Texas Senate Committee on International Relations and Trade

Interim Report

79th Legislative Interim

SENATE COMMITTEE ON INTERNATIONAL RELATIONS AND TRADE

79TH LEGISLATURE

SENATOR EDDIE LUCIO, JR.
Chair

SENATOR ELIOT SHAPLEIGH
Vice Chair
SENATOR KEVIN ELTIFE
SENATOR CRAIG ESTES
SENATOR TROY FRASER
SENATOR KEL SELIGER
SENATOR JUDITH ZAFFIRINI

December 27, 2006

The Honorable David Dewhurst
Lieutenant Governor of Texas
Capitol Building, 2E.13
Austin, Texas 78701

Dear Governor Dewhurst:

The Texas Senate Committee on International Relations and Trade hereby submits its report for the 79th Legislative Interim. We thank you for providing us with the opportunity to address the issues outlined in the report and to present recommendations that will benefit the State of Texas.

Respectfully submitted,

Eddie Lucio, Jr.
Senator Eddie Lucio, Jr.
Chair

Eliot Shapleigh
Senator Eliot Shapleigh
Vice-Chair

Senator Kevin Eltife

Craig Estes
Senator Craig Estes

Troy Fraser
Senator Troy Fraser

Kel Seliger
Senator Kel Seliger

Judith Zaffirini
Senator Judith Zaffirini

P.O. Box 12068 • Sam Houston Bldg., Rm 475 • Austin, Texas 78711
(512) 463-0385 • FAX (512) 463-6004 • Dial 711 for Relay Calls

SCOPE OF STUDY: INTERIM CHARGES.

During the 79th Legislative interim, the Senate Committee on International Relations and Trade was provided four broad and diverse charges in order to attempt to address the needs of rural, distressed regions of Texas while assisting cities and businesses to compete in the international marketplace.

In order to meet its charges, the committee held two hearings with various stakeholders (on August 7 and October 24, 2006) and the staff met with numerous individuals. The committee heard more than thirteen hours of testimony concerning the need for Texas to do more in its water/wastewater, housing and economic development efforts.

Exhibit 1: 79th Legislative Interim IRT Committee Interim Charges

1. Study state and federal programs aimed at assisting cities and businesses to compete in national and international markets. Develop recommendations to increase the competitiveness of Texas communities and entities in trade and commerce.

2. Study and develop recommendations to address the infrastructure and economic development needs of border and coastal communities in rural and non-urban areas of Texas.

3. Study and report on the availability of housing in distressed areas of the state, especially along the Border colonias and rural Texas. Review state, federal and private initiatives aimed at providing housing assistance. Work with private and non-profit entities to address the growing housing needs. Develop recommendations for the cost-effective use of existing housing monies, leveraging of funds and initiatives for new funding sources.

4 Review state and local policies impacting the water/wastewater services, transportation and health infrastructure needs of Texas colonias. Work with the Texas Water Development Board, the Office of the Attorney General and the Colonia Coordinator to develop recommendations aimed at improving and strengthening the available resources and policies affecting economically distressed areas.

WATER AND WASTEWATER RELATED ISSUES.

An overview of Colonia Prevention Laws.

For years, the high concentrations of substandard housing lacking critical, basic infrastructure along the United States and Mexico border provided the State of Texas the unfavorable recognition as the border state with the highest number of such housing developments, i.e., colonias.[1] As multi-state studies have reported, colonias are not just a Texas phenomenon; they are found along all states bordering the country of Mexico. Due to the health and safety problems of their living conditions, "colonias have received national, political and media attention and have been a growing concern for local, state and federal officials."[2] Recently, colonia-like substandard housing conditions have developed outside the immediate border area, in the rural regions of Texas. To understand how these substandard dwellings may have spread to different areas of the state, it is helpful to see how Texas' original colonias evolved.

Colonias have developed through the course of the last fifty years. "The development of Texas colonias dates back to at least the 1950s. Using agriculturally valueless land, land that lay in floodplains or other rural properties, developers created unincorporated subdivisions. They divided the land into small lots, put in little or no infrastructure, then sold them to low-income individuals seeking affordable housing."[3] Unscrupulous developers would prey on the innocence of low-income Texans promising them that basic water and wastewater infrastructure would eventually be installed in the lots that they were buying; however, after such lots were bought, they never fulfilled their promises. In practice, at the county level, one county official explained to the IRT Committee that, "there is many a time when a subdivider requests approval of a subdivision plat, and such approval is given, conditioned upon an explicit promise that the subdivider will install certain infrastructure

---

[1] Reed, Stowe and Yanke, LLC. *Comparative Analysis of Water and Wastewater Infrastructure Requirements in States Bordering with Mexico.* 2001. (RSY Study). ("Colonias can be found in all states that border with Mexico, but the State of Texas has significantly more colonias than the states of New Mexico, Arizona and California combined.")

[2] *Id.*

[3] Federal Reserve Bank of Dallas, *Texas Colonias*, http://dallasfed.org/ca/pubs/colonias.pdf.

improvements. In the past, many subdividers would promise improvements, but after having sold the lots and collected the money, failed to make the promised improvement or made them in such a poor way that it ultimately costs more to remedy the situation than what it cost to initially install them. The failure to make the improvements as promised, and a failure to post financial assurances, led directly to many of the colonia conditions the State has since been called upon to remedy."[4]

EDAP: Economically Distressed Areas Program.

The problems associated with the Texas colonias led state officials in the late 1980s to pass a series of measures aimed at providing financial assistance to address the water/wastewater needs of existing colonias and to prevent new problems from developing. "Commencing in 1989 after numerous studies, national reports, and hearings, showing hundreds of thousands of residents living in some of the worst living conditions in the United States, and facing crisis conditions, the State of Texas began adopting and implementing a series of laws, funding programs and regulations to alleviate some of the myriad [of] health and environmental conditions. Foremost among these actions, the State enacted the Economically Distressed Areas Program."[5] The Texas Water Development Board (TWDB), as the lead agency administering this program, recently reported that the "71st legislative session (1989) created the Economically Distressed Areas Program (EDAP) to provide financial assistance in the form of grants and loans for water and wastewater services to economically distressed areas in affected counties. The program includes measures to prevent future substandard developments, including the requirement that all grant or loan recipients' county or city adopt Model Subdivision Rules, as legally applicable."[6]

Model Subdivision Rules: A Fiscal Financial Safeguard.

The Model Subdivision Rules (MSRs) "impose several requirements on the platting of new

---

[4] The Honorable Jose R. Rodriguez, County Attorney, El Paso County. Testimony. IRT Committee hearing. Oct. 24, 2006.

[5] *Id.*

[6] TWDB, *Legislative Appropriations Request, Fiscal Years 2008-2009,* Aug. 18, 2006.

subdivisions."[7] Among the essential elements that the rules provide is the "build it or bond it" provision. This critical measure requires that "if water and sewer infrastructure is not built when final plat approval is sought, the subdivider must post a bond or other financial guarantee to cover such cost."[8] Specifically, in an effort to curb the proliferation of colonias, as well as to hold developers accountable, "in 1995, colonias-prevention laws were strengthened in Texas, providing enhanced requirements for platting, selling and connecting utilities to residential land outside city limits in any county within 50 miles of the Texas-Mexico border. The laws also require that when a new residential subdivision is created, the subdivider must either install water and sewer service facilities prior to approval of the subdivision plat, or provide a financial guarantee (such as a bond or a letter of credit) to cover the utilities' cost if the installation is not completed by a promised date stated on the plat."[9]

Exhibit 2: Policy behind EDAP

"..As part of the bargain for receiving millions of dollars from the state for remedial work, EDAP areas must enforce strict rules (the 'model rules') assuring that water and sewer facilities in new residential developments meet minimum state standards... "

Source: OAG, http://www.oag.state.tx.us/border/thumbnail.shtml.

In practice, the MSRs work as a fiscal financial safeguard for the state's investment in correcting the water and wastewater problems created by unscrupulous developers. As county officials testified to IRT, "one of the most effective mechanisms for assuring the installation of adequate infrastructure in subdivisions is what is commonly referred to as the 'build-it or bond-it' provision of the Model Rules."[10] In relation to EDAP, the Model Rules serve as an eligibility participation filter: in order to participate in the grant/loan program, counties must adopt the Model Rules to be eligible for funding. In this manner, the Model Rules serve as a financial guarantee or accountability safeguard for the state's investment in ameliorating the problems caused by those who would prey on the

[7] OAG, http://www.oag.state.tx.us/border/history.shtml.

[8] *Id.*

[9] OAG, "Attorney General Abbott Obtains Injunction To Halt Colonia's Development In Cameron County," Press Release, Feb. 6, 2006.

[10] *See* Rodriguez.

innocence of low-income Texans. While providing a "Thumbnail Sketch of Colonias-Prevention Laws" the Office of the Attorney General (OAG) described the state's policy behind the fiscal safeguard feature of the Model Rules when it explained that "as part of the bargain for receiving millions of dollars from the state for remedial work, EDAP areas must enforce strict rules (the 'model rules') assuring that water and sewer facilities in new residential developments meet minimum state standards."[11]

Exhibit 3:
Model Rules: Colonia Prevention Measures

". . .The model subdivision standards adopted by the Legislature have gone a long way toward ensuring that substandard colonias do not proliferate. . ."

John Henneberger
Co-Director TxLIHIS

Source: *John Henneberger, Co-Director, TxLIHIS.* Testimony. IRT Committee hearing. Aug. 7, 2006.

In this role, the MSRs have been hailed by those who have historically dealt with some of the worst colonia-related problems in Texas as an essential tool to curb the spread of substandard subdivisions. The El Paso County Attorney, the Honorable Jose Rodriguez, testified in the Austin hearing and explained the benefits of the state's policies behind the Model Rules. Mr. Rodriguez stated that under the EDAP "local governmental entities were authorized to adopt regulations requiring that subdivision developers install basic water and sewer infrastructure or post financial guarantees to assure the installation of promised infrastructure before any lot could be occupied by a resident. Under the Model Rules, land subdividers can still profit from selling land but must also share in the cost of providing for the basic amenities of water, wastewater, and roads infrastructure. No longer could the subdividers reap all the benefits of the land sales, while simply dumping all of the cost of remediation into the laps of taxpayers. Instead, in return for strict enforcement of the MSRs, particularly the financial assurance provisions . . . ('build-it or bond-it') to prevent future colonia conditions, local counties, municipalities and water districts were benefitted with funding for water and sewer infrastructure improvements to relieve existing problems."[12] John Henneberger, Co-Director of the Texas Low Income Housing Information Service (TxLIHIS), echoed the colonia prevention abilities of the Model Rules during the Houston hearing when he testified that "the model

[11] OAG, http://www.oag.state.tx.us/border/thumbnail.shtml.

[12] *See* Rodriguez.

subdivision standards adopted by the Legislature have gone a long way toward ensuring that substandard colonias do not proliferate."

In order to see the value of the Model Rules, it is helpful to see them in a real life case. Early in 2006, the Office of the Attorney General sued a South Texas developer who was "illegally selling residential lots despite failing to obtain required plat approval from local Cameron County officials and failing to install or bond sewer and water services."[13] In February, the Attorney General obtained an injunction against the developer for selling lots of land without water/wastewater services and for failing to provide the necessary financial guarantees for their installation. In his press release, the Attorney General of Texas, the Honorable Greg Abbott, explained the seriousness of the case and of his office's commitment in such matters. General Abbot stated that his "office will vigorously fight against the proliferation of illegal housing developments in this state . . . our border residents should not be exploited by unscrupulous developers who seek to defy the law and deny basic services to those who want to buy property and build a home."[14]

The developer of the illegally created subdivision was given 30 days by the District Court to "bring the residential subdivision into compliance with the state's platting laws and provide financial assurance for building water and wastewater facilities."[15] However, because the developer failed to comply with the order, the Attorney General filed a motion of contempt seeking sanctions against the developer. In his press statement, General Abbot explained the seriousness of the state's colonia laws and how instrumental they are to the welfare of Texans. General Abbot stated, "Texas colonia prevention laws must be taken seriously. Our border residents will not be exploited by unscrupulous developers who seek to defy the law and spread housing developments that lack basic services crucial to the health and safety of residents."[16]

---

[13] *See* OAG, Feb. 6, 2006.

[14] *Id.*

[15] OAG, "Attorney General Abbott Files Motion Of Contempt Against Developer Of Illegal Colonia In Cameron," Press Release, July 27, 2006.

[16] *Id.*

In August of this year, the developer was found to be in contempt of court for failing to "bring the residential subdivision into compliance with the state's platting laws and provide financial assurance for building water and wastewater facilities."[17] Although the developer was in contempt and was ordered to go to jail, the court "suspended the jail sentence for 60 days" to provide the developer a "final opportunity to correct the violations. The court ordered him to either build the necessary water and wastewater infrastructure, secure financing for such improvements and provide financial assurance to Cameron County, or abandon the project altogether and refund the lot buyers the money they paid" for the properties purchased.[18] Commenting on the judgment and on the value of Texas' colonia prevention laws, General Abbott stated that he was "very pleased with the court's tough message for the defendant. These laws were created to ensure that rural Texans along the border have running water and wastewater . . . there is far more at stake than the convenience of consumers: It is a real health and safety concern that in years past endangered thousands of Texans along our border. I will work aggressively to hold accountable anyone who puts their bottom line ahead of the well being of lot buyers."[19] (The developer eventually brought the subdivision into compliance.)

Attempts to weaken Colonia Prevention Measures.

Unfortunately, in the past, some representing developers have argued that their bottom lines (profit margins) are hurt by the Model Rules. They contend that requiring the Model Rules longer than for a short time frame ultimately hurts developers. During the 79th Regular Legislative Session, a bill was filed that in essence would have limited the financial guarantee of the Model Rules, under certain circumstances, to no more than three years.[20] Colonia advocates who have worked with the Legislature for more than a decade to curb the spread of colonias and to ameliorate the problems caused by unscrupulous developers voiced their concern over such attempts. "The Legislature should resist any attempt to weaken the [Model Rules] standards. We are especially concerned that the 'build-it or bond-it' provisions of the law remain in place. These provisions compel developers

[17] OAG, "Attorney General Abbott Hails Court's Finding Of Contempt Against Developer Of Illegal Colonia In Cameron County," Press Release, Aug. 23, 2006.

[18] *Id.*

[19] *Id.*

[20] Senate Bill 1443, 79th Regular Legislative Session (2005).

of colonias to provide the infrastructure before they sell lots or to post a bond to guarantee performance. Without this provision in place it is extremely likely that colonia developers will create new substandard colonias."[21] While urging the IRT Committee to maintain the "build-it or bond-it" financial guarantee requirements of the Model Rules as they presently exist, the El Paso County Attorney explained during the Austin hearing that "proposals to limit this requirement to three years or less would effectively eviscerate the requirement and lead to more colonias. Instead of requiring subdividers to keep their word on providing infrastructure improvements which have been promised and bargained for, weakening this requirement would allow subdividers to reap the financial windfalls without fulfilling their obligations. They would be able to file plats with the promise of providing water, sewer and other improvements but then simply wait until the assurances expired. This would result in residents once again living in the infamous 'third-world' colonia conditions of years past and/or leave the state taxpayers to once again fund millions of dollars worth of required improvements."[22]

Exhibit 4: "Basic Services Must Be Ensured"

"... There should be no argument. El Paso County Attorney Jose Rodriguez is right on the mark when he says rules and regulations regarding standards for colonias must be maintained, not relaxed. It's a living-conditions issue. It's only common sense that contractors and developers must continue to be held to fair standards in providing basic water, electricity and sewer services in their housing projects. . ."

-- El Paso Times
"Colonia Regulations," Editorial

Source: El Paso Times, "Colonia Regulations, Basic Services Must Be Ensured," Oct. 26, 2006.

Testimony received by the committee from housing and colonia advocates echoed the views of El Paso County Attorney Rodriguez. They maintain that weakening the Model Rules basically forces taxpayers to subsidize unscrupulous developers by having the state shoulder the burden of rectifying

[21] John Henneberger, Co-Director, TxLIHIS. Testimony. IRT Committee hearing. Aug. 7, 2006.

[22] *See* Rodriguez.

the underdeveloped subdivisions they would be creating. Specifically, testimony indicated that "it is in the interest of both the state and low-income families to see that substandard colonias do not proliferate. The Legislature has acted decisively to shut down the development of new colonias that lack proper water, wastewater and transportation infrastructure. This legislation has generally succeeded. It is vitally important that this legislation not be weakened in any manner that would allow the development of additional substandard colonias. Any weakening would cause low-income families suffering and cost the taxpayers of the State more in retrofitting infrastructure to poorly designed subdivisions."[23]

Exhibit 5: Impact of proposals to weaken the Model Rules.

