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**HOUSE COMMITTEE ON URBAN AFFAIRS  
TEXAS HOUSE OF REPRESENTATIVES  
INTERIM REPORT 2002**

**A REPORT TO THE  
HOUSE OF REPRESENTATIVES  
78TH TEXAS LEGISLATURE**

**BILL CARTER  
CHAIRMAN**

**COMMITTEE CLERK  
JULIE STREET**

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Committee On  
Urban Affairs

September 17, 2002

Bill Carter  
Chairman

P.O. Box 2910  
Austin, Texas 78768-2910

The Honorable James E. "Pete" Laney  
Speaker, Texas House of Representatives  
Members of the Texas House of Representatives  
Texas State Capitol, Rm. 2W.13  
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Committee on Urban Affairs of the Seventy-Seventh Legislature hereby submits its interim report including recommendations for consideration by the Seventy-Eighth Legislature.

Respectfully submitted,

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Bill Carter, Chairman

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Kevin Bailey

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Lon Burnam

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Bill Callegari

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Al Edwards

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Harryette Ehrhardt

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Fred Hill

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Elizabeth Ames Jones

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Manny Najera

Kevin Bailey  
Vice-Chairman

Members: Lon Burnam, Bill Callegari, Al Edwards,  
Harryette Ehrhardt, Fred Hill, Elizabeth Ames Jones, Manny Najera

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## INTRODUCTION

At the beginning of the 77th Texas Legislature, the Honorable James E. “Pete” Laney, Speaker of the House of Representatives, appointed nine members to the Committee on Urban Affairs. The Committee membership included the following members: Representative Bill Carter, Chairman; Representative Kevin Bailey, Vice-Chairman; and Representatives: Lon Burnam, William “Bill” Callegari, Al Edwards, Ehrhardt Harryette, Fred Hill, Elizabeth Ames Jones, and Manny Najera.

During the interim, the Committee was assigned four charges to research and report on to the 78th Legislature by Speaker Laney. These charges were (1) Review the roles of the State and of local public housing authorities in increasing access to housing assistance for the State’s poorest families and in supporting families making the transition from welfare to work; (2) Examine the definitions and roles of community housing development organizations (CHDOs) and non-profit housing entities. Assess standards they should meet in order to qualify for set asides, tax exemptions and other forms of special consideration; (3) Study the potential for improving the performance of public institutions by fostering cooperative efforts among employees and employers, including the long-standing controversies related to various forms of bargaining by groups that do not advocate the right to strike; and (4) Actively monitor agencies and programs under the Committee’s oversight jurisdiction, including implementation of sunset legislation and specifically including requirements to target single family mortgage loans to underserved geographic and economic populations and new Section 8 homeownership initiatives.

The Committee on Urban Affairs held four public hearing to discuss each charge individually. These hearings took place on April, 11 2002, May 8, 2002, June 12, 2002, and July 10, 2002. The Committee then met in two formal meetings on August 21, 2002 and September 17, 2002 to discuss their recommendations for the final report and to approve the report to be delivered to the Texas House of Representatives.

The Committee wishes to express its appreciation to the citizens, organizations and agencies that testified before the Committee.

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## HOUSE COMMITTEE ON URBAN AFFAIRS

### INTERIM STUDY CHARGES

- CHARGE      Review the roles of the State and of local public housing authorities in increasing access to housing assistance for the State's poorest families and in supporting families making the transition from welfare to work.
- CHARGE      Examine the definition and roles of community housing development organizations (CHDOs) and non-profit housing entities. Assess standards they should meet in order to qualify for set asides, tax exemptions and other forms of special consideration.
- CHARGE      Study the potential for improving the performance of public institutions by fostering cooperative efforts among employees and employers, including the long-standing controversies related to various forms of bargaining by groups that do not advocate the right to strike.
- CHARGE      Actively monitor agencies and programs under the Committee's oversight jurisdiction, including implementation of sunset legislation, and specifically including requirements to target single family mortgage loans to underserved geographic and economic populations and new Section 8 home ownership initiatives.
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**CHARGE ONE**

**REVIEW THE ROLES OF THE STATE AND OF LOCAL PUBLIC HOUSING  
AUTHORITIES IN INCREASING ACCESS TO HOUSING ASSISTANCE FOR THE  
STATE'S POOREST FAMILIES AND IN SUPPORTING FAMILIES MAKING THE  
TRANSITION FROM WELFARE TO WORK.**

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## BACKGROUND AND RESEARCH FINDINGS

### HISTORY OF PUBLIC HOUSING

Affordable housing first emerged as a public policy issue in the United States during the Depression. Millions of Americans were out of work and could not afford adequate housing. Many Americans who owned homes prior to the Depression were unable to pay their notes as a result of the economy's collapse. In order to save the private housing market, in 1932 the Federal government enacted legislation creating long-term home mortgage financing, allowing citizens to finance their homes over thirty-year or longer time spans. Prior to the advent of long-term financing, most mortgages spanned five years, requiring full payment or refinancing for another five years at the end of the term. This Federal intervention marked a shift in the government's role in the housing market, as prior to the Depression the private sector was viewed as having sole responsibility for housing.

In 1933, the Public Works Administration (PWA), acting under emergency powers, began to build housing for low-income families. During the Depression, one-third of all unemployed citizens were from building trades, so the creation of large-scale, government-funded affordable housing projects served the dual purpose of creating jobs and erecting much needed housing. In the mid-1930's, the PWA oversaw fifty demonstration projects in different American states. The projects created "slum clearance housing," which was usually erected in low-income neighborhoods in the centers of large cities and was designed to eliminate inner-city blight. The PWA based the design of the projects on European social housing programs implemented after World War I. Texas' first public housing complex, Cedar Springs Place in Dallas, was one of the fifty demonstration projects.

Developers and other members of the real estate community began to question the new activist role of the Federal government in the creation of housing. In particular, interested parties objected to the Federal government's use of condemnation powers to acquire land for public housing sites. Subsequently, the courts ruled that the Federal government could not legally buy land and build public housing, but upheld these powers for local agencies acting through authorization by State legislatures.

The court's decision to transfer to local agencies the power to provide public housing led to the U.S. Congress' passage of the Wagner-Steagle Housing Act of 1937. The Wagner-Steagle Act established the United States Housing Administration, now the U.S. Department of Housing and Urban Affairs (HUD); required that any construction of new units be offset by the removal of an equal number of substandard units; set very low maximum incomes for eligible residents; and provided funds for housing initiatives to be owned and operated by local agencies known as public housing authorities (PHAs). The passage of the Wagner-Steagle Act provided the foundation for today's public housing programs.

The Texas Legislature responded to the Wagner-Steagle Act by passing legislation authorizing Texas cities and counties to set up PHAs. The bill did not mandate that Texas communities establish PHAs, but rather provided guidelines for their voluntary establishment. Texas' governor, James Allred, helped steer the enabling legislation through the Texas House and Senate. Although the



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statutes governing public housing authorities have been revised over the past sixty-five years, the essence of the original legislation remains.

## **PUBLIC HOUSING TODAY**

Public housing provides decent and affordable rental housing for eligible low-income families, the elderly, and persons with disabilities. Current HUD figures show approximately 1.3 million households living in public housing units nationally, managed by 3,300 PHAs.<sup>1</sup> Public housing differs from other subsidized low-income housing in two key ways: it is run by public housing authorities that are governed by a board appointed by a city council or commissioners court and it is permanently affordable due to annual Congressional operating subsidies. Public housing ensures that citizens at the lowest income levels receive adequate housing. Rent for public housing residents is determined by family's anticipated gross annual income less deductions. PHAs are responsible for the management and operation of its local public housing program. On-going functions include compliance with leases, setting charges, periodically reexamining family income, as well as general maintenance of the development. Other functions may include services such as homeownership opportunities, employment and other kinds of training, and support programs for elderly.

PHAs also serve as administrators of the Section 8 Voucher program (also called Housing Choice Voucher program) and receive Federal funds from HUD to administer this program. Section 8 Vouchers allow families to lease privately-owned rental housing. The participant is free to choose any housing that meets the requirements of the program and is not limited to units located in subsidized housing projects. A housing subsidy is paid to the private landlord directly by the PHA on behalf of the participating family and the family then pays the difference between the actual rent charged by the landlord and the amount subsidized by the program. A family using a housing voucher must pay 30 percent of their monthly adjusted gross income for rent and utilities, and if the unit rent is greater than the payment standard the family is required to pay the additional amount. By law, whenever a family moves to a unit where the rent exceeds the payment standard, the family shall not pay more than 40 percent of their adjusted monthly income for rent. The income of a family eligible for public housing programs cannot exceed 80 percent of the median income for the county or metropolitan area in which the family resides. By law, a PHA must reserve 75 percent of its Section 8 vouchers to applicants whose incomes do not exceed 30 percent of the area median income (AMFI).

