, and the company has empirical evidence that the operation can be successful under the current vibrational conditions. On the other hand, we have a vitally important industry in cement production that is an absolute requirement for building materials, infrastructure, and businesses across the state and nation. Cement is the second most used substance in the world behind water, and production in Texas continues to grow based on increased demand according to information provided by the Bureau of Economic Geology. As that demand grows, the industry will continue to receive economic signals to open new operations to compete with foreign imports of cement. In fact, in efforts to respond to a request from the Committee regarding the life left in our current eleven cement production plants, the Cement Council of Texas was able to provide some staggering info related to the immediate need for cement due to the unprecedented population growth we are experiencing. With the Texas miracle bringing an average of 1,300 people moving to our great state every day, the demand for cement is accelerating at a rate we have never before encountered. Over the next decade, this growth trajectory suggests we will require over 3.2 million additional tons of cement annually by 2034. To contextualize those numbers, that means that in ten years, cement consumption will grow from 23 million tons estimation in 2024 as calculated by the Bureau of Economic Geology, to 26.3 million tons in 2034. That is a 14% increase. Considering Texas is currently estimated to import 32% more cement than we produce, we are quickly moving towards relying primarily on other countries. If production rates remain at current levels, we could very well import 46% of our cement in ten years.⁷⁸ It is clear that both industries are vitally important on the world stage and Texas should be able to experience the benefits of each. The interim charge asks the Committee to ensure cement production plants are strategically situated and uphold community standards while also fostering economic development. Economic development is not restricted to a particular industry, and in fact, both industries are needed for Texas and communities to compete economically. Changes to the Major NSR permitting process would impact both cement production plants and semiconductor manufacturers as they both receive that particular air permit. Also, any change related to cement production plants needs to consider the impact to the existing eleven plants in Texas.

Based on the information given to the Committee, it is also clear that a solution to proximate coexistence of the two industries is difficult to discern. Most importantly, reliable, scientific data is needed to determine a realistic distance in which aggregate operations are able to be conducted while wafers are able to be safely produced. There is no changing the location of the geologic formations. While the state has some information on the approximate locations of those formations, funding and implementation of SB 2196 is necessary to conduct the mapping of areas suitable for aggregate production operations and conflicts to that production such as land use, zoning, and other impediments. This mapping would be immensely helpful in preventing encroachment by one industry or another as well as for local development planning. If a business

⁷⁷ Written testimony submitted by GlobalWafers to the Senate Committee on Natural Resources and Economic Development on September 17th, 2024.

⁷⁸ The Cement Council of Texas provided additional information following the Committee hearing. In particular CCT indicated that each new resident requires an estimated 1,374 pounds of cement annually to maintain a standard of living that includes housing, schools, roads, and other essential infrastructure. This translates into an immediate need for approximately 1.8 million pounds of cement per day, or 328,410 tons per year.

or a local government is aware of a geologic formation in an area, steps could be taken to better site or plan to avoid the scenario in which coexistence is difficult or not possible. Because GlobalWafers is near the production phase of their operations, a backward approach to preventing industry encroachment may be required. To better understand the vibrational parameters surrounding the delicate production about to occur at GlobalWafers, Chairman Birdwell has asked the Bureau of Economic Geology, along with their Texas Seismological Network and Seismology Research team, TexNet, to investigate a realistic measure of vibrational impact at the GlobalWafers site. As of October 2024, the Bureau is conducting research with available seismological data and site visits to help the Committee understand the limitations. The goal is to get an estimation of a safe distance for aggregate operations the Legislature could use to create policy to protect GlobalWafers operations while creating a process to ensure the state is able to foster cement production for its growing needs.

RECOMMENDATIONS

Following the discussions held in the hearing on Cement Production Plants, the Committee makes the following recommendations.

- Continue to work with the UT Bureau of Economic Geology (BEG) to determine a realistic distance in which GlobalWafers is able to conduct their operations without vibrational disturbance at the bedrock level. Based on that feedback, create legislation to implement a zone in which any “aggregate production” applicant to the Texas Commission on Environmental Quality (TCEQ) who disturbs the bedrock must coordinate with BEG to determine if they can remain under any tolerances necessary for the wafer producer. If the applicant is not able to do so according to BEG, the permit should be denied by TCEQ. This may result in the need for the Legislature to give TCEQ the authority to postpone the decision on the pending Black Mountain permit. Additionally, this action needs to be investigated as a potential eminent domain “taking” of private property and how that should be addressed due to the nature of the unfortunate timing of the situation. Funding for BEG for the purpose of working with the applicant and the wafer producer will need to be identified, whether it is from the applicant, the wafer producer, the state, or a combination. For future wafer production sites in other areas, aggregate production operations should not be liable for rightfully producing natural resources if they create reasonable bedrock vibrations. As such, new wafer producers who implement a bedrock foundation system such as GlobalWafers should consult with BEG to understand locations of geologic formations that the state will need to produce in the future. This leads to the next recommendation.
- The Legislature should further consider funding the program created under Senator Hancock’s bill, SB 2196. The bill should be reexamined to determine if further specification is necessary to achieve the recommendations set forth here.
- Consider creating an “enhanced control” type permit and incentive to obtain that permit for quarry operations to alleviate public concerns regarding issues that are outside the scope of TCEQ’s scientific, environmental approach to permitting.
- Consider the need to reference federal blasting regulations such as the “z curve” in state statute and permit requirements to ensure blasting standards are upheld in Texas.