"...Proposals to limit this requirement to three years or less would effectively eviscerate the requirement and lead to more colonias ...weakening this requirement would allow subdividers to reap the financial windfalls without fulfilling their obligations. They would be able to file plats with the promise of providing water, sewer and other improvements but then simply wait until the assurances expired. This would result in residents once again living in the infamous 'third-world' colonia conditions of years past and/or leave the state taxpayers to once again fund millions of dollars worth of required improvements..."

-- The Honorable Jose Rodriguez
El Paso County Attorney

Source: The Honorable Jose Rodriguez, County Attorney, El Paso County. Testimony. IRT Committee hearing. Oct. 24, 2006.

The Deputy Chief for the Consumer Protection and Public Health Division of the Texas Attorney General's Office, Attorney John Owens, explained to the IRT Committee in Houston the critical importance of the Model Rules. Deputy Chief Owens testified that "installation of water and wastewater facilities or financial guarantees for it -- commonly called 'build-it or bond-it' -- has proved a key element in the program to assure safe and healthy residential subdivisions." Providing a real life illustration of what would happen if the Model Rules were weakened, Deputy Chief

[23] Karen Paup, Co-Director. TxLIHIS. Testimony. IRT Committee hearing. Oct. 24, 2006.

Owens went on to testify that in three cases in Hidalgo County in which the Attorney General's Office filed enforcement actions "the developers pushed through approved plats, but left off the requisite build it or bond it element. The result was residential occupation of lots lacking proper septic systems and water meters. The Hidalgo County cases illustrated what can happen when the build it or bond it requirement is eliminated or time-limited -- low income buyers taking up residence on their lots before they can afford to install proper facilities, particularly septic systems. This condition is the colonia problem that build it or bond it was designed to address. Without an adequate substitute to avoid occupation of substandard lots, weakening build it or bond it requirements may put us back where we started -- a place where no one wants to go."[24]

Exhibit 6: Colonia Prevention for Health and Safety Reasons.

"These laws were created to ensure that rural Texans along the border have running water and wastewater...there is far more at stake than the convenience of consumers: It is a real health and safety concern that in years past endangered thousands of Texans along our border. I will work aggressively to hold accountable anyone who puts their bottom line ahead of the well being of lot buyers."

-- The Honorable Gregg Abbott
Attorney General, State of Texas

Source: OAG: *Attorney General Abbott Hails Court's Finding Of Contempt Against Developer Of Illegal Colonia In Cameron County.* Press Release, Aug. 23, 2006.

As explained, by assuring that the needed basic water/wastewater infrastructure is either installed or has a financial guarantee for its installation, the Model Rules serve as a critical fiscal safeguard for the state's investment in remediating the problems associated with colonias. If such financial safeguards would not exist, or if they would be weakened, there would be little or no accountability for the millions of dollars that the state and federal governments have invested in rectifying the problems which unscrupulous developers created. The El Paso County Attorney explained that "if one accepts the premise that the Model Rules and the EDAP program are designed to prevent new

[24] John Owens, Deputy Chief for the Consumer Protection and Public Health Division, OAG. Testimony. IRT Committee hearing. Aug. 7, 2006.

colonias and ameliorate conditions in existing colonias, the results would seem to indicate that these programs are clearly working as intended. The strict nature of the Model Rules has helped put an end to the problematic practices which would otherwise have gone unabated."[25] Specifically, "the financial assurance requirement has been and remains an effective enforcement mechanism to prevent marginal subdividers from creating more problems which then require intervention of individual homeowners and taxpayers in general to remedy."[26]

Colonia Prevention Law Enforcement.

The "MSRs are an integral part of the state's policies to address colonia proliferation and should be continued, but they only work if diligently enforced."[27]

Much of the enforcement actions of the Attorney General's Office on Model Rule compliance occurred predominantly in the early years after the Model Rules were strengthened in 1995. The "most significant period of litigation occurred between 1995 and 2001, following the enactment of tough new colonias-prevention laws."[28] In both of the IRT hearings, the committee was informed that the OAG funded its colonia investigators by using a grant given by the Environmental Protection Agency (EPA). The Federal grant was for $50,000 and provided for two investigators. Unfortunately, the federal monies no longer exist leading to much of the investigative efforts to be done by financially strapped local units of government. "As mentioned during testimony the EPA grant funds of $50,000 for two OAG colonias investigators were not renewed in 2003. However the OAG continues to prosecute enforcement cases where violations are documented by local governmental officials."[29]

---

[25] *See* Rodriguez.

[26] *Id.*

[27] David Mendez, Private Attorney. Testimony. IRT Committee hearing. Oct. 24, 2006.

[28] Edna Ramon-Butts, Special Attorney General, OAG. Testimony. IRT Committee hearing. Oct. 24, 2006.

[29] Stacey Napier, Deputy Attorney General for Government and External Affairs. Follow-up information. Oct. 27, 2006.

Since this EPA grant was not renewed in 2003, some have testified that there is a need for the state to develop its own manner to fund Model Rule compliance investigative efforts. During the Austin hearing, in submitted testimony, the Deputy Secretary of State testified that there is a "need to reinstate and provide funding for the OAG's colonia investigators to assist the counties and the state with MSR monitoring, compliance and enforcement."[30] County officials also testified in Austin that in order to protect the economic investment Texas' taxpayers have given in rectifying the substandard infrastructure in colonias that they "strongly believe that the state should consider increasing the state resources to the state agencies like the Water Development Board, [and] like the Attorney General's Office" for investigative efforts. Specifically, El Paso County Officials testified that they "recommend that the Attorney General's office be given sufficient funding to increase their investigatory ability."[31]

As indicated above, in order to undertake their colonia enforcement abilities along the border region, the OAG employed two investigators funded by a $50,000 EPA grant for colonia law enforcement efforts. Commenting on the need to provide a similar enforcement for the newly expanded statewide EDAP, El Paso County officials went on to testify that this level of funding for two investigators is "insufficient." County Attorney Rodriguez went on to say that if Texas is going "to continue the good work that has been done"along the border and safeguard the state's investment which "should be protected," then the necessary amount of funding should be given if "we are going to be able to now provide this type of enforcement and vigilance, not only in the border communities . . . but to all the other communities across the state that we are talking about including in the [EDAP] program."[32] Although EDAP counties and cities currently have the necessary authority to attempt to enforce the MSRs, they lack the needed resources to undertake such enforcement efforts. "Counties and Cities have enforcement powers over the MSRs but the costs of enforcement are unfunded. The counties and cities are diligent in reviewing submitted plats, but there is obvious difficulty in going behind the plats and verifying that all of the underlying obligations of developers

---

[30] H.S. Buddy Garcia, Deputy Secretary of State, Office of the Secretary of State. Testimony. IRT Committee hearing. Oct. 24, 2006.

[31] *See* Rodriguez.

[32] *Id.*

or utilities have indeed been met."[33]

The Deputy Secretary of State in his submitted written testimony stated that by reinstating and funding the OAG investigators, the "investigators would identify areas of illegal colonia development or report to the county and state when developers were advertising the sale of lots under 5 acres that had not been platted nor had water/wastewater. These investigators would also work with the developers and new county staff to ensure they were aware of the laws."[34]

Contributory Causes for the Development of Colonias.

As noted earlier in the report, "colonias can be found in all states that border with Mexico, but the State of Texas has significantly more colonias than the states of New Mexico, Arizona and California combined."[35] Often at times, individuals who have never seen a colonia ask why colonias exist? "A brief history of colonias laws is appropriate to set the stage for where we are today. The colonias themselves grew up in large part because of ineffective laws regulating land subdivisions."[36] This finding is echoed by federal agencies when they report that colonias "continue to exist for a variety of reasons, such as poor land use regulations."[37]

In 2001, the TWDB commissioned a study to ascertain why Texas has a higher disproportionate share of colonias among border states. While assessing the "factors contributing to the relatively high population of colonias in Texas," the TWDB testified in the Austin hearing that "the study concluded: Texas lagged behind the other border states in providing authority to counties to require infrastructure installation; the Model Subdivision Rules have been effective in significantly reducing substandard development and residential areas that lack adequate water and wastewater; [and] there

[33] *See* Mendez.

[34] *See* Garcia.

[35] *See* RSY Report.

[36] *See* Edna Ramon-Butts.

[37] HUD, http://www.hud.gov/groups/farmwkercolonia.cfm.

is a need for increased regulatory [authority] to prevent colonia development across the State."[38]

Exhibit 7: Need for Model Rules & Regulatory Authority.

"...TWDB research project in 2001 to determine factors contributing to the relatively high population of colonias in Texas compared to other border states. The study concluded:

- *Texas lagged behind the other border states in providing authority to counties to require infrastructure installation;*
- *The Model Subdivision Rules have been effective in significantly reducing substandard development and residential areas that lack adequate water and wastewater;*
- *There is a need for increased regulatory [authority] to prevent colonia development across the State."*

-- TWDB Written Testimony
October 24, 2006

Source: TWDB, Testimony. IRT Committee hearing. Oct. 24, 2006.

Ordinance Making Authority: Empowering Counties to protect their constituents.

Unlike Texas, other states have provided their counties with some level of regulatory authority. "Counties in New Mexico, Arizona and California have been granted the authority to create ordinance and plan for future growth through comprehensive planning and zoning districts for several decades."[39] In Texas, the experience has been different. In the Lone Star State, counties possess those rights as spelled out by statute and counties in the State have "been traditionally and

[38] TWDB, Testimony. IRT Committee hearing. Oct. 24, 2006.

[39] *See* RSY Report.

purposefully limited in their authority by the Texas Legislature."[40] Providing a historical sketch of colonia development, one agency recently reported that "in today's world, Texas Colonias are considered an observable fact. Their beginnings date back to the 1950's. As a response to the reconstruction era, Texans adopted a state constitution to minimize the powers of government. By making counties subdivisions of the state with no home rule powers, Texans guaranteed that no county could take an action or adopt a rule until it is first voted on by the state. Thus, in Texas, all regulatory powers originate with cities and the state. Areas outside city limits are 'regulation free zones' until problems become so serious that the entire state is ready to empower a county to deal with them. These regulatory free zones enabled colonia developers to purchase or own tracts of land with a marginal agricultural value. Some of these tracts were flood prone and drained poorly . . . "[41]

The TWDB study which compared the regulatory powers of the different border states concluded that "counties in Texas are very limited in their authority to regulate land development."[42] Under the current law, "counties have not been granted general ordinance-making authority from the Texas Legislature, which would allow counties to act as necessary to protect the public health and safety."[43] As reported by this committee in 2004, since 2001, in an attempt to prevent the proliferation of colonias to the entire state, members of the IRT Committee have filed bills to provide counties the necessary authority to regulate land development: SB 517 (2001), SB 535 (2003) and SB 684 (2005). Unfortunately, after having passed through the entire Senate and being voted favorably out of the corresponding House committees, these bills stalled in the House Calendars Committee. A number of individuals, including housing and colonia advocates, have commented on the need to pass these bills. One housing advocate testified that "the Texas Senate has passed bills during the past two sessions that would extend limited ordinance making authority to counties and specifically would allow counties to enforce building standards. Unfortunately, the Texas House of Representatives did not pass the bills. We believe that these powers are essential to prevent the development of substandard rural subdivisions . . . We urge the legislature to finally enact these powers in the

---

40 *Id.*

41 TDHCA, http://www.tdhca.state.tx.us/oci/background.jsp.

42 *See* RSY Study.

43 *Id.*

upcoming session."[44] Correspondingly, among their recommendations to address the infrastructure and economic development needs of rural communities in the state, officials from the Office of Rural and Community Affairs recommended to the Committee that the Legislature should "address county authority to establish minimum building standards for public safety or to regulate land use."[45] In the Houston hearing, representatives from the Texas Association of Counties testified that they have "consistently supported legislative efforts to expand county authority in order to ensure orderly development and adequate infrastructure throughout the state. Although some progress has been made, substandard development remains a statewide problem and results in poor housing conditions, public health threats and substandard (or nonexistent) infrastructure. As you well know, this is a statewide problem, not confined to any particular geographic area, and we are grateful for the efforts of you and your committee in emphasizing the scope of the problem."[46]

Exhibit 8: Limited Ordinance Making Regulatory Authority Needed.

"...The Texas County Association of counties has consistently supported legislative efforts to expand county authority in order to ensure orderly development and adequate infrastructure throughout the state... There are significant parts of this state that are seeing and will continue to see tremendous growth in the coming decades. If we are to retain something of this state for those that come after, we need to look closely at county authority in this area. While most counties would not necessarily seek outright ordinance-making authority, expansion of current authority would help stem the growth of substandard housing...."

-- Marc Hamlin
President, Texas Association of Counties

Source: Marc Hamlin, Texas Association of Counties. Testimony. IRT Committee hearing. Aug. 7, 2006.

44 *See* Henneberger.

45 William M. Jetter, III, Chairman, Executive Committee and Charles S. Stone, Executive Director, ORCA. Testimony. IRT Committee hearing. Aug. 7, 2006.

46 Marc Hamlin, President, Texas Association of Counties. Testimony. IRT Committee hearing. Aug. 7, 2006.

Texas Behind the Curve in Providing Counties Regulatory Powers.

By some accounts, historically, Texas has lacked a concerted effort to provide all of its counties the necessary regulatory authority for appropriate development. "Unlike other border states, the Texas legislature grants county authority to regulate land uses on a case by case basis. For instance, the Model Subdivision Rules can only be implemented by counties along the border or by counties that meet certain economic criteria. Additionally, only select counties have the ability to create zoning districts. The other border states have granted general land use authority, such as zoning authority, to all counties."[47]

There are helpful benefits if counties in the state would have regulatory powers. While discussing how the Legislatures of New Mexico, Arizona and California have provided their counties ordinance-making authority, the 2001 TWDB commissioned study reported that "General ordinance-making authority in Texas would empower counties to pro-actively address issues related to the health and safety of its residents through expanding the county's ability to provide services and regulate activities that are in the best interest of the county as a whole."[48] The Executive Director of the Office of Rural Community Affairs (ORCA) arrived at a similar conclusion when he informed the committee that Texas needs to "address county authority to establish minimum building standards for public safety or to regulate land use."[49] Furthermore, in follow-up testimony Stone testified that the State could expand the infrastructure planning abilities of counties by making "Subchapter E, Chapter 232, Local Government Code" applicable to the entire State "without affecting current requirements as outlined in Subchapters B and C, Local Government Code."[50]

County officials have urged legislative committees to take the necessary steps to comprehensively address the problems engendered by the lack of ordinance making powers. While explaining the interaction between the Model Rules and Ordinance making authority, El Paso County Attorney

---

[47] *See* RSY Study.

[48] *Id.*

[49] *See* Jetter and Stone.

[50] Charles S. Stone, Executive Director, ORCA. Testimony. IRT Committee hearing. Oct. 24, 2006.

Rodriguez explained to the committee that "we need to provide counties limited ordinance making authority . . . you just can't have rules that require water, sewer and some other basic infrastructure and then leave out the essential authority to regulate the land use . . . "[51] The protection of Texas' economic investment necessitates the state providing counties limited ordinance making authority. "We would urge the committee to take the additional steps to resolve the problems as they now exist and prevent the spread to new areas. There is no doubt that as a state, we do not want to return to the days when we had hundreds of thousands of Texans living in residential subdivisions in substandard housing without water or sewer services and unpaved roads."[52]

EDAP II: Statewide Economically Distressed Areas Program.

During the 78th Legislative Interim, the IRT Committee recommended that the very successful Economically Distressed Areas Program be strengthened and expanded to the entire state, not just to "affected" counties.[53] The IRT Committee's recommendations to strengthen EDAP into a statewide program were first introduced in Senate Bill 964. When legislative deadlines impeded SB 964 from moving forward in the Texas House, Chairman Eddie Lucio, working with Lt. Governor David Dewhurst, Senator Mario Gallegos and Representative Kevin Bailey, amended House Bill 467. The amendment was tantamount to a complete bill substitute which allowed HB 467 to be the vehicle for all of the SB 964 provisions and for establishing the statewide EDAP II. "The 79th Legislature passed HB 467 that changed the definition of an affected county to any county that has an economically distressed area (further defined as an area having a median household income that is not greater than 75% of the median state household income). Essentially, those definition changes made the EDAP a statewide program."[54]

---

[51] *See* Rodriguez.