Since the demand for housing assistance often exceeds the limited resources available by HUD to local housing agencies, long waiting periods are common for the Section 8 Voucher program. Public housing faces several other challenges as well. The U.S. Congress has consistently reduced funds for operating subsidies and other programs that fund PHAs, while much of the aging housing stock controlled by PHAs requires significant investment in rehabilitation or demolition/new construction. Due to changes in Federal funding programs, many PHAs focus primarily on demolition but are no longer required to replace each unit one-for-one, leading to a decrease in the stock of public housing in the U.S.

## **PUBLIC HOUSING AUTHORITIES IN TEXAS**

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Texas has 431 PHAs, more than any other state in the nation. According to information from the Texas Chapter of the National Association of Redevelopment Officials (NAHRO), Texas PHAs provide affordable housing to approximately one half million individuals (498,286); PHAs collectively serve 161,211 families across the State through public housing and the Section 8 Voucher programs, with public housing serving 66,211 and Section 8 Vouchers serving 94,989 families respectively.<sup>2</sup>

The largest PHA in Texas is the San Antonio Housing Authority which controls in excess of 6,000 units of public housing and provides assistance to more than 12,000 families in the Section 8 Voucher program, overall serving more than 50,000 individuals.<sup>3</sup> PHAs situated in urban areas serve the housing needs of numerous low income Texans, however most housing authorities are located outside of major urban areas. Most PHAs are small; 91 percent of the PHAs in Texas have 250 units of public housing or less.<sup>4</sup> According to the results of the Urban Affairs PHA survey (page 16), the median number of units held by a Texas PHA is 60 and the median number of vouchers distributed is 148. Certain PHAs serve exclusively as public housing unit administrators and do not administer Section 8 Vouchers, while other PHAs serve only as distributors of Section 8 Vouchers for their area and control no units of public housing. However, most PHAs in Texas provide a combination of Section 8 Vouchers and public housing units.

## **HUD'S ROLE IN PUBLIC HOUSING**

### **Funding**

The majority of PHAs' funds come from the Federal government. Tenant rents typically cover approximately just over one-third of the cost of operating public housing units. HUD's Public Housing Operating Fund program provides subsidies to PHAs whose rents do not cover the costs of managing and maintaining public housing developments. These funds pay for expenses such as lighting, heat, water, trash collection, repairs, repainting, and grounds maintenance. More than 2,900 of the nation's 3,300 PHAs receive operating subsidies.<sup>5</sup> Capital Fund is another HUD program for PHAs; this program provides funds to allow housing authorities to develop, modernize and finance public housing developments. In addition to operating subsidies and capital funds, PHAs receive Federal funds for the Section 8 Voucher program to cover the payments PHAs make on behalf of families using vouchers. PHAs collect an additional fee from the Federal government to cover the administrative costs related to the Section 8 Voucher program.

### **Monitoring**

HUD provides general guidelines for PHAs, but leaves the majority of public housing operating decisions to the local PHA board. Each PHA is required to submit to HUD an annual Public Housing Authority Plan that includes an operating plan, as well as a description of all rules and preferences used to determine tenant eligibility. PHAs are also required to submit five year plans to HUD.

The Public Housing Assessment System (PHAS) is a HUD oversight tool meant to effectively and objectively measure the performance of PHAs. This system officially went into effect September 2001, and has been undergoing continuous modifications and improvements by HUD. The PHAS

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includes four areas of evaluation: (1) physical inspection indicator; (2) financial condition indicator; (3) management operations indicator; and (4) resident satisfaction and service indicator. The PHAS replaced the Public Housing Management Assessment Program (PHMAP), which graded PHAs on a scale from 1-100 and assigned a description to the final score of “high,” “standard,” or “troubled.”

## **OVERVIEW OF STATE STATUTES**

### **Chapter 392 of the Local Government Code**

Texas PHAs are governed by Chapter 392 of the Local Government Code, entitled Housing Authorities Law. This chapter authorizes the creation of and sets regulations for Texas PHAs. Chapter 392 allows the establishment of a PHA in every city and county of the State but requires that the city council or commissioners court certify the need for the PHA and appoint the PHA board before the authority can conduct business. Other key provisions in Chapter 392 include:

- Requirements concerning the appointment of a tenant commissioner to the PHA board;
- Requiring that a PHA rent housing to low income people at affordable rents established in accordance with guidelines adopted annually by the PHA board;
- Allowing a PHA to conduct studies of housing within its jurisdiction and make recommendations relating to slum areas and provision of housing services within its area;
- Authorizing a PHA to use the powers of eminent domain;
- Requiring that the PHA file an annual report of its activities with the municipal or county clerk that makes recommendations for additional legislation or other action necessary to carry out its mission under State law; and
- Certifying that PHA bonds are tax exempt.

### **Chapter 303 of the Local Government Code**

In addition, Chapter 392 allows PHAs to create Public Facility Corporations (PFC), which are governed by Chapter 303 of the Local Government Code. A PFC can provide affordable housing or provide any other public purpose authorized by law. The corporation’s projects and programs must benefit those whose incomes are less than 60 percent of AMFI in the same proportion that the authority-provided funds bear to the overall cost of the project or program.

## **LEGISLATION FROM 77th SESSION**

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## **Senate Bill 929**

The 77th Texas Legislature passed SB 929 by Senator Bernsen which imposed additional constraints on housing projects funded by PFCs. The bill required that any housing project owned by a PHA-created PFC that does not have at least 20 percent of its housing units reserved as “public housing” be ineligible for exemption from all taxes and special assessments and prohibited from issuing bonds unless a public hearing to approve the project is held and at least 50 percent of the development’s units go to residents earning less than 80 percent of AMFI. In addition, when authorizing the use of bonds, the bill requires, after meeting the provisions described above, approval of the bond issue by the governing body of the municipality or county.

SB 929 was signed by Governor Perry on June 17, 2001 and went into effect on August 31, 2002.

## **RECENT HISTORY OF FEDERAL LEGISLATION**

Over the past decade, the U.S. Congress has made significant changes to federally funded public housing programs. The HOPE VI program enacted in 1992 provided a new and substantial pool of funds for public housing infrastructure development, and the Quality Housing and Work Responsibility Act of 1998 significantly changed the policies and operation of PHAs. In addition, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 affected individuals and families receiving welfare benefits.

## **HOPE VI**

The HOPE VI Program works toward eliminating severely distressed public housing by funding grants to PHAs. The program began as a demonstration program in 1992, as a result of the recommendations of the National Commission on Severely Distressed Public Housing. The five objectives of HOPE VI include: (1) changing the physical shape of public housing by replacing the worst public housing developments with apartments or townhouses that become part of their surrounding communities; (2) reducing concentrations of poverty by encouraging greater income mix among public housing residents and by encouraging working families to move into public housing and into new market-rate housing being built as part of the neighborhoods where public housing is located; (3) establishing support services to help residents get and keep jobs; (4) establishing and enforcing high standards of personal and community responsibility; and (5) forging broad-based partnerships in planning and implementing improvements in public housing.

HOPE VI awards competitive grants annually on the basis of an application and ensuing national competition for distribution of funds. PHAs submit plans to HUD which scores applications and awards funds to selected projects. The program awards grants in three areas: planning, revitalization, and demolition. HUD’s primary focus has been on projects that demolish uninhabitable public housing and rebuild units in innovative projects including mixed-income, mixed-finance, and public-private partnerships. A majority of the funds are to be used for the capital costs of demolition, construction, rehabilitation, other physical improvements, and development of replacement housing. Smaller portions of the grants may also be used for community and supportive services. In addition, PHAs may combine HOPE VI grants with financing from a myriad of sources (including other HUD funds, state and municipal contributions, and loans) to create affordable

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housing that differs significantly from traditional housing projects.

HUD does not require that units be replaced one-for-one in using HOPE VI grants. Therefore, public housing residents may not be ensured replacement housing in the new units created with HOPE VI funds. Furthermore, some public housing residents may not meet income restrictions in the new units. In these cases, residents are ensured subsidies in the form of Section 8 Vouchers or are promised relocation in other public housing developments. HUD requires that tenants participate in the development of HOPE VI plans and requires approval from tenant representatives before funding a project. However, several legal challenges have been made by public housing residents claiming they were not substantively involved in the planning process.

Nationally from 1993 to 1999, the HOPE VI program funded projects that demolished 82,000 units and replaced them with 51,000 new units; funding for the program during that period totaled \$3,724,410 and went to 119 housing agencies in thirty-two states, the District of Columbia, Puerto Rico, and the Virgin Islands.<sup>6</sup> Funding for HOPE VI is scheduled to sunset after September 30, 2002 if Congress does not reauthorize the program.

### **Quality Housing and Work Responsibility Act of 1998**

The Quality Housing and Work Responsibility Act of 1998 (QHWRA) significantly overhauled public housing programs by emphasizing moving residents out of public housing and providing more flexibility to PHAs. The legislation included authorization and guidance for the Hope VI program, which prior to the QHWRA's passage was reauthorized annually through the Notice of Funds Availability (NOFA) process.

The QHWRA was designed to provide increased flexibility and responsibility to PHAs, to authorize mixed-finance housing projects, and to encourage programs that assist residents in becoming self sufficient. Key provisions include:

- Requiring the PHA board to include a resident of public housing;
- Requiring adult residents to contribute at least eight hours of community service a month or to participate in an ongoing economic self-sufficiency or job-training program and authorizing termination of a lease for failure to fulfill this requirement;
- Requiring that 40 percent of public housing units and 75 percent of Section 8 Vouchers be reserved for residents at or below 30 percent of area median family income (AMFI);
- Prohibiting PHAs from concentrating the poorest families in certain projects and requiring a PHA to include in its annual plan its strategy for encouraging income-mixing in projects;
- Allowing PHAs to enter into joint ventures with other PHAs or the private sector to administer housing programs or social/supportive service programs;

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- Authorizing Capital and Operating funds, requiring that the funding formula reward superior PHAs, and allowing PHAs to use up to 20 percent of capital funds for operating expenses;
  - Allowing families to choose between paying a flat rent for a PHA unit or paying 30 percent of their adjusted gross income;
  - Authorizing PHAs to design homeownership programs to sell PHA units to residents;
  - Requiring that a study be conducted to determine an alternative method to evaluate PHA performance (resulting in the Public Housing Assistance System);
  - Requiring that law enforcement agencies provide a PHA with information regarding the criminal background of an applicant;
  - Banning any resident from public housing for three years who is evicted because of drug-related or other criminal activity and requiring a PHA to establish standards to prohibit a person from occupying public housing whose use of an illegal substance or alcohol would endanger the safety of other public housing residents; and
  - Prohibiting convicted sex offenders subject to a lifetime registration requirement under a state sex offender registration program from residing in public housing.

### **The Personal Responsibility and Work Opportunity Reconciliation Act of 1996**

In addressing the public housing population and in accordance with the interim charge, it is relevant to note welfare to work initiatives. In August 1996, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) became law. This comprehensive Federal legislation changed the nation's welfare system into one requiring work in exchange for time-limited assistance. It created the Temporary Assistance for Needy Families (TANF) program, which replaced the Aid to Families with Dependent Children (AFDC), Emergency Assistance (EA) and Job Opportunities and Basic Skills Training (JOBS) programs. States each receive a block grant allocation, and must maintain a historical level of spending known as maintenance of effort. The basic block grant provided states \$16.5 billion in Federal funds each year through 2002. The 1996 law offers states great flexibility in designing individual TANF programs.

The name of Texas TANF cash assistance program is Texas Works, and the TANF work program is Choices. In 2001, 129,602 Texas families (345,964 people) participated in TANF. The maximum cash benefit for a family of three with no income is \$188 per month, and Texas imposes a 60 month lifetime limit. Demographics analysis of individuals participating in TANF in Texas reveal the following: 43.8 percent have 12 or more years of education; 6.4 percent are employed; 12.4 percent participate in work activities; and 91.3 percent are U.S. citizens. Statistics also show Texas families

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receiving TANF benefits have an average of 1.9 children.<sup>7</sup>

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## URBAN AFFAIRS SURVEY RESULTS

From October 5, 2001 through November 8, 2001, the Texas House of Representatives Urban Affairs Committee surveyed 421 active Texas PHAs. The following is a summary of the survey results.

### Response Rate

- 47% Response Rate (197 Returned Surveys)

### PHA Respondent Characteristics

- 8 Average Number of Staff; 4 Median Number of Staff
- 88% (173 PHAs) Administer Public Housing Units
  - 219 Average Number of PHA Units; 60 Median Number of Units
- 43% (85 PHAs) Administer Section 8 Vouchers
  - 888 Average Number of Vouchers; 148 Median Number of Vouchers

*The average results are skewed by respondent characteristics and the response rate. The more accurate representation of a typical Texas PHA is reflected in the median results.*

### Funding

- 12% (23) reported receiving funds from sources other than HUD
- 5% (10) reported receiving funds from their County/City
- Most reported using these funds for tenant services.

### HOPE VI

- 3% (6) reported receiving funds under HOPE VI
- 83% (5) reported demolishing units under HOPE VI
- 60% (3) reported replacing units one-for-one

### Texas Low Income Housing Tax Credit Program

- 8% (16) reported applying for the State tax credit program
- 27 applications were submitted in total (The San Antonio Housing Authority only reported current year applications so this number should actually be higher.)
- 37% (10) were awarded credits
- \$36,037,822 was awarded in total which averages to \$3,603,782 per project.

### Tenant Board Members

- 85% (166) reported having a tenant board member
- 83% (123) reported a positive experience with having the tenant on the board
- 7% (10) reported difficulty with recruiting a tenant board member
- 53% (79) reported that the tenant board member needed additional training



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Public Facility Corporations

- 7% (13) reported creating or planning to create a Public Facility Corporation.
- 73% (8) have built housing through their PFC
- 2,466 new mixed-income units were built by these eight PFCs

Section 8 Homeownership

- 6% (10) reported having a Section 8 Homeownership program
- 15% (24) reported planning to implement the program
- 22% (37) expressed interest in learning how to implement the program

PHA Needs

- 25% (51) PHAs reported that they meet all the housing needs of their communities

<b>Need</b>	<b>Number of Responses</b>	<b>% of PHAs Reporting Need</b>
More Low-Income Units	65	38%
More Large, Family Units	37	22%
Assistance with Homeownership	21	12%
More Landlords in Section 8 Program	17	10%
More Elderly/ Disabled Units	15	9%
Moderate/ Mixed-Income Housing	12	7%
More Funds for Housing	8	5%
More Section 8 Vouchers	5	3%
Transitional Housing Assistance	5	3%
Utility Assistance	4	2%
More Jobs in Community	4	2%
Homeless Assistance	4	2%
More Funds for Services	2	1%
Fewer Regulations	2	1%

Age of Housing Stock

- 55% (87) reported that their housing stock needs substantial rehabilitation

<b>Year Built</b>	<b>Number of Responses</b>	<b>% of PHAs Reporting Stock</b>
1930-1939	3	2%
1940-1949	9	6%
1950-1959	46	29%
1960-1969	86	55%
1970-1979	67	45%
1980-1989	53	34%
1990 +	10	6%

Capacity to Take on Additional Housing Projects

- 55% (96) reported could take on additional acquisition, development, and management of housing programs given current resources
- 74% (112) reported would require outside technical/financial assistance
- 31% (35) reported this assistance was available in their area

Largest Need as PHA

<b>Need</b>	<b>Number of Responses</b>	<b>% PHAs Reporting Need</b>
Funds for Rehab of Units	38	23%
More Units	28	17%
Less Paperwork and Fewer Regulations	27	16%
More Money	25	15%
More Staff and Administrative Funds	21	13%
More Funds for Services	11	7%
More Landlords in Section 8	8	5%
More Training and Tech. Support	8	5%

<b>Need</b>	<b>Number of Responses</b>	<b>% PHAs Reporting Need</b>
Ability to Maintain Safe and Clean Property	7	4%
More Vouchers	6	4%
More Elderly/ Disabled Units	5	3%
Funds for Homeownership	3	2%
More Community Involvement	3	2%
Desegregation of Units	2	1%