[52] *Id.*

[53] WATER CODE, §16.341. Prior to amendments adopted during the 78th Legislative Session, "Affected Counties" meant a county "(A) that has a per capita income that averaged 25 percent below the state average for the most recent three consecutive years for which statistics are available and an unemployment rate that averaged 25 percent above the state average for the most recent three consecutive years for which statistics are available; or (B) that is adjacent to an international border."

[54] *See* TWDB, *LAR*.

Since its inception, the EDAP provided "financial assistance in the form of a grant, a loan, or a combination grant/loan to bring water and wastewater services to economically distressed areas where the present water and wastewater facilities are inadequate to meet the minimal needs of residents."[55] As of May 31, 2006, the Texas Water Development Board (TWDB) awarded funds for facility planning grants and for construction grant/loan commitments totaling $504,297,038 assisting 780 colonias and serving a population of more than 295,000.[56] Such assistance was made possible by the innovative manner through which the TWDB provides EDAP funding. "The EDAP was initially funded in 1989 and 1991 with $250 million in general obligation bonds and from 1993 through 1998, by $300 million in EPA grant dollars."[57] TWDB historically maximized the use of state funds with those of federal funds wherever possible. However, the majority of the funding of the bonding authority for EDAP has already been expended or committed. "To date, EDAP has funded 85 projects with the initial bonding funding of $250 million and $300 million in EPA grants. The majority of the funding has been spent, or committed to the 85 projects. Additional administrative funds are necessary to complete the program."[58]

Exhibit 9: Water/Wastewater Needs Assessment

$5.4 billion Total Statewide Needs

$2.6 billion Water Treatment and Distribution
$2.8 billion Wastewater Infrastructure

Kevin Ward
Executive Administrator, TWDB

Source: Kevin Ward, Executive Administrator, TWDB. Testimony. IRT Committee hearing. Oct. 24, 2006.

[55] TWDB, *Economically Distressed Areas Program*, http://www.twdb.state.tx.us/assistance/financial/fin_infrastructure/edapfund.asp.

[56] TWDB, Background Information. Testimony. IRT Committee hearing. Aug. 7, 2006.

[57] See TWDB, *LAR*.

[58] *Id.*

During the 78th Legislative Session, through a series of attempts, the Legislature almost funded the newly expanded EDAP II with increased bonding authority to the tune of $785 million.[59] However, because of legislative calendars, due to the lateness in the Session when these measures moved through the process, the necessary constitutional amendment to fund the statewide EDAP was not passed.[60] "Because HB 467 was passed late in the 79th Session in 2005 there was no opportunity to get funding appropriated to implement the statewide EDAP during the FY 06-07 biennium."[61] However, the need to fund EDAP II remains. According to the latest information from the TWDB, currently, there are more than $5.4 billion in total water and wastewater needs in distressed areas in the state.[62] During the Houston hearing, representatives of the Texas Association of Counties explained the importance for rural counties to fund the newly expanded EDAP. "The Texas Water Development Board administers other essential infrastructure funding programs that benefit rural Texas, including the Economically Distressed Areas Program . . . Recent legislation expanded the number of counties eligible for EDAP funding (HB 467, 79th Regular Session) and additional bonding authority of up to $50 million, but water and wastewater needs through the state remain unmet. Increased funding for this essential program, especially in light of its statewide scope, would help meet these needs."[63] In its current Legislative Appropriations Request, the TWDB is "requesting several Exceptional Items to administer and close out the current program and to provide staff, technical assistance, training, customer service, and coordination, as well as the grants and loans to bring safe and reliable water and wastewater services to economically distressed

---

[59] Senate Joint Resolution 27, 79th Regular Legislative Session (2005).

[60] *Id.* (SJR 27 was reported Engrossed by the Texas Senate on May 3, 2005. It was read for the first time and referred to committee in the Texas House on May 9, 2005; while passing favorably out of Committee on May 18, 2005. SJR 27 was considered by the Calendars Committee on May 22, 2005, and was placed on the Constitutional Amendments Calendar on May 24, 2006.)

[61] Candace Windel, Deputy Executive Administrator for the Office of Project Finance and construction Assistance, TWDB. Testimony. IRT Committee hearing. Aug. 7, 2006.

[62] Kevin Ward, Executive Administrator, TWDB. Testimony. IRT Committee hearing. Oct. 24, 2006.

[63] *See* Hamlin.

communities across Texas."[64]

EDAP was expanded to a statewide program not only for its assistance to distressed areas in need of basic water and wastewater services, but also because of its special colonia prevention provisions that have been inherent in the program since its inception.[65] Participating counties in the EDAP program must adopt the Model Subdivision Rules. Testifying on this matter, colonia and housing advocates remarked in Houston that "we have to vigorously enforce the laws to make sure that additional colonias don't take place . . . we believe that any county that participates in receiving funding for non-border colonias to get water and wastewater brought into those areas would be made subject to the Model Rules that have been adopted and worked very well on the border. In essence, we need to make sure that the taxpayers are not going to be asked to come in behind the money that the state is putting in these areas and in the future provide additional money to cure the problems in those areas."[66]

Texas Coordination of Colonia Initiatives.

As EDAP has evolved into a statewide program to begin to address the problems of non-border distressed areas of the state with colonia-like developments, the State's coordination of colonia initiatives may be improved by further developing and strengthening the Colonia Ombudsman program. As background, the Colonia Ombudsman program was established by the 1999 Colonias Omnibus Bill as part of the State's Coordination of Colonia Initiatives.[67] Originally, the rationale behind the ombudsman program was to have the Colonia Coordinator appoint one ombudsman to those areas of the State with the most severe colonia problems: to "each of the six counties that the coordinator determines have the largest colonia populations."[68]

---

[64] *See* Windel.

[65] *See* Model Rules discussion above.

[66] *See* Henneberger.

[67] Senate Bill 1421, 76th Legislative Session (1999).

[68] GOV'T CODE, §775.003. (The statute has subsequently been amended to provide for an ombudsman in Nueces County.)

The Ombudsmen are basically colonia coordinators[69] who "serve as advocates among border colonia residents, state agencies, local governments, and utility companies to ensure residents are connected to water and wastewater services in the most efficient and timely manner possible."[70] For the October hearing, the Secretary of State, which has been appointed as Texas' Colonia Coordinator, was asked to provide recommendations to increase the effectiveness of the Ombudsman Program. In written testimony, the Deputy Secretary of State suggested to the committee "two specific recommendations to improve the workings and efficiency" of the Ombudsman program "obtaining funds for public awareness campaign[s] to inform colonia residents of state programs and resources; and, training to assist with other areas of needed assistance to colonias such as economic development and sustainability, financial, managerial and technical capacity for struggling border communities."[71]

Exhibit 10: Ombudsman Program
Outreach Efforts Essential to Quality of Life.

"...Above all, the need to outreach more effectively and efficiently to our colonia residents should remain a top priority. This will assure that the quality of life for our Texas residents keeps improving..."

Enriqueta "Queta" Caballero
Cameron County Colonia Ombudsman

Source: Enriqueta "Queta" Caballero, Cameron County Colonia Ombudsman, SOS. Testimony. IRT Committee hearing. Oct. 24, 2006.

As reported by this committee in 2004, and most recently TDHCA in 2006,[72] the unique problems of the counties with the highest concentration of colonia residents continue to warrant special attention by the state. In order to increase the success of programs that provide critical assistance to the quality of life of the most needy of Texans, such as the ombudsman programs, it would be beneficial for the state to increase the resources available to such programs for strategic efforts, such as community outreach matters. The Cameron County Colonia Ombudsman, Ms. Enriqueta Caballero, testified in the Austin hearing that "above all, the need to outreach more effectively and

---

[69] *See* Garcia.

[70] SOS, http://www.sos.state.tx.us/border/colonias/program.shtml.

[71] *See* Garcia.

[72] TDHCA, *2006 State of Texas Low Income Housing Plan and Annual Report.* Dec. 2005.

efficiently to our colonia residents should remain a top priority. This will assure that the quality of life for our Texas residents keeps improving." The Secretary of State's Office identified two specific counties which need additional resources to support ombudsman activities, Nueces and San Patricio Counties. Additionally, in order to begin to address the geographic sporadic problems of non-border distressed/rural areas experiencing colonia-like developments, it would behoove the state to appoint one statewide non-border colonia facilitator to assist these regions. This position could be centrally located in Austin and the main goal would be to improve the living conditions of residents of non-border colonias located in counties which have a higher than average non-border colonia population as compared to the total population of the applicable county. Specifically, this designated individual could be one manner by which to strengthen the program in order for residents of non-border colonias to have an advocate when dealing with state/federal agencies in water and wastewater matters. Having such an appointed person in the state's effort to address the needs of colonias would assist the Colonia Coordinator to identify ways in which to improve state outreach efforts to all non-border colonias. A similar, yet not as specific, issue was raised in the testimony of the Deputy Secretary of State while discussing the Ombudsman Program: "another point of interest was the need for greater outreach efforts, for which we recommend funding to include Nueces and San Patricio Counties and non-border colonias."[73]

Exhibit 11: Helping the Most Needy Texans.

". . .One of government's chief responsibilities is to help Texans with the greatest needs. The Secretary of State's Ombudsman Program is a central part of our initiatives to assist needy Texans living in colonias. The program is helping to provide better roads, bring water and wastewater infrastructure to areas that lack these basic services, and improve the quality of life for some of Texas' neediest citizens. . ."

-- The Honorable Rick Perry
Governor, State of Texas

Source: SOS, http://www.sos.state.tx.us/border/colonias/index.shtml.

[73] *See* Garcia.

The Colonia Road Bond Access Program is essential to addressing the infrastructure needs of colonia residents. The program was first established in 2001 and supported by bonding authority (approved by state voters) of $175 million for Border colonia access roadway projects. As of December of this year, $100 million of the original $175 million had been identified and allocated. TxDOT officials indicate that the next program call, allocating the remaining $75 million in the program, is scheduled to be done early in the upcoming year.[74] Since the program will be out of funds in the near future, transportation officials were asked to provide an updated summary of "all colonias road paving needs outside the $175 million border Colonias Access Program." After working with the border districts/counties, TxDOT reported that there were $324 million in "total colonias road paving needs."[75] Knowing how successful the program has been in the past, there may be a need for the Legislature to revisit and strengthen the program.

Housing related issues.

Exhibit 12: Substandard Conditions and the Need for Affordable Housing.

". . .a limited supply of adequate, affordable housing in cities and rural areas along the Texas–Mexico border, coupled with the rising need for such housing, has contributed to the development of new colonias and the expansion of existing ones. . ."

--Federal Reserve Bank of Dallas
Texas Colonias

Source: Federal Reserve Bank of Dallas, *Texas Colonias*, http://dallasfed.org/ca/pubs/colonias.pdf.

In their *2006 State of Texas Low Income Housing Plan and Annual Report*, TDHCA commented on the statewide housing needs when it reported that "Texas is one of the fastest growing states in the nation. According to recent Census data, Texas' population expanded by nearly a quarter (22.8 percent) between 1990 and 2000, far exceeding the national growth average of 13.2 percent for the

[74] TxDOT response to follow-up questions.

[75] Follow-up information received from TxDOT. Nov. 27, 2006.

decade."[76] Texas is projected to continue to grow within the next thirty years. While explaining the implication of the state's continued expected growth to the state's housing needs, TDHCA reported that "looking at long-term demographic projections, it is clear that the demand for affordable and subsidized housing will increase in the coming years. The present state population of 20.9 million is expected to surge to 50.4 million by 2040."[77] As a consequence, there will be a continued need for affordable housing.

Looking at the demographic makeup of Texas, TDHCA also reported that "the poverty rate for all family households in Texas, different from the overall poverty rate, is expected to increase from the 2000 figure of 11.4 percent to 15.4 percent by 2040."[78] In other words, while the Texas population continues to increase, so will the poverty rate and thus the strain on the availability for affordable housing opportunities. Background information received by the committee addressing Texas' growth and poverty rates arrived at a similar conclusion. "Texas has one of the highest poverty rates in the nation and a population that is projected to age substantially between now and 2030. The state's minority population is expected to increase, but mainly in households below median income. In short, households in Texas are losing their ability to pay for housing."[79]

It follows that the ability to afford decent housing is more severe in distressed areas, such as those along the border colonias due to their excessively high poverty rates and thus may warrant targeted assistance by the state. While describing the poverty characteristics of the State, TDHCA explained that "according to the 2000 Census, Texas has the eighth highest overall poverty rate in the nation, with a rate of 15.4 percent compared to the national rate of 12.4 percent. Poverty conditions along the Texas-Mexico border warrant special attention. Parts of the region, like McAllen-Edinburg-Mission, suffer from an unemployment rate double that of the state's (12 percent vs. 6.1 percent) and less than half of the state's per capita income average. Fifteen counties along the border have a poverty rate of at least 25 percent, almost double the national average. Conditions are particularly

---

[76] *See* TDHCA *2006 Report.*

[77] *Id.*

[78] *Id.*

[79] Texas Association of Community Development Corporations (TACDC) "Policy Priorities for 2006-2007."

acute in the colonias, unincorporated areas along the Texas-Mexico border lacking infrastructure and decent housing. It is estimated that 43 percent of colonia residents live below the poverty level."[80] TDHCA's report echoes the findings first arrived at by IRT in its 2004 Interim Report. Although the primary reasons for such high levels of poverty will be addressed in a subsequent section of the report (lack of skills, shortage of high paying jobs, and access to state resources) when it comes to housing, this level of poverty in distressed regions and the high demand for affordable housing have led to a unique program to increase homeownership rates in distressed areas for hard-to-service populations: The Texas Bootstrap Home Loan Program.

In order to understand the need for homeownership opportunities in the state, it is helpful to see where Texas stands among the fifty states in its efforts. In a written response to questions asked by the committee, TDHCA addressed the issue of Texas' ranking among the 50 states in homeownership rates. The Department reported that "while not where we want to be, Texas has improved its homeownership ranking nationally . . . " Updated figures provided to the committee office by TDHCA staff indicate that while the national homeownership rate is now 68.9 percent, the Texas rate is 65.9 percent. While comparing these figures to data sets from the United States Census Bureau, the ranking of the state for homeownership has gone up to 44 (from 45 in 2004). TDHCA reports that in order to "help increase this homeownership rate, the department has created a targeted staff and raised the Texas homeownership program to a Division within the agency."[81]

To put this issue in perspective, it is helpful to see where Texas' homeownership rates have been for the last ten years. According to the U.S. Census data, Table 1 illustrates that in 1995 Texas' homeownership rate was 61.4 percent, while the U.S. rate was 64.7 percent. Accordingly, Texas' rank was 44. In 2000, the State's ranking was the same with a rate of 63.8 percent; however, still below the U.S. rate of 67.4 percent. In the period between 2001 to 2004, the State's ranking remained unchanged at 45, however it eventually increased to 44 (2005). Notwithstanding, over this period of time the homeownership rate of Texas continued to be below the national rate. Arriving at a similar conclusion, while looking at historical homeownership rates of Texas, in 2005, *The Perryman Texas Letter* reported that homeownership in Texas "lags [behind] the U.S. average." Specifically, it reported that in 2003 the U.S. homeownership average was "68.3%. U.S. Census

[80] *See* TDHCA *2006 Report.*

[81] Follow-up information received from TDHCA. Oct. 24, 2006.

Bureau estimates about 64.5% of Texas households own their homes. Prior to 1980, homeownership in Texas was slightly higher than the U.S. level. Over the past two decades, the Lone Star State has ranked below [the] national rate."[82]

Table 1: Homeownership Rates: 1995-2005
Comparison of Texas and the United States rates

Population	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
United States	64.7	65.4	65.7	66.3	66.8	67.4	67.8	67.9	68.3	69.0	68.9
Texas	*61.4*	*61.8*	*61.5*	*62.5*	*62.9*	*63.8*	*63.9*	*63.4*	*64.5*	*65.5*	*65.9*
Ranking*	44	44	44	44	45	44	45	45	45	45	44

Data Source: United States Census Bureau, Housing and Household Economic Statistics Division (last revised Mar. 01, 2006): http://www.census.gov/hhes/www/housing/hvs/annual05/ann05t13.html. (*Note: the U.S. Census includes the District of Columbia in Homeownership rates data.)

It is clear that although Texas has started to increase in its ranking, and the housing agency in Texas has begun to undertake internal steps to attempt to address the problem at the agency level, it would behoove the state for the Legislature to provide greater homeownership opportunities in Texas so that the state will no longer continue to be behind the national average. The state has a myriad of programs to provide housing opportunities in Texas. Although the inventory is vast, the committee received some very targeted concerns with specific programs from those participating in the hearings. The following is a discussion of these issues.

[82] *The Perryman Texas Letter*, Mar. 11, 2005.

Exhibit 13:
"Homeownership in Lone Star State Lags [Behind] the US Average

. . .National average of homeownership in 2003 (latest data) was 68.3%. US Census Bureau estimates about 64.5% of Texas households own their homes. Prior to 1980, homeownership in Texas was slightly higher than the US level. Over the past two decades, the Lone Star State has ranked below [the] national rate. . ."

-- *The Perryman Texas Letter*
March 11, 2005

Source: *The Perryman Texas Letter*. Mar. 11, 2005.

Texas Bootstrap Loan Program: A Fiscally Conservative, Cost Conscious Program.

In an effort to address affordable housing opportunities in Texas, the committee worked with private- and non-profit entities and sought their expert assistance. The committee was informed that although the State of Texas has a number of programs aimed at providing housing to people, one key program having much success and showing serious progress in helping Texans own their own home is the Texas Bootstrap Loan Program. This "self-help loan program that targets economically distressed communities"[83] is commonly referred to as a "uniquely Texas type solution" to providing affordable housing in Texas.

In 1999, the members of IRT worked on the enabling legislation to create this program. Specifically, Chairman Lucio, along with Vice-Chairman Eliot Shapleigh and Senator Judith Zaffirini, authored Senate Bill 1287 to address the affordable housing problem among low-income Texans. The bill's goal was to "promote and enhance homeownership for very low income Texans by providing loan funds to purchase or refinance real property on which to improve existing or construct new residential housing."[84] The Bootstrap Program is similar to Habitat-for-Humanity but "without the

[83] *See* Henneberger.

[84] TDHCA, http://www.tdhca.state.tx.us/oci/index.jsp.

church volunteers, [because] the people themselves must build their own home."[85] This program is a "self-help construction program, which is designed to provide very low-income families an opportunity to help themselves through the form of sweat equity."[86] The program "requires the borrower to provide at least 60 percent of the labor necessary to build or rehabilitate the proposed housing or provide an amount of labor equivalent to the required amount by working through a State-certified owner-builder housing program."[87] Currently, TDHCA is allowed to establish the minimum amount of the loan; however, "a loan may not exceed $30,000."[88]

While commenting on affordable housing opportunities in the State, housing advocates testified in the Houston hearing that "Texas has developed and implemented a small scale housing program that is one of the best and most successful programs to house lower-income families anywhere in the country."[89] It was reported to the committee that "Texas is a national leader in self-help, owner-builder housing thanks to the Texas Bootstrap Self-Help Housing Program."[90] Since this "approach to low-income housing uniquely reflects Texas values" in that "it is [a] fiscally conservative, cost-conscious program that rewards individual initiative with an opportunity to own a home," it was recommended to the committee that "it is time to take this program beyond the modest level it has operated on for the past decade and make self-help housing a centerpiece of how Texas does low-income housing across the state."[91] To date, under the program, over 1,000 homes have been built and "about 120 houses per year are produced with Bootstrap loans."[92] Because of this sweat equity program, Texas is number one in the nation in providing self-help units. It was further recommended to the committee that the Legislature capitalize on this success and pass the Texas Self-Help Act and

---

85 *See* Henneberger.

86 TDHCA, http://www.tdhca.state.tx.us/oci/index.jsp.

87 *Id.*

88 GOV'T CODE, §2306.754(a).

89 *See* Henneberger.

90 *Id.*

91 *Id.*

92 *Id.*

establish a Self-Help Division in TDHCA.

Among the reasons why housing advocates have hailed the Bootstrap Program as a unique Texas solution for affordable housing is because the program picks up where the market forces left off: providing a means to reach the low income populations through critical funding assistance for self-help construction of homes. Specifically, "this is a program that reaches the population that is lower income than any other housing program that the state has available, it is more affordable than the rental housing programs that the state makes available."[93] There may be a need for such a self-help program since there is a shortage of affordable housing. While reporting on the state housing supply, housing officials indicated that "there is a shortage of affordable housing in the extremely low, very low, low, and moderate income brackets. This is primarily caused by the private sector's concentration of development, both single family and multifamily development, in larger metropolitan areas and targeting higher income individuals and families. The explosive growth of the metropolitan areas as well as the lack of new construction during the late 1980s and early 1990s created a huge demand for housing at all income levels. Due to higher margins associated with housing products targeted for the higher income population, developers focused production to fill the demand at the upper-end of the income spectrum."[94]

Exhibit 14: Benefits of the Texas Bootstrap Home Loan Program

"...This initiative among all the housing initiatives that I have seen in the 30 years that I've done low income housing is absolutely the most win-win combination possible. It's good for the taxpayers because it produces houses that are on the tax rolls, it is good for the families because it values their individual effort and rewards them for helping themselves and it builds stable, affordable housing at a rate that is far more affordable than any other housing program the state can possibly provide..."

– John Henneberger
Co-Director, TxLIHIS

Source: John Henneberger, Co-Director, TxLIHIS. Testimony. IRT Committee hearing. Aug. 7, 2006.

93 *Id.*

94 *See* TDHCA *2006 Report.*

The Bootstrap Program addresses the need to provide affordable housing opportunities in a cost-effective manner. While reporting on the department's initiatives to increase affordable housing, and on the Bootstrap Program specifically, TDHCA reported in 2006 that "the most important component of the program is the increase of homeownership for very low income Texans by providing loan funds to purchase or refinance real property on which to build new residential housing or improve existing residential housing." TDHCA went on to state that "this initiative can remedy some of the living standards and provide the 'American Dream' to many low income families. The objective is to continue expanding affordable housing through self-help construction."[95] While commenting on the ability of the Bootstrap Program providing affordable housing, one housing advocate testified in Houston that "this initiative among all the housing initiatives that I have seen in the 30 years that I've done low income housing is absolutely the most win-win combination possible. It's good for the taxpayers because it produces houses that are on the tax rolls, it is good for the families because it values their individual effort and rewards them for helping themselves and it builds stable, affordable housing at a rate that is far more affordable than any other housing program the state can possibly provide."[96]

A corollary manner by which affordable housing programs, such as the Bootstrap Program, can better assist distressed communities of the state -- especially those with colonia developments -- is to increase and strengthen the Colonia Self-Help Centers. As reported by this committee in 2004, members of IRT authored the necessary legislative measures in 1995 (SB 1509) to create the Colonia Self-Help Centers.[97] The enabling statute of the Centers indicates that their purpose is to "assist individuals and families of low income and very low income to finance, refinance, construct, improve, or maintain a safe, suitable home in the colonias' designated service area or in another area the department has determined is suitable."[98] Specifically, the centers may "serve individuals and families of low income and very low income by," among other matters, "providing assistance in obtaining loans or grants to build a home; ...teaching construction skills necessary to repair or build a home; ...helping to obtain, construct, access, or improve the service and utility infrastructure

[95] *Id.*

[96] *See* Henneberger.

[97] Senate Bill 1509, 74th Legislative Session (1995).

[98] GOV'T CODE, §2306.586.

designed to service residences in a colonia, including potable water, wastewater disposal, drainage, streets, and utilities; ...providing credit and debt counseling related to home purchase and finance; ...applying for grants and loans to provide housing and other needed community improvements . . ."[99]

In 2004, the State of Texas, through the Colonia Self-Help Centers, received the Housing and Urban Development (HUD) Community Development Excellence Award for "accomplishments in colonias." HUD reported in September of that year that Texas' Office of Rural Community Affairs (ORCA) and the Department of Housing and Community Affairs received this award "for its funding of more than 300 projects to improve living conditions in the colonias and to assist residents in becoming homeowners. It was one of only two awards presented to States."[100] TDHCA administers the Centers which are funded with Community Development Block Grant (CDBG) monies given to the state by HUD via the ORCA, which transfers the CDBG monies to TDHCA. (The centers receive approximately $2.2 million per year.) Historically, TDHCA is required to have Centers in the five counties with some of the worse colonia problems in "Cameron/Willacy, Hidalgo, Starr, Webb and El Paso" counties.[101] Since their creation, centers have been established in Maverick and Val Verde counties. The success of the Colonia Self-Help Centers could be increased by expanding the program and strengthening their efforts. For instance, one housing and colonia advocate urged the committee that as part of the Texas Self-Help Opportunity Act, to consider using the CDBG funding to "require that each center produce at least 30 new homes per year."[102]

Housing Tax Credit Program.

The committee also received testimony from entities representing investors, lenders, developers, and housing professionals on possible targeted reforms, which the Legislature could consider to increase affordable housing opportunities in Texas. Specifically, the committee heard from those who participate in the Housing Tax Credit (HTC) program. As background, the HTC "encourages private

99 *Id.*

100 HUD, http://www.hud.gov/local/tx/news/pr2004-09-14b.cfm.

101 TDHCA, http://www.tdhca.state.tx.us/oci/centers/index.jsp.

102 *See* Henneberger.

investment in the new construction or rehabilitation of affordable, rental housing by providing tax credits to developers, which reduce their federal income tax liability. The value of the tax credits allows developers to produce quality housing while offering reduced rents to income-qualified tenants. In return for the tax credits, owners must set aside a minimum of 20 percent of units for use by extremely low and very low income tenants; most owners set aside 100 percent of units for qualified low income families."[103] The HTC is "administered by the Texas Department of Housing and Community Affairs (TDHCA). TDHCA uses a Qualified Allocation Plan (QAP) as the rules for the tax credit program."[104] The State requires TDHCA to annually adopt the QAP to administer the HTC.[105] The QAP sets forth criteria and a scoring process for those seeking to participate in the HTC.

Several of the concerns that the committee heard in the August Houston hearing were made toward the State's implementation of the HTC through TDHCA's QAP. During the August hearing the 2006 QAP was in place. Since August, TDHCA addressed at agency level -- where statutorily possible -- some of these issues of concern with revisions in the recently adopted 2007 QAP. However, due to the nature of some of the problems presented in testimony, some concerns were not completely addressed by the agency revisions to the QAP due to statutory constraints. Consequently, the following discussion of HTC-related issues serves as an example of some of the housing issues presented to the committee which merit legislative attention.

The President of the Texas Affiliation of Affordable Housing Providers (TAAHP), Ms. Diana McIver, testified that the "legislation governing the State's implementation of the Housing Tax Credit program is overly prescriptive, particularly as it relates to the scoring of the applications."[106] Although provisions of the governing legislation may have been needed at one time to restore TDHCA into "an agency of transparency," McIver explained, the current statute "restricts the ability

---

[103] Legislative Budget Board (LBB), *Fiscal Size-Up 2006-07 Biennium.*

[104] Roy Navarro, Executive Director, The Housing Authority of the City of Pharr. Testimony. IRT Committee hearing. Oct. 24, 2006.

[105] GOV'T CODE, §2306.67022.

[106] Diana McIver, Board President, Texas Affiliation of Affordable Housing Providers. Testimony. IRT hearing. August 7, 2006.

of the agency to redirect priorities"[107] when needed. In administering the program, TDHCA "needs a certain amount of flexibility to address the State's changing landscape. The recent need to meet the needs of hurricane victims is an example of how these priorities need to be changed at an administrative" level. McIver outlined a series of reforms to the Government Code for the Legislature to consider.

As explained above, using the 2006 QAP, McIver testified that a better statutory definition for what amounts to "quantifiable community participation" was needed for the scoring system. Under the 2006 QAP, developed to conform to Section 2306.6710(b)(1)(B) of the Government Code, "an applicant who gets a valid support letter from a registered neighborhood organization whose boundaries encompass the site receives up to 24 points, a neutral letter is awarded 12 points, and a letter of opposition receives a score of 0. However, if there is no neighborhood organization with boundaries encompassing the applicant's site, the application receives the neutral score of 12 points. Thus, an application located in a community where no neighborhood organizations exists begins the process with a 12 point deficit in scoring." McIver explained that "this is such a sizeable number of points that it drives applicants into the big cities that have neighborhood associations - Dallas, Houston, San Antonio and Austin - and away from communities that may have significant need and desire for housing."

Under the recently adopted 2007 QAP, areas in which no qualifying "neighborhood associations" exist are granted up to 7 points under the new QAP provision "Demonstration of Community Support other than Quantifiable Community Participation" (Section 49.9[i][16]). As a consequence, instead a 12 point deficit as the August testimony indicated, because of the manner by which the existing Government Code defines Quantifiable Community Participation, communities with no neighborhood associations continue to find themselves in a deficit position: a five point, rather than 12 point, deficit. In August, the committee was informed that "TAAHP supported modification [to the QAP] that would allow these points for support from civic groups such as the Chamber of Commerce, PTA, and business clubs -- in instances where a neighborhood association does not exist -- but TDHCA's analysis of the legislative requirements suggested that such a policy was not permitted under current law."[108]

---

[107] *Id.*

[108] *Id.*

Just this month, TDHCA addressed this issue in the briefing document for the proposed 2007 QAP. The agency reported in the "Comments" Section of the document that "while comments applaud the addition of the QAP Section 49.9(i)(16) [Demonstration of Community Support other than Quantifiable Community Participation] which grants up to 7 points for Applications in areas that have no organizations meeting the definition of 'neighborhood organization' in the QAP, it does not go far enough in leveling the playing field between Applications that have neighborhood organization and Applications that do not. Assuming an Applicant meets the requirements of 49.9(i)(16), [that Applicant] would receive a maximum of 19 points (12 plus 7), while an Application with a neighborhood organization would receive 24 points. While the incentive for fraud in neighborhood organization creation and the disincentive for development in rural areas without 'neighborhood organization' may decrease, it will not be totally eliminated . . . "[109] TDHCA explained that the comments received went on to suggest the elimination of the new section 49.9(i)(16) and correspondingly amend the proposed 2007 QAP in an alternative manner not consistent with the statutory requirements set forth in statute. Section 2306.6710(b)(1)(B) of the Government Code requires TDHCA to evaluate quantifiable community participation "on the basis of written statements from any neighborhood organizations on record with the state or county in which the development is to be located and whose boundaries contain the proposed development site."[110] The TDHCA "Staff Response" to the alternative non-statutorily based public comment indicated that TDHCA "does not believe that it can allow points for QCP if a neighborhood organization does not exist because the statute is clear that these points are for QCP for neighborhood organization."[111] As a consequence, notwithstanding TDHCA's attempt to provide additional points to areas with no neighborhood organizations for community participation under the new 2007 QAP, areas that do not have neighborhood organizations may still find themselves in a five-point deficit.

Another reform which would provide smaller cities better access to the HTC and thus provide greater affordable housing opportunities involves the requirement in the point system to provide

[109] TDHCA, *Order Adopting: 2007 Housing Tax Credit Program, Qualified Allocation Plan and Rules.*

[110] GOV'T CODE, §2306.6710(b)(1)(B).

[111] *See* TDHCA *Order*.

development funding by local political subdivisions. Government Code Section 2306.6710(b)(1) requires TDHCA to "create a scoring platform that ranks financial participation by local governments as the fifth highest scoring item."[112] Specifically the statute mandates that TDHCA "score and rank the application using a score system that . . . prioritizes in descending order criteria regarding . . . (E) the commitment of development funding by local political subdivisions . . . "[113] (Note: (E) is the fifth item in the prioritized descending order ranking.) In implementing this statutory item, under the QAP "an applicant can receive up to 18 points for receiving funds as a grant or a loan from a Local Political Subdivision, defined by TDHCA to be cities and counties and their instrumentalities, such as a housing finance agency or a housing authority. Although it may be appropriate to reward communities that support affordable housing through an investment of dollars, this requirement creates an uneven playing field for smaller cities, which do not have these types of dollars." It was further explained that "only the largest of our Texas cities have significant funding available to be able to contribute at the highest point level, currently $3,501 per unit. These include Austin, Houston, Dallas, and San Antonio, among others, where allocations of HOME, Community Development Block Grant (CDBG) and local Trust funds are available to support affordable housing endeavors."[114] As a consequence, "applicants are seeking out these cities knowing that they can potentially get the full points in these locations and therefore depriving Texans living in small communities of affordable housing opportunities." In practice, it was reported that "small cities such as Conroe, Texas City, and Mission do not receive direct allocations of HOME funds and only small allocations of CDBG. Mid-sized cities such as Abilene, Amarillo, and Tyler receive allocations of HOME dollars, but in very limited quantities. Because of the regional funding allocation, these smaller communities must compete with the larger cities and simply cannot overcome this large point preference available to the larger cities. Thus, developers are becoming increasingly reluctant to apply in these smaller communities."[115] It was reported to the committee that the 2007 QAP appears to have made this problem worse for small communities/cities. In follow-up information provided to the committee concerning this issue and recent changes to the QAP, the committee was informed that although the 2006 QAP had the highest contribution level of $3,501 per unit, the 2007

---

[112] *See* McIver.