#### Regional Approach and Planning

- 20% (38) reported currently participating in region-wide needs assessment and planning
- 82% (142) reported interest in working on regional, collaborative planning
- 82% (150) reported interest in learning about State housing initiatives

#### How State Can Help

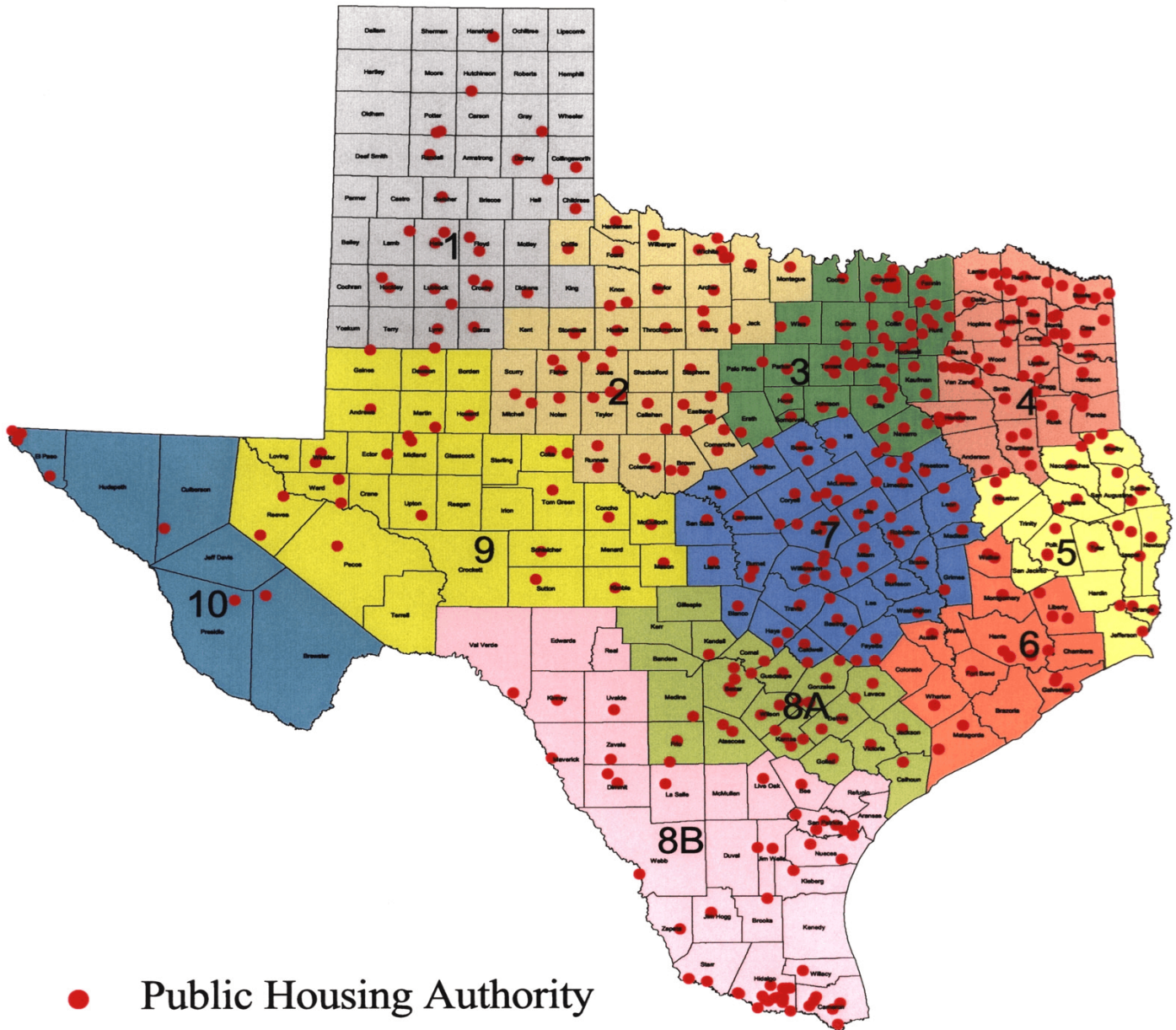
<b>Idea</b>	<b>Number of Responses</b>	<b>% PHAs Reporting Idea</b>
Provide Funds to PHAs	42	36%
Training, Technical Assistance, Planning	17	15%
Set asides in State Tax Credit and Bond Programs	12	10%
Build More Units	11	9%
Fund Programs Based on Region and Size of PHA	8	7%
Provide Incentives to Affordable Housing Developers	6	5%
Ease Administrative Burden for State Housing Programs	6	5%
Reduce Cost of Criminal Background Checks	4	3%
Help with Community Outreach	4	3%

<b>Idea</b>	<b>Number of Responses</b>	<b>% PHAs Reporting Idea</b>
Train Families for Self Sufficiency	4	3%
Appoint PHA Representative to State Boards	3	3%
Assist with Tenants' Utility Costs	3	3%
Pass Laws to Allow PHAs to Kick Out Delinquent Tenants	3	3%
Limit Tax Credit Rents in Rural Areas	2	2%

### How HUD Can Help

<b>Idea</b>	<b>Number of Responses</b>	<b>% Reporting Idea</b>
Less Paperwork and Fewer Regulations	43	31%
More Funds to Build Housing	31	23%
More Administrative Funds	23	16%
Different Treatment of Rural/Small PHAs v. Urban/Large PHAs	20	14%
Fewer Regulatory Changes	11	8%
More Flexibility of Funds	8	6%
Increase Fair Market Rents	6	4%
More Section 8 Vouchers	6	4%
Loosen Income Restrictions	4	3%
More Training and Technical Assistance	3	2%
Finalize Young v. Martinez Lawsuit	2	1%
Increase HUD Staff	2	1%
Increase Funds for Elderly Housing	2	1%

# Public Housing Authorities by Region



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## PUBLIC HEARING FINDINGS

Testimony on Interim Charge One was taken at a public hearing held May 8, 2002 in Austin, Texas. The focus of this charge was to review the roles of the State and of local public housing authorities (PHAs) in increasing access to housing assistance for the State's poorest families and in supporting families making the transition from welfare to work.

A number of individuals testified at this hearing, including representatives of various public housing authorities, interest groups and information resources, as well as the Texas Department of Housing and Community Affairs (TDHCA), Texas Department on Aging (TDOA), and the U.S. Department of Housing and Urban Development (HUD). The testimony emphasized the growing shortage of affordable housing in Texas, especially among those with very low incomes. Along with the growing paucity of quality affordable housing, PHAs have been experiencing a substantial reduction in HUD funding over the years. These challenges have led to significant difficulties for PHAs, including problems meeting operating expenditures, outdated housing stock for many larger PHAs, and long waiting lists for both public housing and Section 8 Voucher Assistance programs. Much of the testimony was informational in nature, as the State of Texas historically has not taken a very active role in public housing. Witnesses did, however, provide a myriad of suggestions concerning ways the State could complement the efforts of local PHAs in providing for the housing needs of very low income Texans.

Public housing authorities address the growing need for affordable housing through the provision of public housing as well as the administration of HUD Section 8 Vouchers, also called Housing Choice Vouchers. Both public housing and Section 8 Vouchers provide deep housing subsidies as a safety net for the poor. John Henneberger of Texas Low Income Housing Information Service testified that, while other affordable housing programs are usually directed towards families at 50 percent to 80 percent of the area median family income (AMFI), Texas PHAs typically serve the needs of families at just over 20 percent of AMFI. According to the National Association of Housing and Redevelopment Officials (NAHRO), a nonprofit organization comprised of public housing and community development agencies, Texas PHAs serve 498,286 low income individuals, with an average annual family income of \$7,477 for families in public housing and \$7,566 for those participating in the Voucher Assistance program. Mr. Henneberger testified that most public housing residents are either elderly, have disabilities or are low wage employees, and only 21 percent of public housing residents and 27 percent of voucher holders receive a majority of their income from welfare.