[113] GOV'T CODE, §2306.6710(b)(1).

[114] *See* McIver.

[115] *Id.*

QAP "raised this to 5% of [total] development costs -- more like $5,000 - $6,000 per unit -- so the problem is worse now."[116] Thus testimony indicated that removing this scoring item from the point system would allow local governments to direct their funding based on local priorities and financial needs and more evenly allow smaller cities to compete.

Another issue of concern presented to the committee pertained to the letters of support from elected officials. Government Code Section 2306.6710(b)(1)(F) allows state elected officials to submit letters of support for applications in the HTC program. Although state officials are allowed to submit these letters, those at the local level (i.e., members of the city council or a county commissioners court) are not afforded the ability to show local community support. The Executive Director of the Texas Association of Local Housing Finance Agencies (TALHFA), Ms. Jeanne Talerico, testified that "TALHFA feels that the opinion of a local elected official, or the governing body, should garner at least as much weight as a neighborhood association in the scoring system. Currently, if a State Legislator is not comfortable writing a letter, the applications cannot possibly compete with others in the same region. There should be an opportunity for input from additional sources."[117] Talerico went on to recommend that the state should "allow the consideration and scoring of a City Council Resolution or a County Commissioners Court Resolution that expresses either support or non-support for the development."[118] Amending Section 2306.6710(b)(1)(F) in this manner "would put the burden of support or opposition on the political jurisdiction at the local level."[119]

---

[116] Follow-up information received from McIver.

[117] Jeanne Talerico, Executive Director, TALHFA. Testimony. IRT Committee hearing, Aug. 7, 2006.

[118] *Id.*

[119] *See* McIver.

Exhibit 15: Local Officials Need Ability to Show Support.

"TALHFA feels that the opinion of a local elected official, or the governing body, should garner at least as much weight as a neighborhood association in the scoring system. Currently, if a State Legislator is not comfortable writing a letter, the applications cannot possible compete with others in the same region. There should be an opportunity for input from additional sources..."

– Jeanne Talerico
Executive Director, TALHFA

Source: Jeanne Talerico, Executive Director, TALHFA. Testimony. IRT Committee hearing, Aug. 7, 2006.

An additional area of concern with the HTC presented in testimony involves the "At Risk Development Set Aside." Government Code Section 2306.6714 requires TDHCA to "set aside for at-risk developments not less than 15 percent of the housing tax credits available for allocation in the calendar year."[120] In other words, this means that TDHCA must at least make available 15 percent of the housing tax credits for "'at risk' projects -- projects that may be 'at risk' of losing their affordability."[121] In practice, when Section 2306.6714 is applied to the "regional set-asides," the committee was informed this is "far exceeding the 15 percent set-aside due to the 'at least' language and making it nearly impossible for some regions to get any new construction projects funded, even though such projects may score 50 points higher than their 'at risk' competitors."[122]

The committee also heard some concerns over the HTC/QAP by those who represent Housing

120 GOV'T CODE, §2306.6714.

121 *See* McIver.

122 *Id.*

Authorities. For example, one official was concerned that Resident Councils are not treated the same as other neighborhood organizations under the QAP in terms of having their participation limited. Testimony indicated that "a Resident Council support or opposition for new construction is not considered by TDHCA even when the proposed new construction is within the boundaries of their organization."[123] Another concern voiced pertained to what is considered a reconstruction development. "The definition of 'Reconstruction' in the 2007 draft QAP excludes as 'Reconstruction' development proposing to increase the number of units in the demolished development."[124] In the "Staff Response" Section to the QAP, TDHCA indicated that "this definition was written to ensure that the QAP does not provide incentives to increase density on a piece of land. Therefore, staff does not recommend a change to this definition to allow for an increase in units above the original total number of units."[125] Although the adopted 2007 QAP provided for instances where partial demolition was going to be undertaken to be considered "reconstruction," it failed to allow instances where demolition occurs and subsequently there is an increase in units. Specifically, the 2007 QAP defines "reconstruction" as "the demolition of one or more residential buildings in an Existing Residential Development and the re-construction of the Units on the Development Site. Developments proposing adaptive re-use or proposing to increase the total number of Units in the Existing Residential Development are not considered Reconstruction."[126] IRT was informed that "this penalized Housing Authorities and other applicants from effectively and efficiently utilizing their sites to provide additional affordable housing. More important, it penalizes Housing Authorities trying to leverage their limited federal resources by using the HUD mixed finance development method."[127] The committee looks forward to working with interested entities to address these and other concerns voiced on the HTC/QAP.

---

[123] Roy Navarro, Executive Director, The Housing Authority of the City of Pharr. Testimony. IRT Committee hearing. Oct. 24, 2006.

[124] *Id.*

[125] *See* TDHCA *Order*.

[126] TDHCA, *2007Qualified Allocation Plan.*

[127] *See* Navarro.

Other housing related issues.

The committee also received testimony expressing issues of concern with the Private Activity Bond Allocation Program. Currently, Chapter 1372 of the Government Code does not allow more than one project site per application to the program. In smaller cities and rural areas this application restriction prevents multifamily housing projects from developing. Specifically, "it is cost prohibitive to use private activity bonds to finance development in areas needing a small number of multifamily units, such as rural areas needing 75 units."[128] Amending the Chapter 1372 to allow scattered, small site applications for multifamily developments would "provide an additional financing tool in smaller cities and rural areas" and would encourage regional multi-family housing.[129]

A corresponding concern presented to the committee is the timeline associated with the rural set-aside of the Private Activity Bond Allocation Program. Currently, subsection (e) of Section 1372.0231 of the Government Code requires the Bond Review Board to set aside, until May 15 of each year, $15 million for "areas located outside of a metropolitan statistical area" of Austin, Dallas, or Houston.[130] This set-aside was established in the 77th Legislative Session in order to "ensure that non-metro areas in the largest regions had an opportunity to get some multifamily development."[131] The Executive Director of TALHFA testified that because of the existing timeline and associated constraints in the project development in rural regions (as discussed above, one-project application restrictions) "this set-aside has not been very effective." In fact, "in the last 4 program years, only one has been done (in Marble Falls)."[132] In order to increase the effectiveness and efficiency of the program and to preserve affordable housing units, Talerico testified that the Legislature should "amend the statute to allow the set-aside allocation to also be used for rehabilitation transactions inside or outside the metro areas. [The Legislature should also] shorten the set-aside period from

128 *See* Talerico.

129 *Id.*

130 *Id.*

131 *Id.*

132 Follow-up background information received from Talerico.

May 15th to March 1st so the allocation does not remain unavailable for [a] long [period of time] if it is not being utilized."[133] Such a reform would "decrease the amount of time that a volume cap is set-aside (before being available to the entire region), but also allow the set-aside amount to be used for rehabilitating" older multifamily properties which are in need of such rehabilitation, thereby preserving affordable housing. "If an older development is rehabilitated, we have preserved those units at affordable rates for another 30 years."[134]

The last recommendation received by the committee concerning the Private Activity Bond Allocation Program pertains to the requirement that 100% of the units have rent and income restrictions. State statute[135] requires that "all Priority 1 and Priority 2 multifamily applications set prescribed rent and income restrictions on 100% of the units in the development" thereby restricting market-rate units in the developments.[136] In order to provide developers the "flexibility to include market rate units if it is financially feasible" it was recommended to amend the statute to "allow at least 80% of the units to be restricted."[137] This recommendation would make such mixed developments more accepting to neighborhoods and cities especially since "many cities are encouraging mixed-income and mixed-use developments."[138]

Several other issues of concern were identified concerning the HOME Program. "The federal HOME Investment Partnerships (HOME) Program provides competitive grants or loans for the construction of single and multifamily housing units by public and private sector partnerships. HOME awards also finance homebuyer, home repair, and tenant-based rental assistance and can be used to help eligible communities affected by natural disasters. At least 95 percent of TDHCA's HOME funds are available only to more rural areas of the State that do not receive HOME funds directly from the federal government. The remaining 5 percent of the funds are reserved for people

---

[133] *See* Talerico.

[134] Follow-up background information received from Talerico.

[135] GOV'T CODE, §1372.0321(a-1).

[136] *See* Talerico.

[137] *Id.*

[138] *Id.*

with disabilities that may reside in larger metropolitan areas that receive HOME funds directly. The HOME program targets extremely low, very low, and low income families and requires matching funds."[139] In the Houston hearing, the committee was presented a laundry list of concerns with TDHCA's handling of the HOME program, especially with some of the new rules that had been adopted for the program. The rule "changes were the result of a 5-month public process that began in September 2005."[140] "In February 2006, after five months of deliberation, the TDHCA board adopted new rules for its single family HOME activities. One of the principal goals of these new rules was greater dispersion of HOME funds in order to better meet the needs of all rural Texas."[141] In fairness to TDHCA, Chairman Lucio directed TDHCA representatives in the audience to study the list and to work with the committee to address the issues outlined. In written response to the issues raised, agency officials stated that "the department acknowledges the concerns raised and equally share these concerns. Consequently, the department has and will continue to take action to make its HOME Program administration one of the [top] 20 in the nation. The Department believes that changes to the Single Family program rules, creation and implementation of a HOME Task Force, re-organization of staff and procedures into one single HOME Program division, and a nationwide dedicated search for a HOME Program director will enable it to significantly improve HOME. The Department will work closely with the Senate IRT Committee on these measures in order that legislation, if necessary, can be drafted and introduced."[142] The committee welcomes the opportunity to work with TDHCA and interested parties to further study issues pertaining to the HOME program in order to ensure that its effectiveness is increased during the upcoming session.

Another issue addressed by the committee was Texas' Housing Trust Fund (HTF). The HTF was established in the early 1990s to "create affordable housing for low and very low income individuals and families. It is the only state authorized affordable housing program. Funding sources consist of appropriations or transfers made to the fund, unencumbered fund balances and public and private

---

[139] *See* LBB *Fiscal Size Up: 2006-07.*

[140] Michael Gerber, Executive Director. Texas Department of Housing and Community Affairs. Testimony. IRT Committee hearing, Oct. 24, 2006.

[141] Follow-up information received from TDHCA. Oct. 24, 2006.

[142] *Id.*

gifts or grants."[143] The Committee asked the department to compare the HTF with those from across the nation. TDHCA responded that "based on the Housing Trust Fund Project sponsored by the Center for Community Change, in 2002 there were more than 275 housing trust funds in cities, counties and states that provided more than $750 million to support housing needs. Of the estimated 34 states that have trust funds, allocations range from less than $1 million to more than $10 million with more than 22 of the state trust funds receiving $5 million or less (including Texas)."[144]

The HTF funds programs, such as the very successful Bootstrap Home Loan Program, in order to service hard to reach populations, low and very low income Texans. Background information provided to the committee concerning the need to increase funding to the HTF, as well as to finding a dedicated funding source, indicated that "the Housing Trust Fund is the only program currently funded through general revenue from the State to provide affordable housing for extremely- and very low-income families. In order to avoid the growing affordable housing crisis looming in the horizon, Texas needs a larger Housing Trust Fund that can reach low and very low-income populations."[145] One housing official explained to the committee that since the level of funding by the federal government to affordable housing has lowered over the years, there is a need to make up such a shortfall with state dollars. "Federal funding for housing programs has been significantly reduced over the past years, making it necessary to couple these programs as well as using resources to leverage other funds."[146]

One issue presented to the committee that stands in the way of affordable housing projects is the capitalization rate which chief appraisers use to determine the value of rent-restricted, affordable housing properties. As background, the capitalization rate is the "conversion factor used to determine the underlying value of an income-producing property or business using the income

---

[143] TDHCA, http://www.tdhca.state.tx.us/multifamily/htf/index.htm.

[144] *See* TDHCA follow-up Oct. 24, 2006.

[145] *See* TACDC info.

[146] Roy Navarro, Executive Director, The Housing Authority of the City of Pharr. Testimony. IRT Committee hearing. Oct. 24, 2006.

approach to valuation."[147] In other words, it is the multiplier applied to set the value of a given property. Under current law, appraisers can use the same capitalization rate for affordable housing projects and for market-driven properties. As a consequence, the use of the same capitalization rate for both properties discriminates against projects which are rent-restricted and have little, if any, marketability. In practice, the value of an apartment property which has rent-restrictions for 15- to 30-years is not comparable to the value of an apartment property which charges its tenants market-based rents. In using the same capitalization rate, chief appraisers may be setting an artificially low capitalization rate on these rent-restricted affordable housing properties. "Using a low capitalization rate increases the price and threatens the financial feasibility of the project."[148] The committee was informed that "the problem that you find with these types of [affordable housing] projects is that there are no comparables."[149] Normally if you have an apartment project or a home, the appraisal district would come in and "look at other sales that are in your neighborhood" and find comparable projects. In setting the capitalization rate for rent-restricted properties, a problem arises since typically there are no sales of affordable housing projects. Testimony indicated that in the 2004-05 period there were no actual sales of affordable housing projects; "if you do not have a sale, you do not have a comparable."[150] Chief appraisers working with developers and the comptroller negotiated and developed a solution to this problem during the last regular session. Their proposal provides that if a chief appraiser cannot find a comparable for rent-restricted affordable housing, a set 13.5% capitalization rate should be used. However, if a comparable is found, the appraiser is free to use the comparable. Senate Bill 724 of the 79th Legislative Session attempted to codify this solution; however, due to time constraints, the bill did not finally pass the House Chamber. In order to resolve the problem associated with rent-restricted affordable housing, the committee was urged to endorse the negotiated, agreed-upon proposal.

---

[147] John Pitts. Private Attorney. Testimony. IRT Committee hearing. Aug. 7, 2006.

[148] Follow-up information received from Pitts.

[149] *See* Pitts.

[150] *Id.*

ECONOMIC DEVELOPMENT SECTION.

One of the reasons why the committee undertook a targeted approach to housing was because of the role that housing plays to the development of communities. The Executive Director of the City of Pharr Housing Authority, Mr. Roy Navarro, explained this issue to the committee in his October testimony. "Housing development is a major part of economic development. For economic development to be successful, the need for quality affordable housing must be met for all segments of the population, particularly the workforce and the less fortunate in our communities."[151]

As explained in the housing discussion, while the Texas population is expected to double by 2040, the poverty rate in Texas households is expected to be higher from 11.4 percent in 2000 to 15.4 in 2040. TDHCA's housing report indicated that "the primary reasons for this are the rapid growth of present minority populations and the dominance in the economy of low-paying, particularly service-industry, jobs. While manufacturing and mining continue to decline, Texas ranked third in the nation in 2003 for service industry job creation. In 2002 the top two most common jobs in Texas were retail salesperson and cashier. Of course, these occupations are not high-paying. According to [the] U.S. Bureau of Labor Statistics data, eight of the top ten most common jobs in Texas earn incomes that fall at least $10,000 below the state median income of $33,770."[152] Such a finding provides justification to what labor officials have urged the State to undertake -- provide greater opportunities and targeted programs, such as skills programs, to assist Texans in acquiring higher paying jobs. This is especially true since, the "expected economic growth will not necessarily lift the lowest income groups. The Texas Comptroller's Economic Update predicts that the fastest growing sector of the state economy over the next decade will be largely in industries requiring specialized education and skills. These industries include high tech communications, engineering, and research. While this progress may buoy state growth figures, it is unlikely to raise [the level of] many low income families, who may not have the necessary education or training, from their current positions."[153]

---

[151] *See* Navarro.

[152] *See* TDHCA *2006 Report.*

[153] *Id.*

Texas Wide Open for Business

In the past several years, the Legislature has undertaken a concerted effort to address the economic development needs of Texas. In fact, the commitment to expand enterprises in the State led the Legislature to create the Division of Economic Development and Tourism (EDT) in the Governor's Office. The mission of this division is to enhance the economic growth of Texas communities through marketing and development initiatives for business and tourism.[154] Specifically, EDT actively promotes Texas to companies looking to expand or relocate to the State or as a destination for tourists through its four sections: Texas Tourism, Texas Business Development, Aerospace and Aviation, and the Texas Economic Development Bank.[155] Additionally, EDT operates various programs designed to improve economic development and showcase the factors that contribute to the prosperous business environment in Texas. Aaron Demerson, Executive Director of EDT, presented testimony regarding three programs responsible for the tremendous edge Texas enjoys over the competition. In his testimony, Demerson highlighted the Texas Enterprise Fund, Emerging Technology Fund and the Invest in Texas Seminars as being critical to the economic development future of the State.