Testimony from several witnesses referenced dwindling HUD funds available to serve the housing needs of those with very low and extremely low incomes and pointed to a growing gap between needs and resources in PHAs. Melvin Braziel, President of San Antonio Housing Authority and an officer of Texas NAHRO, testified that HUD's Capital Fund experienced a 5.5 percent reduction from fiscal year 2001. Mr. Braziel stated that the San Antonio Housing Authority requires approximately \$270 million to address present maintenance and modernization needs, but only \$10

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million in Federal Capitol Resources are available to meet these needs. Mr. Braziel described that the San Antonio Housing Authority provides Section 8 Vouchers for 12,000 households, with a waiting list of over 20,000. David Zappasodi, President of the Texas Chapter of NAHRO and Deputy Director of Housing Authority of the City of Houston, said there were 19,000 households covered by Section 8 in Houston and over 40,000 households on the waiting list. Texas NAHRO asked that the Texas Legislature urge Congress to make available adequate public housing operating funds, Capital Funds, Section 8 Vouchers, and HOPE VI funds for Texas to better meet the housing needs of this State's very low and extremely low income households.

In light of the erosion of Federal funding, many witnesses felt it was imperative that local, State, and Federal government work together to preserve and improve the affordable housing stock. David Zappasodi of Texas NAHRO and City of Houston PHA stressed the importance of cooperation between all levels of government to meet the affordable housing needs of the poor. He proposed the creation of an advisory council to the TDHCA Board on public housing as a means to effectively leverage existing resources, increase communication, as well as make housing programs administered by TDHCA more accessible to PHAs. The Urban Affairs Committee, however, expressed hesitation at the formation of a formal advisory committee due to cost factors and uncertainties concerning the outcome as a result of the committee.

Further collaboration between TDHCA and local PHAs was encouraged by Texas NAHRO and other witnesses. Specifically, NAHRO expressed that Low Income Tax Credits, HOME, and the State's Housing Trust Fund should be more responsive and accessible to PHAs. NAHRO specifically requested that TDHCA's Qualified Allocation Plan give priority in the Low Income Tax Credit (LIHTC) program to PHAs, as these tax credits could allow PHAs to formulate funding mechanisms to address much needed new construction and substantial modernization. Testimony suggested TDHCA consider reconciling their program rules, such as with the LIHTC, to HUD guidelines to lessen the administrative burden on PHAs.

Frances Pelley, Executive Director of Texoma Council of Governments (COG), discussed the problem of PHAs' inability to check tenant rental history in order to identify high risk tenants. She suggested a cooperative effort demonstration project between local PHAs and the State, using existing HUD data to create a computerized PHA rental history database. Ms. Pelley envisioned that this database could be utilized on a subscription basis and would help ensure that public housing residents do not abuse the public housing system.

Several witnesses suggested the integration of welfare to work programs with public housing in order to enable more families to move out of public housing into the private housing market. The linkage between housing assistance and workforce assistance for low-income families was discussed at length. According to John Henneberger of the Texas Low Income Housing Information Service, housing is an essential aspect of welfare reform; rent is the largest percentage of a welfare recipient's budget, and without housing subsidy, self-sufficiency is an unattainable goal. Several witnesses suggested utilization of Temporary Assistance for Needy Families (TANF) Federal block grant funds, administered through the Texas Department of Human Services (DHS), for housing vouchers as a means to provide supplementary housing benefits to those families receiving TANF funds. Furthermore, Mr. Henneberger stressed the importance of moving welfare recipients to high

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job-growth areas, and advocated the development of affordable rental housing in strong job-growth areas and ceasing landlord discrimination against Section 8 rental voucher recipients.

Patrick Bresette of Center for Public Policy Priorities elaborated the intersection between housing assistance and welfare to work efforts, and discussed that stable housing is a critical component of employment and economic security. Mr. Bresette encouraged investigating the use of individual development accounts (IDAs) with TANF matching funds (note that the House Committee on Human Services Interim Charge Two addresses IDAs) and improving PHA communication with local Workforce Development Boards to facilitate moving people from welfare to work. He also described the benefits of a Federal program underutilized by PHAs, the HUD Family Self-Sufficiency Program, which has been effective as an employment and savings incentive program. Both Mr. Bresette and Frances Pelley of Texoma Council of Governments encouraged local PHA participation in HUD's Family Self-Sufficiency Program. Testimony predicted that a coordinated effort of DHS, TDHCA, and PHAs would help move public housing residents and Section 8 Voucher recipients into economic self-sufficiency.

Luz E. Solis Day, Director of the San Antonio HUD office was available to discuss HUD's interaction with local PHAs, TDHCA and other State agencies. The Committee posited a number of questions about the Section 8 Vouchers Assistance program and its efficacy in addressing the housing needs of Texas' poor. Urban areas suffer from a paucity of vouchers and PHAs often do not have sufficient vouchers to serve the affordable housing needs of the area, resulting in waiting lists up to two years. In many rural areas, however, Section 8 Vouchers are underutilized, and vouchers sometimes go unutilized due to an insufficient and deficient stock of affordable housing in the area. Other witnesses added that discrimination against Section 8 Voucher recipients has further aggravated the problem of voucher utilization, especially in urban areas. The Committee asserted that local community commitment to affordable housing is requisite for the most effective functioning of the Section 8 Voucher and other programs, and local involvement is absolutely necessary in order to preserve and create affordable housing for Texas' very low and extremely low income families.

Many witnesses expressed interest in the development of an effective program to assist Section 8 Voucher recipients in securing permanent housing in areas where there has been a problem of voucher underutilization. Edwina Carrington, Executive Director of TDHCA, testified before the Committee that the Department is investigating a demonstration project between several South Texas PHAs and TDHCA to help transition families from renters into homeowners. The Department intends to partner with PHAs Statewide to best utilize Section 8 resources, and is researching the needs of primarily rural based PHAs who might be interested in Section 8 Homeownership opportunities. She also testified that TDHCA is investigating the use of TDHCA programs in conjunction with Section 8 Vouchers and is considering increasing points in the HOME and the Housing Trust Fund application process to encourage the use of Section 8 Vouchers for homeownership (Section 8 Homeownership is addressed in greater detail in Urban Affairs Interim Charge Four).

NAHRO supported TDHCA's partnering with local PHAs in homeownership initiatives, and also suggested that the Department develop and implement a program to educate Section 8 consumers,



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mortgage companies and underwriters about the Section 8 Voucher Homeownership program. Ms. Carrington described some of the Department's other interaction with PHAs, which include granting points or other items in TDHCA's Qualified Application Plan that may encourage awards to PHAs, the availability of revenue bond funds to PHAs through traditional funding cycles, TDHCA participation in TX NAHRO and Texas Housing Association conferences, and utilization of PHA-provided housing data in defining regional allocation formulas. In addition, she stated that the Agency encourages PHA involvement in stakeholder meetings and in the development in the Qualified Application Plan.

A number of important and timely issues pertaining to PHAs were brought up during the course of the hearing. Among the trends noted in testimony was the rising population of poor older adults, and widespread housing problems among older Texans. According to information collected by NAHRO and presented to the Committee by Melvin Braziel, many homes of older adults are in need of repair and rehabilitation; according to HUD estimates, almost 1.5 million elderly households in the nation lack basic elements of housing such as complete plumbing or reliable heating. Furthermore, many domiciles require home modifications and/or supportive services to maintain older adults' independence and keep aging Texans in the community. Al Swan, Executive Director of Affordable Housing Corporation in Parker and Wise Counties, also testified to the critical affordable housing shortage for owner occupied and elderly rental units, and noted his experience in rural areas. He suggested that the State's housing department simplify certain procedures to encourage the development and maintenance of housing for older adults.

Texas Department on Aging's (TDOA) Office of Aging Policy testified further to the growing need of affordable housing for older adults in Texas. This Agency conducts studies on special problems of the aged, including housing, and cooperates with TDHCA to assess the need for housing among older individuals in different localities. According to TDOA, the 60+ population is growing at a faster pace than the general population, and the expected effects of the baby boomers hitting retirement age, and their concomitant housing needs, will be significant. TDOA is in the process of completing research addressing relevant aging issues including the housing needs of the 60+ population, with emphasis on 75+, women, minorities, rural residents and renters, as well as habitation of substandard units, excessive expenditures for housing by older adults, and housing options and costs.

The Committee heard testimony concerning the specific housing needs of persons with disabilities. Many individuals with disabilities have extremely low incomes and high incidence of unmet housing needs, particularly among individuals receiving their income from Federal Supplemental Security Income (SSI) disability benefits. A number of suggestions concerning how to better address the specific housing needs of persons with disabilities were provided by Jean Langendorf of the Texas Home of Your Own Coalition. Ms. Langendorf suggested TDHCA develop and market a strategic plan to increase the amount of affordable housing and community support services available to persons with disabilities, and that the Department should ensure compliance with existing Federal fair housing laws and Olmstead Decision implementation. Susan Maxwell with the Texas Council for Developmental Disabilities also appeared before the Committee to encourage policy changes that would better incorporate people with disabilities into the community.

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Testimony was presented before the Committee that emphasized the crucial issue of affordable housing in Texas' rural communities and the unique needs of PHAs in rural areas and small towns. Mark Mayfield, President of Marble Falls Housing Authority, testified that 394 out of 431 housing authorities in Texas have 250 units or less, and represent as a whole rural and small town Texas. Marble Falls Housing Authority has been effective in developing both multifamily and single family affordable units through leveraging multiple sources of funding. Mr. Mayfield believes that rural PHAs can provide very cost-effective and quality affordable housing, but cannot compete with metropolitan areas for available program funds from TDHCA and asked that funds be dedicated through the Legislature specifically to rural Texas' housing authorities. In regard to rural housing authorities, Frances Pelley of Texoma COG shared Texoma's experience in consolidating 17 small and less efficient PHAs into one effective unit. She also discussed problems of law enforcement in smaller, rural housing authorities that may not have access to adequate law enforcement coverage and suggested that rural PHAs work with TDHCA and the Texas Department of Criminal Justice to strengthen law enforcement in public housing developments. In addition, Melvin Braziel testified on behalf of Texas NAHRO concerning the needs of PHAs in less urban areas; in light of the smaller staff and limited resources in rural PHAs, TDHCA should be cognizant of the amount of paperwork necessary for these housing authorities to access funds, and may need to develop training and technical assistance programs to help develop the capacity of small PHAs.

Another concern that emerged during the course of the hearing pertained to resident commissioner requirements as provided for in State statute. Texas Local Government Statute, Chapter 392, entitled Housing Authorities Law, governs PHA establishment in the State of Texas. Section 392.0331 discusses appointment of tenant representatives as commissioners in municipal, county, and regional housing authorities. This section states that all PHAs must have a resident commissioner, but allows that PHAs in county or regional housing authorities with less than 750 units may opt out of this requirement. According to the survey data gathered by the Urban Affairs Committee, approximately 15 percent of PHAs do not have a resident commissioner on their board. The Committee expressed that all PHAs, regardless of size, need resident input and cooperation; as such, it was suggested that Section 392.0331 of the Local Government Statute should be amended to require all PHAs include a resident commissioner on their board. Texas Local Government Statute, Section 392.0331 is available in the Appendix (Appendix A) for reference, as is the current Federal regulations concerning resident commissioner requirements articulated in 42 United States Code (U.S.C.) Section 1437(b) (Appendix B).

The Committee would like to thank the following individuals who testified on May 8, 2002: Melvin Braziel, Patrick Bresette, Edwina Carrington, Luz Day, John Henneberger, Joe Huff, Jean Langendorf, Susan Maxwell, Mark Mayfield, Jane Norwood, Frances Pelley, Al Swan, David Zappasodi.

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## RECOMMENDATIONS TO THE 78th LEGISLATURE

It is imperative that the State of Texas increase access to affordable housing for very low and extremely low income residents. Public housing and Section 8 assisted housing provide a valuable safety net for very low and extremely low income Texans. The State should actively seek to assist and compliment the efforts of local communities and Public Housing Authorities (PHAs) in the provision of decent, safe and sanitary housing. However, the provision of affordable housing requires proper local planning and support. Local community commitment to the provision of an adequate stock of affordable housing available to Texans with low, very low and extremely low incomes is necessary.

**Change requirement for resident commissioners on PHA governing board** - Resident commissioners are essential to better understanding PHA resident concerns and to foster better relations and communications between residents and PHAs:

- Close existing loopholes in State law which allow certain PHAs to forgo resident commissioner representation on PHA boards;
- Specifically change Local Government Code 392.0331 - Appointment of Tenant Representative as Commissioner of Municipal, County or Regional Housing Authority. Amend the statute to ensure consistency with Federal HUD requirements of 42 U.S.C. 1437(b) and 24 C.F.R. Part 964:
  - PHAs with 300 units or more must include at least one resident commissioner on their board;
  - PHAs with fewer than 300 units must provide opportunities for residents to serve on the governing board and make certain efforts to recruit resident commissioners;
  - PHAs with fewer than 300 units must advise the PHA Resident Advisory Board of the opportunity for residents to serve on the governing board and must wait at least 30 days for a response;
  - The resident commissioner requirements are waived only if no resident interest is shown, and a repeat notification must be provided annually; and
  - Federal statute also provides that Section 8-only PHAs, regardless of the number of vouchers they administer, fall under the small PHA rule. Amend the Local Government Code to include provisions that ensure consistency between Federal and State statute in regard to Section 8-only PHAs.
- **Clarify language of Local Government Code 392.0331** - The current language is vague concerning resident commissioners in regional housing authorities. The statute should specify that PHA resident board commissioner requirements do in fact apply to regional housing authorities.

**Texas Department of Housing and Community Affairs (TDHCA) and PHAs should establish an ongoing working group concerning public and Section 8 housing:**

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- The group should be composed of PHA directors and commissioners, from both rural and urban areas, as well as TDHCA staff;
  - The working group will allow for greater communication, understanding, and collaboration between TDHCA and local PHAs, and will promote TDHCA program accessibility;
  - The group should review TDHCA programs and make recommendations for ways program guidelines and resources can better preserve and improve the public and Section 8 housing stock;
  - TDHCA should be responsible for determining the composition of the group; and
  - Regional Development Coordinators from each of the 11 TDHCA uniform service regions should be de facto members.

**TDHCA to explore ways to assist PHAs in applying for funds:**

- Continue to participate in conferences and work in conjunction with trade associations;
- Consider making available technical and planning assistance to PHAs;
- Work to make programs more accessible through modifications in program regulations, outreach and training; and
- Reduce the administrative burden incurred by PHAs applying for TDHCA administered programs:
  - TDHCA should carefully review and/or offer assistance with paperwork in order to simplify access to funds, especially for small or rural PHAs; and
  - Regional Development Coordinators should help local PHAs access TDHCA funds and programs.

**Address the problem of underutilization of Federal vouchers in certain areas of the State:**

- Local communities should encourage landlords who receive HUD funding to comply with HUD discrimination guidelines in order to increase Section 8 voucher housing opportunities, especially in desirable employment areas; and
- TDHCA and local City and/or County officials need to collaborate with PHAs to find more available housing for Section 8 Voucher holders.

**Consider a joint effort of TDHCA and trade associations to develop a PHA commissioner training program:**

- This would enable the commissioners to be more effective in their roles and foster a better understanding of their legal and ethical responsibilities;
- Separate training programs should be developed for non-resident and resident commissioners due to their unique training needs;
- TDHCA should function in an advisory capacity, allowing trade associations to take the lead in developing materials and administering PHA commissioner training programs; and
- Costs incurred as a result of a PHA commissioner training program would be

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paid by the trade association and not TDHCA.

**Monitor TDHCA’s partnership with local PHAs in utilizing Federal Section 8 Vouchers for voucher recipients to transition from renters to homeowners:**

- Support a demonstration project between TDHCA and local PHAs, allowing local PHAs to administer such a program;
- TDHCA should research optimal eligibility requirements and methods of determining how to choose among qualified Section 8 homeowner participants; and
- Promote the leveraging of TDHCA administered programs and funds in relations to the Section 8 Homeownership Initiative:
  - Single Family Mortgage Revenue Bond Program; and
  - Down Payment Assistance Program

*Note this recommendation is duplicated in Interim Charge Four (Oversight Charge)*

**TDHCA should continue to focus on the development of affordable, family-oriented rental property and should work with PHAs to increase housing opportunities for low, very low and extremely low income families.**

**TDHCA market analysis studies should actively consult with local PHAs about existing housing resources; furthermore, PHAs should be made aware that TDHCA market analysis results may be challenged.**

**Improve the State’s commitment to Texan’s with special needs:**

- Address affordable housing needs of low, very low and extremely low income seniors to meet present need and anticipate the higher need for older adult housing in the future;
- Make accessible, affordable and integrated housing available to persons with disabilities in order to encourage the utmost level of independence and productivity;
- Ensure compliance with the provisions of the Olmstead Decision; and
- Support TDHCA’s continued participation in the Disability Advisory Council to ensure active consideration of Texans with disabilities in TDHCA policies and programs.