In 2003, through Senate Bill 1771, the Texas Legislature approved $295 million for the Texas Enterprise Fund (TEF) in order to pursue a competitive advantage to attract businesses with the intent of job creation to the State.[156] Specifically, TEF is used to attract new businesses or those existing enterprises looking to undergo significant expansion projects to use the funding for economic development, infrastructure development, community development, job training programs, and business incentives.[157]

---

[154] *See* LBB, *Fiscal Size Up: 2006-2007.*

[155] Aaron Demerson, Executive Director, Economic Development and Tourism Division. Testimony. IRT Committee hearing. Aug, 7, 2006.

[156] Office of the Governor, http://www.governor.state.tx.us/divisions/ecodev/ed_bank/tefund

[157] *Id.*

During the 79th Legislative Session an additional measure was passed authorizing state funds to secure and advance the research environment within the State. House Bill 1765, better known as the Texas Emerging Technology Fund, secured $200 million in state funding to enhance the commercial development of technology in Texas.[158] This program was designed to create jobs and stimulate the economy by providing financial awards to emerging technology companies. "To date the State has approved over $9 million in awards to seven Texas based technology companies."[159]

Continuing with the theme of expanding businesses to Texas and still in the preliminary stages, the Invest in Texas Seminars program makes presentations to companies with an interest in establishing facilities in Texas. Currently, the EDT is concentrating its efforts in making several presentations to Mexican based companies displaying the benefits of establishing a location in Texas. Presentations have already been made in several Mexican cities (e.g., Guadalajara and Mexico City) to encourage Mexican-based companies to expand their operations into Texas.[160]

In his written testimony, Demerson also reported to the committee that Texas earned the coveted 2005 Governor's Cup for the second consecutive year by having the highest number of announced job creation deals in the country.[161] Along with the Governor's Cup, fifty-six *Fortune 500* companies call Texas home, leading every other state in the nation.[162] In October 2005, Texas tied with Massachusetts as the state with the second highest number of technology companies nationwide.[163] Furthermore, in November 2005, *Site Selection Magazine* ranked Texas first for the best overall business climate in the nation for the third consecutive year.[164] Demerson reported that the State has created thousands of jobs through its pursuit of economic development. By way of

[158] *See* Demerson, Aug. 7, 2006.

[159] *Id.*

[160] *Id.*

[161] *Id.*

[162] Texas Wide Open for Business Brochure, submitted by Aaron Demerson, Oct. 24, 2006.

[163] *Id.*

[164] *See* Demerson, Aug. 7, 2006.

tools, such as the Texas Enterprise Fund, Texas has set the standard for business climates; however, there may be a need for the State to explore different ways to strengthen these programs.

The Need for Greater Program Accessibility.

For all of the successful job creation projects stemming from the programs currently in place, some have expressed concerns regarding their accessibility. Wharton City Manager, Andres Garza, Jr., testified that rural areas lack access to TEF for projects. According to the information received, TEF funds have been heavily concentrated in urban areas leaving rural Texas facing financial obstacles and lacking the recruitment tools provided to the larger areas. "The Governor's Texas Enterprise Fund seems to fund only those projects that are initiated by the State and not projects nurtured locally or from a regional effort...rural communities have amenities urban communities only dream of and yet are forgotten at the State level."[165] Unfortunately, many rural communities are limited in their options to pursue projects and are only able to pursue communication with current companies already in the area. The testimony further identifies that the lack of local funding stymies rural communities in their efforts to compete in the international marketplace.

Exhibit 16 : Texas Enterprise Fund and Rural Accessibility

"The Governor's Texas Enterprise Fund seems to fund only those projects that are initiated by the State and not projects nurtured locally or from a regional effort...rural communities have amenities urban communities only dream of and yet are forgotten at the State level."

Andres Garza, Jr.,
City Manager, City of Wharton

Source: *Andres Garza, Jr., City Manager,* City of Wharton. Testimony. IRT Committee hearing. Aug. 7, 2006.

In a report dated February 2005, the Center for Public Policy Priorities (CPPP) released information identifying TEF as the program with the largest annual appropriation of any cash-based economic development incentive program in the nation. As of January 2005, close to $206 million in grants to 17 projects have been allocated.[166] The point most important to observe is which areas in Texas seem to receive the most amount of support. Information presented by EDT shows project funding awards to each of the seven regions as defined

165 Andres Garza, Jr., City Manager, City of Wharton. Testimony. IRT Committee hearing. Aug. 7, 2006.

166 CPPP, Enterprise Fund Policy Page: "High Road or Low Road," (Feb. 2, 2005).

by the TEF program.[167] A cursory review of the information shows that although these areas are represented with a few awards to rural cities, such as Buda and Nacogdoches, the overwhelming majority of TEF funding is directed to metropolitan areas. A similar observation was made by the CPPP when it found that 89 percent of TEF funding is directed to counties with a population of more than 500,000 residents.[168] Counties with a population of less than 500,000 only accounted for 11% of investment for TEF-financed job creation.[169] Not only have TEF awards been concentrated in more populated areas, but almost all TEF disbursements have been for business incentives and "virtually no funds have been disbursed for community development or job training programs."[170]

Exhibit 17: Texas Enterprise Fund Project Awards

"...virtually no funds have been disbursed for community development or job training programs."

Center for Public Policy Priorities
Report, February 2005

Source: *CPPP, Enterprise Fund Policy Page:* "High Road or Low Road." (Feb. 2, 2005).

Not only have TEF funds been awarded to higher populated regions, they have also been allocated to areas with moderate unemployment levels. Using information provided by the Legislative Budget Board (LBB) and the Texas Workforce Commission (TWC), the CPPP concluded in a subsequent document that the distribution of TEF grants have been in areas with low or medium unemployment rates.[171] Counties with a 7 percent or more unemployment rate, a rate considered to be high, only received 1 percent of the job distribution projects.[172] This information supports the CPPP finding that TEF grants have historically been targeted towards larger suburban and metropolitan areas experiencing relatively low unemployment and high growth patterns. In

167 Aaron Demerson, Executive Director, Economic Development and Tourism Division. Testimony. IRT Committee hearing. Oct 24, 2006.

168 *See* CPPP, Feb. 2, 2005.

169 *Id.*

170 *Id.*

171 Don Baylor, Policy Analyst, CPPP. *Memorandum, HB 2421: Job Creation and Closing the Skills Gap.* May 27, 2005.

172 *See* CPPP Feb. 2, 2005.

contrast, rural and border areas have usually experienced higher unemployment rates due to the lack of economic opportunities available to those pockets of the State. As the testimony by Wharton City Manager Garza indicates these areas seem to have been overlooked by the Enterprise Fund. Clearly, regions experiencing higher unemployment rates than the rest of the State would likely benefit greatly from private investment, allowing TEF to have a meaningful impact. The challenge to the State is to provide greater accessibility to the necessary resources/programs for rural and border communities to address their critical economic development needs. As discussed in a later section of this report, in order to increase the accessibility of some of the State's economic development programs, Texas could explore establishing a Rural Economic Development Fund, much like other states, to intensify its outreach efforts to rural areas.

Job Training: Addressing the Workforce Needs of Texans.

A key component in attracting companies to Texas is the availability of skilled workers. Diane Rath, Chair of the Texas Workforce Commission (TWC), testified in the Houston hearing that "without skilled workers we can't attract or maintain the type of companies that pay the type of wages to sustain the quality of life we have come to expect."[173] TWC "administers workforce training programs that provide services to both the state's workers and employers. These services are designed to equip workers with the skills needed to foster economic development."[174]

One such program administered by TWC is the Skills Development Fund which "respond[s] to the workforce needs of Texas employers and industry."[175] It provides "grants to community colleges and technical schools to fund training programs tailored to jobs with local employers."[176] Since the program's inception, over 168,000 individuals have received training via Skills Development funding.[177] TWC information indicates that this has led to the creation of over 61,000 new jobs and the retention of nearly 107,000 jobs in Texas. Just in fiscal year 2005, the "TWC awarded 23 grants

[173] Diane Rath, Chair, TWC. Testimony. IRT Committee hearing. Aug. 7, 2006.

[174] *See* LBB, 2006-2007.

[175] *Id.*

[176] *Id.*

[177] TWC, follow-up information received on Nov. 15, 2006.

totaling $8.6 million. These grants served 95 businesses, generating 3,351 new jobs and retraining 8,896 current workers for existing jobs. The trainees received an average hourly wage of $17.01 plus benefits upon completion of the program."[178] Furthermore, since the program has been established, the Skills Fund has helped approximately 2,600 businesses.[179] In fiscal year 2006, of the 125 businesses served in Texas, 71 of them were micro or small businesses.[180] In terms of the economic impact to the State, TWC officials reported to the committee that "using a formula provided by the Comptroller's Office, we calculate the economic impact to the state based on the awarded grant amount. For FY 06 grants, the economic impact was estimated at approximately $349,588,804."[181] As the data indicates, the Skills Development Fund has greatly assisted its trainees, businesses and the State of Texas. Accordingly, in order to address the issues outlined in the housing section in terms of the projected increases of individuals in low-paying jobs, it would greatly benefit the State to strengthen programs such as the Skills Development Fund to engender greater economic development and growth. This is especially true since the average hourly wage reported for fiscal year 2006 for Skills trainees was $19.22.[182]

---

[178] TWC, follow-up information received on Nov. 8, 2006.

[179] *See* TWC, Nov. 15, 2006.

[180] *Id.*

[181] *Id.*

[182] *Id.*

Needs of Texas' Workforce.

For the Houston hearing, Chair Rath highlighted some of the most pressing workforce needs of the State by comparing the job market of today with that of the 1950s. Unlike 50 years ago when unskilled labor could fill 60 percent of the jobs available, Chair Rath went on to explain, that times have changed, "as other countries are developing their economies, they can provide the same caliber of unskilled labor for a small fraction of the costs as here -- hence why the garment industry abandoned El Paso and San Antonio for places like El Salvador and Vietnam. Our competitive advantage is in technology-and-knowledge-based fields."[183] This is especially true "if you look at a 10-year table of the percentage of projected job openings due to growth[;] all of the professions that require a post-secondary certificate or some form of college degree are growing."[184] Unfortunately, according to Census data, a significant amount of the state's population does not have a high school diploma and thus are not being able to pursue these expanding new jobs. Rath went on to explain that data from 2000 "indicates that 4.4 million Texans age 16 and older and out of school do not have a high school diploma or equivalent. That's more than 28 percent...who are only able to compete for a dwindling percentage of low-skill jobs."[185] This is especially problematic along the border region. Rath reported that the Lower Rio Grande Local Workforce Development Board found that "more than 48% of the region's working-age population 25 and up does not have a high school diploma."[186]

TWC findings also showed that there is a significant amount of Texans who cannot communicate effectively. Specifically, of the 4.4 million individuals without a high school diploma, about half do not speak English as their "primary language. Almost 1.5 million do not speak English 'very well,' and more than 420,000 don't speak English at all."[187] This should be of concern to state officials since "English is the language of commerce in our state, our country, and the world, and

[183] *See* Rath, Aug. 7, 2006.

[184] *Id.*

[185] *Id.*

[186] *See* Rath, Aug. 7, 2006.

[187] *Id.*

large employers in this State's emerging and targeted industries do not want to locate in communities where workers cannot communicate effectively in English."[188] In 2001, in order to attempt to find a solution that would address this problem, the Legislature authorized TWC to "create a pilot program out of existing resources to provide adult technology training for trade-affected workers in El Paso."[189] In 2004, the necessary funds became available to implement the program and to train 60 trade-displaced workers through "bilingual, computer-assisted curriculum for jobs such as Computer Office Skills and Certified Nursing Assistants."[190] Chair Rath reported that "this innovative curriculum provided Spanish-speaking workers with intensive GED remediation and ESL instruction that reflected the English language requirements employers said were required for available jobs." As a consequence, "by capitalizing on the strengths workers had in their native language and incorporating technology supports into the curriculum, workers were not only able to complete training in a shorter time period but were able to compete for jobs in the bilingual and bicultural job market of El Paso."[191] Although the necessary authority to take this program statewide was passed in 2005, no funding was associated with the program. As this discussion illustrates, and as recommended by workforce officials, in order to address the needs of Texans with a low level of English fluency, workforce literacy programs should be strengthened and new ones established to provide this segment of the Texas population the necessary tools it needs to succeed. Distressed regions of the State with high concentrations of individuals in need of these services, such as the border region, would greatly benefit through such workplace literacy programs.

Exhibit 18: Comments from TWC

"...the Texas/Mexico border region has tremendous untapped potential."

Diane Rath
Chair, TWC

Source: Diane Rath, Chair, TWC. Testimony. IRT hearing. Aug. 7, 2006.

[188] *Id.*

[189] *Id.*

[190] *Id.*

[191] *Id.*

Combating illiteracy and promoting workforce training are critical to the economic development efforts throughout different areas since the State "can't train people for employment until they are literate."[192] The Texas Education Agency (TEA) administers the Adult Basic Education (ABE) program which provides grants for "comprehensive English literacy service with basic instruction in reading, writing, and mathematics to adult learners."[193] Recent information provided by TEA and TWC shows that the State is drastically behind the curve in making ABE funding a priority.[194] In Houston, the committee was informed that TEA has been "appropriated approximately $75 million a year for adult basic education and family literacy, and its target is to serve 150,000 students in FY 2006 and 160,000 in FY 2007. However, California, another state with a similar literacy problem, is supplementing its federal funds with nearly $700 million in state funds to provide adult basic education."[195] TEA reported that in the four Legislative Appropriations Requests that the agency has submitted to the Legislature, TEA has requested "increased state funding for adult and community education" however, has not been appropriated such monies.[196] Education Commissioner, Shirley J. Neeley, has indicated that she "would be supportive of more general revenue funding for adult education."[197]

---

[192] *Id.*

[193] TEA, background information. Nov. 2, 2006. (With an exception when TEA's LAR included no exceptional items for any purpose.)

[194] *Id.*

[195] *See* Diane Rath, Aug. 7, 2006.

[196] Shirley J. Neeley, Commissioner ,TEA. Follow-up information to the committee, Nov 2, 2006.

[197] *Id.*

Table 2: Increased funding requested by TEA on ABE.			
Fiscal Year	**Exceptional Item**	**Amount Requested**	**Amount Appropriated**
2007	Adult Ed. St. Funding	$6.8 million	0
2006	Adult Ed. St. Funding	$6.8 million	0
2005	*No Exceptional Items*	0	N/A
2004	*No Exceptional Items*	0	N/A
2003	Adult Ed. St. Funding	$5.4 million	0
2002	ABE St. Funding/Comm. Ed. Dev.	$5.9 million	0
2001	Community Ed. Dev.	Unused Balance	0
2000	Community Ed. Dev.	$450,000	0

Data Source: TEA follow-up information, Nov. 2, 2006.

Although information from TEA shows that states like California and Florida have supplemented their federal ABE grants with significantly greater amounts of state funding (by more than $644 million and nearly $230 million, respectively in 2003),[198] "Texas does not fund adult education to the same extent as some of our comparable states."[199] In Austin, the committee was informed that "Texas' estimated adult education target population was 4.4 million. Our adult out-of-school population is 28 percent, which is a higher proportion than either California or Florida. In the 2003-04 program year, TEA supplemented its $46 million in federal funds with less than $9 million in state revenue. This allowed TEA to provide services to less than 123,000 -- less than 3 percent of our target population and less than one-third of the individuals that the smaller state of Florida served."[200] In 2004-05, TEA officials testified that Texas had "$39 million for adult education

[198] TEA, background information. Testimony. IRT Committee hearing. Oct. 24, 2006.

[199] Shirley J. Neeley, Commissioner ,TEA. Follow-up information to the committee, Nov 2, 2006.

[200] Diane Rath, Chair, TWC. Testimony. IRT Committee hearing. Oct. 24, 2006.

providers ($6.8 from state, $32 million from the federal government)."[201] This means that with the "current resources we are only serving 3.5 percent of the adult basic education population."[202]

As indicated above, not only is Texas behind the curve in terms of funding for adult education, it is also behind other states in the percentage of the populations served. California and Florida, with their increased state support for their adult education programs serve respectively 13 and 17 percent of their population in need. Texas with its current amount of funding can only serve about 4 percent of its residents in need of ABE services.[203]

Table 3: TEA Adult Basic Education (Percent of Population Served)	
Florida	17%
California	13%
Illinois	8%
New York	6%
Texas	***4%***

Data Source: Shirley J. Neeley, Commissioner of Education. TEA. Follow-up information. Nov. 2, 2006.