**Optimize opportunities for greater self-sufficiency among public and Section 8 housing residents:**

- Promote local PHA participation in HUD Self-Sufficiency Program<sup>8</sup>;
- Encourage the availability of affordable housing to low, very low and extremely low income families in areas with greater job growth; and
- Promote the movement of public housing residents and Section 8 recipients into the private housing market.

**In light of the intersection of stable housing with employment and economic security:**

- Direct State agencies, such as TDHCA, Department of Human Services

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(DHS), and Texas Workforce Commission (TWC), as well as local Workforce Development Boards to work closely in collaboration with PHAs in meeting the needs of Texans transitioning from welfare to work;

- State agencies including TDHCA, DHS, and TWC should increase communication with each other to better coordinate programs and explore innovative ways to address the cross section of housing and welfare to work;
- Encourage the use of Temporary Assistance to Needy Families (TANF) Federal block grant monies to provide temporary and supplemental housing benefits to families during the transition from welfare to work; and
- Investigate innovative ways to integrate housing with economic and other programs for the welfare to work population. Explore working with U.S. Department of Housing and Urban Development, U.S. Department of Labor, U.S. Department of Health, and other Federal agencies to meet this goal and to access necessary funds.

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**CHARGE TWO**

**EXAMINE THE DEFINITION AND ROLES OF COMMUNITY HOUSING DEVELOPMENT ORGANIZATIONS (CHDOs) AND NONPROFIT HOUSING ENTITIES. ASSESS STANDARDS THEY SHOULD MEET IN ORDER TO QUALIFY FOR SET ASIDES, TAX EXEMPTIONS AND OTHER FORMS OF SPECIAL CONSIDERATION.**

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## BACKGROUND AND RESEARCH FINDINGS

### DEFINITIONS

#### **What is a Community Housing Development Organization (CHDO)?**

A Community Housing Development Organization (CHDO) is a private, nonprofit organization with a 501(c) Federal tax exemption. A CHDO must include the provision of decent, affordable housing to moderate and low-income households as its purpose in its charter, articles of incorporation or by-laws.

House Bill 137 by Representative Buddy West (75th Session) provided an ad valorem exemption from property taxes for affordable housing property developed by a nonprofit organized as a CHDO, and land acquired by this organization for development of affordable housing. The Texas Tax Code Section 11.182 (e) defines a community housing development organization as having the meaning assigned by Title 42 of the United States Code (U.S.C.) Section 12704. 42 U.S.C. Section 12704(6) states the definition of a CHDO:

- Has among its purposes the provision of decent housing that is affordable to low-income and moderate-income persons;
- Maintains through significant representation on the organization's governing board and otherwise, accountability to low-income community residents and, to the extent practicable, low-income beneficiaries with regard to decisions on the design, siting, development and management of affordable housing;
- Possesses a demonstrated capacity for carrying out activities assisted under this Act; and
- Has a history of serving the local community or communities within which housing to be assisted under this Act is to be located.

#### **What is a nonprofit housing entity?**

A nonprofit housing entity is federally defined as a private, nonprofit organization: organized under State or local laws; has no part of its net earning inuring to the benefit any individual; complies with federally acceptable standards of financial accountability; and has among its purposes significant activities related to the provision of decent housing that is affordable to low-income and moderate-income persons (42 U.S.C. 12704(5)). A nonprofit housing entity is only a CHDO if it meets the definition of CHDO as stated above.

### STATE RESOURCES AVAILABLE TO CHDOs AND NONPROFIT HOUSING ENTITIES

**Housing Trust Fund** is the only State-authorized program for affordable housing. Funds administered through TDHCA provide loans, grants, or other comparable assistance to local units of government, public housing authorities (PHAs), nonprofit organizations (including CHDOs), and



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income eligible individuals, families, and households for housing. Money from the fund can be used to acquire, rehabilitate, and construct new housing and to provide technical assistance and capacity building to nonprofit organizations and CHDOs.

TDHCA selects projects through a competitive funding process in which applicants must demonstrate how the project addresses an identified affordable housing need, and must provide evidence of financial feasibility as well as ability to complete the project successfully. This fund currently has approximately \$12.7 million available per biennium; each biennium, the first \$2.6 million available in the fund must be set aside exclusively for local units of government, PHAs, and nonprofit organizations (including CHDOs) (Sec. 2306.202, Government Code). Forty-five percent of the available funds in excess of the first \$2.6 million shall be made available to nonprofit organizations. Ten percent of the Housing Trust Fund allocation is set aside for capacity building activities specifically for nonprofits and CHDOs, and an additional 10 percent of the allocation is targeted for predevelopment loan activities for nonprofits and CHDOs. Housing Trust Fund Rules require that 35 percent of funds allocated in each funding cycle go to CHDOs, unless there is an insufficient number of CHDO applications, in which case the funds may go to any other eligible entity.

**HOME Investment Trust Fund** (HOME fund) is a Federal HUD program created under the Cranston Gonzalez National Affordable Housing Act of 1990. HOME funds are awarded to CHDOs, nonprofit housing entities, units of local governments, PHAs, and for-profit developers. The fund is used to increase the supply of affordable housing for low, very low and extremely low income households and to combat excessive rent burdens, homelessness, and deteriorating housing stock. HOME funds can be used for the following activities: rehabilitation or reconstruction of single-family owner-occupied housing; down payment and closing cost assistance for home buyers; acquisition, construction, or rehabilitation of multifamily housing; and rental subsidy and security deposits for tenants.

The Federal government provides HOME block grants to TDHCA and local governments designated as Participating Jurisdictions (PJs) as defined in 24 Code of Federal Regulations 92.105. TDHCA receives a Statewide block grant of HOME funds for areas of the State which have not been designated a PJ by HUD. Larger cities and counties in Texas are PJs in their own right and administer HOME funds directly from HUD. Per HB 1811 by Representative Kolkhurst (77th Session), TDHCA is required to set aside 95 percent of their HOME funds for smaller cities and rural areas that are not designated PJs, with the remaining 5 percent of funds available to projects serving persons with disabilities in PJs.

The term and definition of CHDO was created in the context of the Federal HOME program. TDHCA certifies whether an organization has CHDO status in relation to the State administered HOME program. A minimum of 15 percent of the annual HOME fund allocation is reserved for CHDOs. Of the funds set aside for CHDO projects, a minimum of 10 percent are further set aside for CHDO predevelopment loans, not subject to the regional allocation formula.

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**Low Income Housing Tax Credit (LIHTC)** program, created by the Federal Tax Reform Act of 1986, is a federally funded program that directs private capital toward the creation of affordable rental housing. The program authorizes tax credits at a per capita rate for the State population which translates into an annual award of approximately \$36 million in tax credits for Texas. Under the Federal income tax code, a tax credit is a dollar-for-dollar reduction in the tax liability or tax bill for the property owner or investor. TDHCA is the only entity in the State with the authority to allocate tax credits under this program.

Under the 9 Percent LIHTC program, TDHCA selects eligible developments based on broad guidelines designed to provide housing for the low income tenants. Applications are evaluated with a point based scoring system along with other non-point based factors (Secs. 2306.671 and 2306.672, Government Code). To qualify for tax credits, the proposed development must involve new construction or substantial rehabilitation of existing residential units. The level of tax credit funding that may be applied for depends on the amount and type of additional funding sources, the total amount of qualified development costs to be incurred, and the percentage of units set aside in the development for eligible low income tenants. The owners of LIHTC developments sell the tax credits to investors who use the credits to reduce their tax burden. The money raised from selling the tax credit is used to reduce the level of permanent financing needed to develop housing and the mortgage savings enable some of the units to be offered at below market rates to qualified low income households.

In 2001, TDHCA awarded 66 applicants \$27.9 million in Federal tax credits, with 15.6 percent of the funds going to applicants competing in the nonprofit set aside. The 9 Percent tax credit program has a minimum of 10 percent of tax credits set aside specifically for nonprofits involved in multifamily projects in which the nonprofit has a controlling interest in the project. A joint venture between a nonprofit and a for-profit is eligible for a maximum of three points on the LIHTC application and the nonprofit does not need a controlling interest in order for the joint venture to be eligible for these points.