This is especially troubling. In follow-up testimony, workforce officials testified in Austin that "given that more than one-fourth of Texas' adult population is out of school and without a high school diploma or equivalent, adult basic education (or ABE) needs to be a critical component of the State's workforce development strategy. Unfortunately, two fundamental issues get in the way: the priority the State assigns to adult education and the structure of adult education services in Texas."[204]

201 *See* Neeley, Oct. 24, 2006.

202 *Id.*

203 Shirley J. Neeley, Commissioner ,TEA. Follow-up information to the committee, Nov 2, 2006.

204 *See* Rath, Oct. 24, 2006.

Although increasing funding can begin to address some of the adult education needs in Texas, the State could increase the effectiveness of the program by providing it a greater workforce-related focus. This is especially true when considering the make-up of adult education program participants. TEA officials testified in Austin that "over 62% of adult education learners are between the ages of 25 and 59 . . . [this is] very interesting since a lot of people tend to think they are much younger."[205] In October, TWC officials testified that providing a greater workforce focus to the program would benefit the adult education participants. The committee was informed that "because Texas' ABE system lacks a direct connection to business and workforce development systems, it is not currently positioned as a solution provider for employers. Businesses do not see the system as a resource to help them remain competitive. The Texas Workforce Investment Council's 2006 Employer Survey found that only 6 percent of Texas employers currently work with the ABE system. Similarly, because it lacks innovative timely program offerings that build skills needed for today's jobs, students with employment goals do not access the system. According to the state performance report submitted to Congress for program year 2003-04, only 801 out of 122,773 students with employment goals actually entered employment after receiving ABE services."[206] During the October hearing, TEA officials indicated that there was a "need to align our adult basic education programs with career exploration and development activities."[207] Specifically, the committee was informed that "the next step is to improve the collaboration with the Texas Workforce Commission to provide our next steps which will definitely include vocational training internship and job placement."[208]

In order to improve the effectiveness of Texas' Adult Basic Education program, the committee looks forward to working with both TEA and TWC to increase the resources available to the program. To better address the needs of Texans which require adult education services, as well as to provide them the necessary building blocks to succeed in the marketplace, it would behoove the State to work with interested parties in order to align the program with more of a career/job placement focus. One approach presented to the committee to attempt to improve the program is to consider looking into funding the program under a need-based approach. Specifically, Wanda Garza, Chair of the Workforce and Education Committee of the Texas Border Coalition (TBC), testified in October in

---

205 *See* Neeley.

206 *See* Rath, Oct. 24, 2006.

207 *See* Neeley.

208 *Id.*

favor of Texas ABE taking proactive steps towards a "needs-based" formula to provide support to areas with high concentrations of individuals in need of adult education.[209] Garza also recommended there be a performance review of the program in order to increase its effectiveness.

Economic Development in Rural and Non-Urban Texas

In terms of the needs of rural communities, the committee sought the participation of the Office of Rural Community Affairs (ORCA). As background, ORCA was created in 2001 to "support community and economic development, to promote access to healthcare in rural Texas, and to ensure the general welfare of rural communities in Texas."[210] The agency is the largest rural affairs office in the nation, which is directly tied to the high rural population in Texas.[211] More than three million Texans live in rural Texas.[212] Charles Stone, Director of ORCA, testified in the August hearing that in order to improve the quality of life of rural residents, ORCA funds a series of programs which support "economic development through the Texas Capital Fund and Small Business and Microenterprise Loan Programs; community development, with an emphasis on providing access to first-time water and sewer services; capital infrastructure for rural Texas' healthcare facilities; and, recruitment and retention of healthcare professionals."[213]

ORCA was asked to present a series of recommendations to assist the committee in order to better assist rural communities of the State. In Houston, ORCA testified that in order to increase the competitiveness of rural communities and to assist them in trade-related matters, the State could "tailor economic development incentives for the rural economy."[214] This recommendation addresses the concern voiced by the City of Wharton officials, which indicated that some of the State's

209 Wanda Garza, Chair, Workforce and Education Committee, Texas Border Coalition. Testimony. IRT Committee hearing. Oct. 24, 2006.

210 *See Fiscal Notes 2006-07.*

211 Charles S. Stone, Executive Director, ORCA. Testimony. IRT Committee hearing. Oct. 24, 2006.

212 *Id.*

213 *See* Stone and Jeter, Aug. 7, 2006.

214 *Id.*

economic development programs seem to have overlooked rural regions. A possible outreach effort to increase the State's assistance to rural communities is to "place a priority on incentives for businesses to locate in rural areas."[215]

For the State to better provide the necessary infrastructure for distressed and rural communities, ORCA officials informed the committee that Texas needs to provide greater community development tools to these communities. Currently, ORCA can only fund about "one-third of applications for community development projects in rural Texas."[216] This is of concern to the State, since the federal government has decreased the level of CDBG funding. Consequently, Stone informed the committee that "there is a need to establish a floor funding level for community development in rural Texas."[217]

In the Austin hearing, testimony received from ORCA officials indicated that leadership development is "the most critical tool to address the varying needs of rural communities."[218] The committee was informed that "capacity building is needed to increase the number of rural leaders in Texas and to improve the return on investment of local, state and federal and private resources."[219] Stone testified that the necessary funding to support ORCA's leadership development was eliminated during the 78th legislative session and has "severely impacted ORCA's ability to carry out this critical mandate."[220]

The State of Texas could also increase its assistance to rural communities through various agency initiatives. Agencies could be encouraged and be provided incentives to "commit funding and/or technical resources to interagency partnerships"[221] to benefit rural Texans. Coordination among

---

215 *See* Stone and Jeter, Aug. 7, 2006.

216 *Id.*

217 *Id.*

218 *Id.*

219 *Id.*

220 *Id.*

221 *Id.*

agencies could be encouraged as to decrease overlap or duplication of services in order to "increase efficiency, identify cost savings, streamline processes, and reduce project completion time-frames, etc."[222] ORCA, specifically, could be allowed to "have expanded capabilities to serve rural Texas through the development of an online rural clearinghouse of information, data and reports related to rural issues."[223]

The second most pressing need in rural Texas, after that of leadership capacity, is the need for resources for rural entrepreneurship. The committee was informed that entrepreneurial spirit in rural Texas is strong; however, rural areas face most of their difficulties in the start-up phase of business. ORCA officials testified that much of the challenges facing rural entrepreneurship is the lack of a support system found in the most highly populated areas. Collaboration is difficult in regions with such a sparse population leaving a lack of synergetic efforts found in most urban or highly populated suburban areas of Texas. Therefore, it is vital to economic development efforts that Texas find ways to support rural business ventures with technical and leadership development. Stone testified that in 2005, ORCA developed two new programs to assist rural entrepreneurs with their challenges, the Small Business Loan Fund and the Microenterprise Loan program.[224] Additionally, "during the 79th Legislative Session, HB 1747 created the Texas Entrepreneurship Network (TEN) to work locally, regionally, and statewide with educators, agencies, organizations, networks, businesses, economic developers, consultants, communities, researchers, or other persons to develop and support strategies to assist entrepreneurs and improve the environment for entrepreneurial development in the state."[225] However, as ambitious as TEN's development was intended, its efforts fell short of its goals due to a lack of funding.

Additionally, ORCA's testimony placed a strong emphasis on an approach many other states are taking to attempt to maintain the community assets of their rural areas. "According to the *Boston College Wealth Transfer Report*, a wealth transfer of at least $41 trillion will take place in the United States by the year 2052. Given the share of the US population (7.7 percent), Texas' wealth transfer could be in the neighborhood of $3 trillion over the next 50 years" with rural Texas poised to reach

---

[222] *Id.*

[223] *Id.*

[224] *Id.*

[225] *Id.*

$400 billion.[226] This information illustrates the negative impact that could be felt in areas already experiencing uphill challenges for growth. However, testimony indicated that if Texas could structure a system by which a simple five percent of that rural wealth transfer could stay in the community through charitable organizations or rural community foundations, "Texas could gather $20 billion over the next 50 years—an average of $400 million a year."[227] It is imperative for Texas to explore ways to keep the wealth established within rural communities in them. ORCA recommended that the "Texas Legislature could implement a program to encourage the creation of community organizations that will work to keep wealth in rural Texas."[228]

Exhibit 19:
ORCA: Positives Resulting from the Creation of Community Organizations/Foundations to Keep Wealth in Rural Texas

- Building sustainable community wealth and decreasing reliance on state/federal governments.
- Maximizing existing state/federal funding sources through the availability of local matching dollars.
- Increasing the accessibility of funding that is not available to state agencies.
- Decreasing the likelihood that monies will be left "on the table."

Data Source: Charles S. Stone, Executive Director, ORCA. Testimony. IRT Committee hearing. Oct. 24, 2006.

In order to increase the State's effort to address the needs of rural areas, ORCA was asked to inform the committee what programs other states have undertaken to better assist their rural communities. Exhibit 20 highlights the programs established in Utah, Louisiana, and Nebraska. From the information received, the State of Nebraska notably seems to have a large variety of rural development programs aimed at building and maintaining strong rural communities. A rural development fund of this caliber in Texas could begin to mitigate some of the difficulties rural Texas faces in economic development and growth, given the large rural population and the potential wealth transfer involved. In response to questions posed by the IRT Committee Chair in Houston, Stone indicated that his agency would support the creation of a Rural Economic Development Fund that

226 *Id.*

227 *Id.*

228 *Id.*

would provide greater economic development resources to rural and distressed areas of the State.

Exhibit 20: Rural Development Activities by States with Rural Development Funds (Purpose and Summary of Programs)

Utah	Louisiana	Nebraska
▪ Rural Development Fund, established in 1998 ▪ Aims to provide grants to local government entities ▪ Funding through royalties on exchanged lands ▪ Utah State Department of Community and Economic Development provides administrative and operational support ▪ Funding is directed at design projects directly resulting in a capital project ▪ Funding is based on a 50/50 match basis	▪ Rural Development Fund, established in 1991 ▪ Funds projects developed and coordinated jointly by the Office of Rural Development and the Department of Transportation and Development ▪ Funding through state appropriation ▪ Funding used for capital improvements, natural catastrophe relief or the matching of federal funds ▪ Funding is based on a 50/50 match basis	▪ Rural programs administered through the Department of Economic Development with assistance by the Rural Development Commission ▪ Package of programs: Building Entrepreneurial Communities Act, Agricultural Opportunities and Value-Added Partnership Act, Nebraska Advantage Microenterprise Tax Credit Act, and the Nebraska Advantage Rural Development Act ▪ Variety of grants available to support economically distressed rural areas of Nebraska, to support small enterprises in the agricultural sector of the rural economy, tax credits to encourage economic development in depressed areas, and tax credits for qualifying business ventures in rural areas ▪ Nebraska is at the forefront with their rural development activities

Source: Charles S. Stone, Executive Director, ORCA. Testimony. IRT Committee hearing. Oct. 24, 2006.

Small Business Administration

Another way to ensure economic development to different areas of the State is to pay the needed attention to the effects of regulatory statutes on small businesses. During the August IRT hearing, the committee heard testimony from the Region VI Advocate of the U.S. Small Business Administration Office of Advocacy, Mr. Eric Munson. In his role as the advocate for an area including Arkansas, Louisiana, New Mexico, Oklahoma and Texas, Munson encourages fair small business policies to ensure future growth.

Exhibit 21 : Small Businesses Facts

- More than 93% of businesses in every state are small businesses
- Represent 96% of the firms in Texas are small
- Create nearly 75% of all net new jobs
- Small businesses with less than 20 employees spend $7,647 per employee for federal law compliance; firms with 500 or more employees spend $5,282
- The burden for compliance is 45% greater for small businesses

Data Source: Eric Munson, Region VI Advocate, U.S. SBA. Testimony. IRT Committee hearing. Aug. 7, 2006.

Munson testified that the Office of Advocacy monitors federal agency compliance with the Regulatory Flexibility Act (RFA) in order to reduce the regulatory burden on small businesses.[229] The committee was informed that "small business owners also have to shoulder the cost of compliance with state and local regulations."[230] Testimony indicated that "under the federal RFA, [the Office of] Advocacy has shown time and again that regulations can be reduced and the economy improved without sacrificing important goals such as environmental quality, travel safety and

229 Eric Munson, Region VI Advocate, U.S. SBA. Testimony. IRT Committee hearing. Aug. 7, 2006.

230 *Id.*

workplace safety."[231] The Office of Advocacy has assisted different states with drafting model legislation to mirror the RFA on a state level. Since the creation of the model legislation in 2002, a number of states have considered and implemented regulatory flexibility legislation in one form or another. In Texas, Munson testified that "although the Texas Administrative Procedure Act (APA) does contain some form of regulatory flexibility, it does not contain all of the five critical elements of Advocacy's model legislation. Therefore, the law could be strengthened through legislation to fill in the missing key components that add to regulatory effectiveness."[232] Munson's recommendation may be needed since "based on the definition of small business provided in the Texas Administrative Procedure Act, approximately 96 percent of the firms in the state are small according to the latest statistics from the U.S. Census Bureau."[233]

Exhibit 22:
SBA: Issues that Should Be Addressed by State-Level Regulatory Flexibility Laws

1) A small business definition that is consistent with state practices and permitting authorities
2) A requirement that state agencies prepare a small business economic impact analysis before they regulate
3) A requirement that state agencies consider less burdensome alternatives for small business that still meet the agency objective
4) Judicial review of agency compliance with the rulemaking procedures
5) A provision that forces state governments to periodically review existing regulations

Data Source: Eric Munson, Regional Advocate, Office of Advocacy, SBA. Testimony. IRT hearing. Aug. 2006.

Other Economic Development Issues.

A critical element for economic development is infrastructure and without it in place, Texas communities will not remain competitive in the global marketplace. The committee heard testimony from representatives of Texas ports. The committee was informed that Texas Ports are a key asset to the State of Texas and are a valuable commodity in terms of job creation and the flow of trade. Texas ports have accounted for roughly "one million jobs for Texans and more than $30 billion in

[231] *Id.*

[232] *Id.*

[233] *Id.*

economic impact to the state."[234] With more than 1,000 miles of commercial navigable waterways, ports of Texas handled one fifth of all waterborne commerce in the United States in 2005.[235] Ports in the State extend from Orange to Brownsville and are important for commercial as well as military purposes. The Texas Ports Association testified that most of the ports of Texas are "local political subdivisions that support their capital construction and operations with a combination of fees and local tax revenue."[236] Texas ports do not receive any direct funding from the State and limited amounts of funding from federal sources. "The fact that Texas ports receive no direct state funding is especially critical when we consider the fact that all of the other states in the Gulf of Mexico do support their ports with funding for capital improvement."[237] In 2001, member of IRT passed Senate Bill 1282, creating the port access fund in an attempt to support ports with critical improvement projects.[238] Unfortunately, to date the port access fund has yet to be funded. Since ports make a significant impact to the state's economy, the Port Association urged the committee to seek funding for the program.

---

[234] David C. "Chris" Fisher, President, Texas Port Association. Testimony. IRT Committee hearing. Aug. 7, 2006.

[235] *Id.*

[236] *Id.*

[237] *Id.*

[238] *Id.*

Exhibit 23: Texas Ports at a Glance

- Port of Houston ranks 1st in the U.S. in foreign tonnage and is the 6th busiest port in the world
- Port of Houston generates an economic impact of $11 billion and is responsible for 287,000 direct and indirect jobs resulting in $7.2 billion in personal income
- Texas has 16 port authorities that extend from Orange to Brownsville
- Houston, Beaumont, Corpus Christi and Texas City are among the top 10 in the U.S. for tonnage handled
- Texas has more than 1,000 miles of commercial navigable waterways
- 502 million tons of cargo are imported and exported through Texas ports annually
- Beaumont and Corpus Christi handle military cargo for defense and foreign aid shipments
- Texas ports receive no direct state funding

Data Sources: David C. Fisher, President, Texas Ports Association. Testimony; Linnet Deily, Ambassador, Greater Houston Partnership. Testimony; and Tom Kornegay, Executive Director, Port of Houston Authority. Testimony. IRT Committee hearing. Aug. 7, 2006.

The committee also heard testimony from those representing the Port of Houston Authority. The Port of Houston, "which includes all the public and private marine terminals along the Ship Channel -- including the large petrochemical plant--makes up the largest port in the United States for foreign tonnage."[239] Tom Kornegay, Executive Director of the Port of Houston Authority, testified on the need to strengthen intermodal connections to ports. Specifically, "one intermodal connection project that will positively impact most of the seaports in Texas is the development of the NAFTA corridor from the Rio Grande Valley to Port Huron, Michigan."[240] Kornegay also stated that the State can assist ports by the development of the Interstate 69 (I-69) and the Trans-Texas Corridor (TTC) linking trade that comes in through the Texas ports up to the Midwest and Canada. TxDOT officials testified that "I-69/TTC is the corridor that spans from Northeast Texas to the valley and will serve

[239] Tom Kornegay, Executive Director, Port of Houston Authority. Testimony. IRT Committee hearing. Aug. 7, 2006.

[240] *Id.*

Houston, Corpus, the valley, and other ports."[241] Infrastructure development, such as the I-69/TTC, is the method by which the State can increase the already proven capacities of Texas ports while assisting rural/coastal communities. Port officials testified that "a corridor connecting Mexico, the Mid-West and Canada with Texas Ports would be a vital transportation link in the logistics system to move cargo efficiently to and from our ports."[242] TxDOT went on to state that "the Trans-Texas Corridor will not only provide a major, interstate grade, arterial to the border and coastal regions, it will provide tremendous economic opportunity to the state."[243] Support for these aforementioned projects was urged by those testifying in Houston as a means to strengthen economic development in coastal and rural areas of the State.

Establishing infrastructure along the rural and coastal communities is one of the top priorities of the TxDOT. Michael Behrens, Executive Director of TxDOT, presented oral and written testimony stating that rail and port projects across the nation are beginning to receive assistance from states. Virginia and Ohio, for example, have respectively established a state fund and corporation to assist in financing rail/railroad projects. As discussed above, "for port improvements, each of the Gulf States has a port development program funded at various amounts."[244] Behrens explained that Louisiana supports its ports with yearly appropriations of "less than $25 million," Mississippi assists its ports through project-specific funding, Alabama funded infrastructure revitalization in its ports through a one-time $300 million assistance, while Florida supports its ports with $35 million from motor vehicle registrations.[245] In Texas, two programs have been established to assist rail improvements and port infrastructure, the Rail Relocation and Improvement Fund and the Port Access Fund. Finding a revenue source for the Rail Fund is critical to infrastructure because it will improve the mobility of trade throughout the State reducing the impacts on local communities.[246]

---

[241] John W. Johnson, Commissioner, Texas Transportation Commission. Testimony. IRT Committee hearing. Aug. 7, 2006.

[242] *See* Kornegay.

[243] *See* Johnson.

[244] Michael Behrens, Executive Director, TxDOT. Testimony. IRT Committee hearing. Oct. 24, 2006.

[245] *Id.*

[246] *See* Kornegay.

TxDOT officials testified that the cost for rail improvement is high; however, "improving our rail system is one significant way Texas can increase mobility by giving shippers the choice to move by rail or highway. It is also possible to enhance public safety by decreasing the number of train/vehicle crossings, expand economic opportunity by encouraging greater freight movement through the State, as well as improve air quality by decreasing the number of idling vehicles and trains."[247]

[247] *See* Johnson.

The following are suggested recommendations and reforms developed by the Texas Senate Committee on International Relations and Trade mirroring, as well as addressing, the testimony provided to the IRT Committee during its interim hearings.

Distressed Areas-related Recommendations.

In an effort to improve the infrastructure of economically distressed areas across the state in a cost-effective manner, the IRT Committee recommends:

- Strengthening the success of Texas' effort in addressing the needs of Economically Distressed Areas by:
    - Providing Texans the opportunity to vote on a constitutional amendment giving the Texas Water Development Board (TWDB) the necessary bonding authority ($250 million) to fund the statewide EDAP II program established during the 79th Legislative Session and address the dire water and wastewater needs of distressed areas.
    - Providing the TWDB the necessary resources to finish administering the original EDAP program as well as to implement the EDAP II. Allocate sufficient funds to issue the remaining $12 million in previously authorized EDAP bonds which have yet to be issued.
    - Providing the TWDB the necessary outreach and community efforts to assist communities in need of water- and wastewater-services.
    - Increasing the effectiveness of the statewide EDAP II by continuing to support the Model Subdivision Rules as a fiscal safeguard for the state's investment in providing water and wastewater assistance to Texas communities.
    - Strengthening the effectiveness of the Model Subdivision Rules by:
        - Continuing to work with the TWDB, the Office of the Attorney General and

interested parties so that any necessary adjustments needed to be made to the Model Rules are undertaken in a manner that protects the interests of low-income Texans and the State's investment in ameliorating substandard housing problems.

- Increasing the effectiveness of the State's effort to address the water and wastewater needs in Texas by providing the necessary resources to re-establish the Attorney General's Model Rule Compliance Investigators to better ensure statewide compliance with colonia prevention laws. Correspondingly, provide the OAG additional support for Model Rule investigative and litigation efforts.

- Creating a state-authorized Model Rule Review Agent Program by working with the appropriate state agencies to certify local officials to assist Texas counties in Model Subdivision Rule review and enforcement efforts.

- Developing a method, with the assistance of the TWDB and OAG, by which counties and applicable cities participating in the statewide EDAP II can provide annual residential subdivision plats to the TWDB to determine the adequacy of Model Rule compliance/enforcement.

- Providing the TWDB additional outreach resources so that the agency can better provide assistance and educational services to new communities participating in the statewide EDAP II program.

- Maintaining the checks and balances of Texas' investment in correcting the problems associated with the development of colonia-like substandard conditions by maintaining incentives between Model Rule compliance/enforcement and state funding.

- Maximizing Texas' efforts in assisting disadvantaged communities by supporting the TWDB's request to restoring funding to the Disadvantage Community Program of the Drinking Water State Revolving Fund.

- Empowering Texas counties with the necessary tools to assist the State in its effort to curb the development of colonia-like, substandard housing conditions and ensure that low-income Texans are not taken advantage of by those who would prey on their innocence by:

    - Providing counties with limited ordinance making authority.

    - Allowing regions of the state with the worst concentrations of substandard living conditions the necessary regulatory ability to ensure meaningful, safe housing development.

    - Removing the participation/eligibility brackets in Subchapter E of Chapter 232 of the Local Government Code allowing counties some permissive authority in infrastructure planning and related items.

- Increasing the coordination of Texas' effort to address the needs of colonias.

    - Further developing the Colonia Ombudsman program by:

        - Strengthening the workings and efficiency of the Ombudsman program by appropriating the necessary funds for outreach efforts, such as public awareness campaigns, to inform colonia residents of state programs and resources.

        - Increasing the effectiveness of the program by providing the necessary resources to train the Ombudsmen to assist struggling communities in other critical areas such as economic development and sustainability, financial, managerial and technical capacity.

        - Increasing the outreach/servicing efforts of the program by providing the requested resources to support additional Ombudsmen in areas of high colonia concentrations, including San Patricio and Nueces County.

    - Addressing the current lack of infrastructure in border colonias by working with TxDOT, the Colonia Coordinator and the Office of the Governor in strengthening the Colonia

Road Access Program by developing the necessary initiatives and providing the needed resources to address the remaining road way needs identified by TxDOT.

- Enhancing the success of the Colonias Self-Help Centers by working with the appropriate agencies to double the number of centers in Texas and increase the delivery of services provided by the centers, which have earned Texas national recognition.

- Providing the Colonia Coordinator the ability to address the living conditions of residents of non-border colonias located in counties which have a higher than average non-border colonia population by allowing the Coordinator to have a statewide non-border colonia facilitator to advocate for these regions when dealing with state/federal agencies in water and wastewater matters. Require that the new position assist the Coordinator in identifying ways to improve state outreach efforts to all non-border colonias.

Housing-related Recommendations.

To provide greater affordable housing opportunities in Texas, the committee recommends:

- Capitalizing on the success of the Texas Bootstrap Home Program by strengthening its efforts to provide greater home ownership opportunities to the hard-to-reach populations by:

    - Increasing the funding to the Bootstrap Program from its present \$3 million per year to \$12 million in FY 2008 and \$40 million in FY 2009. Providing the TDHCA the necessary resources to successfully implement this enhanced homeownership initiative.

    - Correspondingly, setting performance goals of the Bootstrap Program which would require an increase from the present 120 constructed housing units per year to 1,000 units per year by 2009.

    - Enhancing homeownership opportunities by conservatively increasing the amount of funding provided by the TDHCA in individual Bootstrap loans to keep in line with increased construction costs.

    - Allowing the TDHCA to develop a separate category of funding assistance in the Bootstrap Program for the elderly and disabled wanting to participate in self-help construction.

    - Establishing a division/office of self-help housing within the TDHCA in order to ensure that Texas will continue to be the national leader in self-help construction projects.

    - Supporting the training of new self-help housing organizations and working with the TDHCA, institutions of higher education and institutes of architecture to develop/design cost-effective plans for self-help housing.

    - Allowing self-help housing organizations to perform some level of loan servicing under the program to increase the administration and success of Bootstrap Loans.

    - Increasing the success of the Colonias Self-Help Centers by allocating existing CDBG Colonias Self-Help Center funding to require all Centers to produce at lest 30 new homes per year.

    - Continuing to work with interested parties, including non-profits and housing officials, to develop a Texas Self-Help Housing Opportunity Act to support this undertaking in order to significantly increase housing opportunities in Texas.

- Addressing the concerns heard in testimony regarding the Housing Tax Credit Program and thereby increase the program's effectiveness by:

    - Providing a better statutory definition for what amounts to "Quantifiable Community Participation" in the scoring system. Undertake this reform to assist communities, such as those in rural Texas, where there may exist a significant need and desire for housing projects but there are no neighborhood associations.

    - Addressing the uneven playing field smaller communities and cities face in the scoring system due to the lack of "Development Funding." To encourage the pursuit of housing developments in smaller communities and cities, explore alternatives to the

"Development Funding by Local Political Subdivisions" scoring category. The elimination of the category should be considered.

- Allowing those at the local level of government, such as members of a city council or county commissioners court, the ability to show "local community support" in the scoring process through the submission of enacted resolutions. Additionally, develop a means by which Resident Councils can also have an input in the "local community support" category.

- Addressing the issues confronted with the "At-Risk" Development Set-Asides which inhibit some regions of the state from acquiring funds for new construction projects. Provide the set-asides more of a statewide focus to ensure that the highest scoring "at-risk" projects around the State will receive awards of credit.

- Revising the "Reconstruction" definition in statute to more effectively and efficiently allow the utilization of sites to provide additional affordable housing.

- Improving the effectiveness of the Private Activity Bond program by:

    - Addressing the program's cost prohibitive nature of using bonds to finance developments in small areas, such as rural regions, in need of multifamily projects by allowing more than one project site per application. Amending Chapter 1372 to allow scattered, small site applications for multifamily developments to provide an additional financing tool for smaller cities and rural areas and encourage regional multifamily housing.

    - Addressing the ineffectiveness of the Rural Set-Asides for areas outside the metropolitan statistical areas of Austin, Dallas and Houston. Increase the efficiency of the program and preserve affordable housing units by allowing the set-aside allocation to also be used for rehabilitation transactions inside or outside the metro areas and shortening the set-aside period from May 15 to March 1. This will decrease the amount of time that a volume cap is set-aside before it is made available to the entire region and allow the set-aside to be used to preserve affordable housing by rehabilitating older multifamily properties.

- Addressing the requirement that 100% of housing units have rent and income restrictions which prevent projects from having market-rate units. Provide flexibility to developers to include market-rate units if it is financially feasible by amending statute to allow at least 80% of the units to be restricted. Such a reform would allow mixed-income projects to develop.

- Addressing the remaining housing-related matters presented to the committee by:

  - Continuing to work with TDHCA and interested parties to provide the necessary support to the department and undertake the necessary reforms to increase the efficiency and effectiveness of the HOME program.

  - Identifying a funding source for the Housing Trust Fund and increasing support to the Fund to ensure that innovative projects such as the Bootstrap Program receive the necessary funding from the State.

  - Resolving the problems associated with the capitalization rate used to determine the value of rent-restricted, affordable housing properties by codifying the proposal developed by chief appraisers and interested parties during the 79 Legislative Session.

Economic Development Recommendations.

It is important to equip underserved, rural and distressed areas with the tools necessary to enhance economic development. To address these needs the members of the IRT Committee recommend the following measures:

- Working with the appropriate state agencies to develop initiatives that foster greater economic development in areas experiencing high unemployment rates.

- Providing support to local/regional efforts promoting partnerships among educational institutions, counties, cities, and the private sector in order to generate economic development in non-urban parts of the State.

- Providing further incentives for companies to locate in distressed and strategic areas of Texas.

- Facilitating the creation of networks through partnerships with higher education institutions in order to incubate small businesses and emerging technologies in distressed regions of the State.

"Workforce Infrastructure" Recommendations.

Workforce training and ABE are critical elements for equipping rural and distressed areas with the tools necessary to effectively provide Texans with the needed skills for entering and advancing into higher paying jobs; understanding these concerns the IRT Committee recommends:

- Increasing state funding to adult education programs to significantly improve the number of individuals being served and to combat illiteracy and promote workforce placement.

- Increasing the effectiveness of adult basic education programs by providing a greater workforce related focus and aligning the programs with career development training to have an "employer-driven" job placement outcome.

- Seeking input from Texas employers regarding their needs in employees through the creation of regional employer advisory committees to further customize and tailor adult education efforts.

- Expanding programs and initiatives of Vocational English as a Second Language as an option to prepare working aged individuals with employment goals to enter the workforce.

- Considering a performance review of the ABE system in order to increase the program's effectiveness and improve our standing versus peer states.

- Increasing funding to the Skills Development Fund to prepare Texans for higher paying jobs and foster greater economic development and growth within the State.

Rural Economic Development Recommendations.

In order to address the economic development needs of rural Texas, the IRT Committee recommends:

- Tailoring economic development incentives to target the rural economy, placing a greater emphasis on awards for businesses to locate in rural areas.

- Providing greater accessibility to economic development programs and to build and maintain strong rural communities, the State should consider a Rural Economic Development Fund. Such an initiative would intensify much needed outreach efforts to rural areas.

- Increasing coordination among agencies in order to pool resources, share information, and provide more efficient services to rural regions. Interagency partnerships could be developed so that the necessary resources reach rural communities in need.

- Supporting rural business ventures by funding the Texas Enterprise Network program established during the 79th Legislative Session.

- Providing sufficient support for ORCA to create an online rural clearinghouse to better serve the needs of rural areas.

- Strengthening the Small Business Loan Fund and the Microenterprise Loan Program in order to foster rural entrepreneurship and alleviate some of the obstacles facing small businesses.

- Providing local communities with the resources to create community development foundations in order to build sustainable community wealth, maximize funding through local matching dollars, and increase accessibility to funding not available to state agencies. Such an effort will allow wealth to be kept in rural Texas.

- Restoring funding to ORCA in order to re-establish rural leadership development programs, since leadership development is the most critical tool to address the needs of rural communities.

- Establishing a floor funding level for community development in rural Texas, since ORCA is only serving the needs of one-third of the applications for community development projects due to the reduction in federal CDBG funding. Such an initiative will better provide the much needed community development tools in rural areas.

Small Business Recommendations.

Small businesses are vital to improving economic development in areas throughout Texas; considering their needs the IRT Committee proposes the following recommendations:

- Working with U.S. Small Business Administration officials and appropriate state agencies to implement SBA model legislation with elements of the Regulatory Flexibility Act. Such an initiative can reduce regulatory hurdles without sacrificing important goals such as environmental quality, travel safety and workplace safety while improving the success of small businesses. Elements to be considered include:

    - Incorporating a small business definition consistent with state practices and permitting authorities.

    - Instituting a requirement calling for state agencies to prepare a small business economic impact analysis before they regulate.

    - Requiring that state agencies take into consideration less burdensome alternatives for small businesses that still meet the agency's objective.

    - Requiring judicial review of agency compliance with the rulemaking procedures.

    - Including a provision that allows state governments to periodically review existing regulations.

<u>Infrastructure Improvement Recommendations.</u>

In order to address the State's infrastructure needs, the IRT Committee recommends:

- Supporting infrastructure development initiatives in order to maintain the State's competitiveness in commerce and trade-related activities.

- Finding ways to finance the previously established Port Infrastructure Fund to remain competitive in import/export activities because Texas remains the only Gulf Coast state that does not provide any funding to its ports.

- Providing the necessary support to strengthen intermodal connectivity within Texas ports to foster an environment friendly to international trade efforts and supporting projects such as the development of Interstate 69.

- Funding the Freight Rail Relocation Fund in order to provide options for the mobility of commerce and trade. Such an initiative would take complete advantage of the hundreds of navigable waterways with`in the State.