**Multifamily Bond Program** allows the issuance of multifamily mortgage revenue bonds to qualified nonprofit 501(c)(3) organizations (including CHDOs) and for-profit developers for the acquisition or development of affordable rental units. The rental properties are financed under the Multifamily Bond Program through the sale of tax-exempt mortgage revenue bonds. The two different vehicles for acquiring multifamily bonds are through subceiling four (multifamily housing) of the **Private Activity Bond Program**, available to both nonprofits and for-profit multifamily developers, and through the **501(c)(3) Bond Program**, exclusively for nonprofit developers.

The Texas Bond Review Board administers the Private Activity Bond Program which, in program year 2002, directed approximately \$1.6 billion in tax-exempt private activity bonds, at a rate of \$75 per capita, to finance projects in six subceilings: single family housing mortgage revenue bonds; state-voted issues; small issue industrial development; multifamily housing; student loan bonds; and a variety of "exempt facilities" including qualified sewage facilities, solid waste disposal facilities,

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and hazardous waste disposal facilities.<sup>9</sup> Under the Private Activity Bond Program, the State's private activity volume cap is subject to a stipulated set aside of private activity tax-exempt bonds for multifamily projects. The Texas Bond Review Board administers a lottery of the private activity bonds that TDHCA, local housing authorities, and other eligible bond issuers enter into to determine which entities have the authority to issue these private activity tax-exempt mortgage revenue bonds.

Currently 23 percent of the private activity bonds are allocated to the multifamily housing subceiling, with unallocated volume cap from other subceilings rolling into the multifamily subceiling between August 15 and August 31 of the calendar year. As of the 2002 program year, 25 percent of the multifamily set aside in the private activity volume cap is reserved solely for TDHCA to issue bonds, with the remaining 75 percent dedicated to local issuers (until the September 1st collapse). In addition to lottery numbers being issued, the multifamily subceiling is prioritized to encourage developers to reach individuals earning at or below 50 percent and 60 percent of area median family income (AMFI), and also has provisions to encourage development in all regions of the State. Usually, noncompetitive 4 Percent Low Income Housing Tax Credits are applied for in conjunction with multifamily private activity bonds.

Under the 501(c)(3) Bond Program, TDHCA, Texas State Affordable Housing Corporation, and local issuers issue noncompetitive tax-exempt mortgage revenue bonds, not subject to the private activity volume cap, to finance properties owned by nonprofit 501(c)(3) organizations, including CHDOs. Of the units created with mortgage revenue bonds, 75 percent must be occupied by households that are at 80 percent or below the AMFI; in addition either 20 percent of the residents must be at or below 50 percent of AMFI, or 40 percent of the residents must be at or below 60 percent of AMFI.

**Additional State administered funds** for housing are available to nonprofit housing entities and CHDOs. Nonprofits and CHDOs are able to participate as lenders in the **Single Family Bond Program** (First Time Homebuyer Program). Nonprofits and CHDOs are also eligible to apply to administer the Texas **Bootstrap Owner-Builder Loan Program** through TDHCA's Office of Colonia Initiatives.

## **LEGISLATIVE BACKGROUND ON CHDO TAX EXEMPTION**

### **House Bill 137**

The 75th Texas Legislature passed House Bill 137 (HB 137) by Rep. Buddy West. This bill established provisions relating to the qualifications of certain charitable organizations for an exemption from ad valorem taxation, and specifically includes CHDOs. This bill explicitly created an exemption from property taxes for affordable housing property developed by groups organized as CHDOs and land acquired by these organizations for the development of affordable housing.

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## House Bill 3383

During the 77th Texas Legislature, two pieces of legislation addressed the CHDO property tax exemption, and both were passed into law: House Bill 1392 (HB 1392) by Representative Jim Keffer and House Bill 3383 (HB 3383) by Representative Yvonne Davis. HB 1392 added the CHDO property tax exemption to the list of exemptions that property owners do not have to reapply for each year. This is important to CHDOs and appraisal districts alike because the application task is challenging for both organizations who are often short-staffed and under-funded.

HB 3383 made significant changes to the CHDO property tax exemption. Seeking to protect the integrity of community building, as well as the future existence of the exemption itself, proponents of this bill made the case that it was possible to balance the leveraging needs of property tax specialists, the borrowing power of CHDOs, the concerns of the appraisal districts and the needs of low income community residents. In this bill, Section 11.182 of the Texas Tax Code is modified to focus the exemption on the public purposes of non-housing services for residents. The new exemption language requires:

- CHDOs with multifamily properties with 36 or greater units to spend 40 percent of the value of the exemption on social, educational and economic development services in the same jurisdiction where they are seeking the exemption. This does not apply to CHDOs who have used tax-exempt bond financing between January 1, 1991 and December 31, 2001 (grandfather clause).
- Eligibility for the tax exemption is also broadened to Low Income Housing Tax Credit projects and bond financed projects if the CHDO is in complete control of the general partner in those projects. These projects are also required to spend 90 percent of the project's cash flow on the above described services.
- The reinvestment provisions do not apply if the CHDO makes payments in lieu of taxes (PILOT) to the school district in which the property is located, or if the rents on the property are restricted, or if the CHDO has entered into a reinvestment agreement with the appraisal district that granted the exemption.

## CURRENT ISSUES CONCERNING CHDOs

### Public Benefit

Some groups have voiced concern over the CHDO property tax exemption. When a large multifamily property is removed from the tax base, the various governmental entities that use the tax base revenue to provide services are negatively affected, i.e. their tax base is decreased. Revenue from exempt properties is forgone for local fire districts, hospital districts, school districts, municipal utility districts, etc., and concern has been expressed about the amount of public benefit garnered from the loss of tax revenue.

Nonprofit housing advocates believe that the CHDO tax exemption's public benefit outweighs the

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forgone revenue. This exemption increases the stock of affordable housing in Texas. Additional public benefit is achieved through the provision of non-housing services by the CHDO that otherwise may not be available to low income families in the CHDO's service area. Furthermore, advocates believe that CHDOs have a stabilizing impact that helps to steady surrounding property values, thereby negating the loss of the CHDO property from the tax rolls and perhaps compensating the granting entity for provision of tax dollars that would normally go towards the functions the taxing entities perform.

### **TSAHC 501(c)(3) Bonds**

Texas State Affordable Housing Corporation (TSAHC), along with TDHCA and local bond issuers, issue tax-exempt 501(c)(3) Multifamily Mortgage Revenue Bonds. TSAHC issues bonds Statewide for multi-jurisdictional transactions involving two or more properties or single jurisdictional transactions where the local issuer is not empowered or is unwilling to issue the bonds. HB 3383 (77th Session) clarified the circumstances when a 501(c)(3) bond project would be eligible to receive the CHDO property tax exemption. Although there are no completely reliable figures available, there appears to have been a proliferation of organizations funded with tax exempt 501(c)(3) bonds that are certified or simply organized per Section 11.182 of the Texas Tax Code as CHDOs subsequent to HB 3383.

A few notably large 501(c)(3) bond transactions through TSAHC have come to fruition since the 77th Legislative Session, with these same organizations organized as CHDOs and utilizing the associated property tax exemption. According to Executive Director Henry Flores, TSAHC has taken measures to ensure that 501(c)(3) bond transactions lead to developments that, through an underwriting formula, can prove measurable public benefit to the community and residents of the development. TSAHC furthermore ensures HUD-defined affordable rents in projects funded by TSAHC issued 501(c)(3) bonds, and has requirements exceeding the base IRS definition of a 501(c)(3) nonprofit. TSAHC also requires payments in lieu of taxes (PILOTs) across the board to all taxing units in the amount of 25 percent of original taxes, and requires 100 percent tax payment to special taxing entities (municipal utility districts, rural fire departments and rural emergency services) at TSAHC's discretion, as well as evidence that the local issuer is aware of the bond transaction.

### **Levy Loss and General Revenue Loss**

The Texas Legislative Council's Statistical and Demographic Research Section investigated the levy loss as a result of the CHDO property tax exemption in March of 2002. Specifically, the Council sought to estimate the amount of levy loss to taxing jurisdictions resulting from the property tax exemption granted under Section 11.182 of the Tax Code, and to ascertain the number of CHDOs receiving the property tax exemption under this provision.<sup>10</sup> Due to problems with data available from external organizations, a precise estimate of levy loss and number of CHDOs claiming this exemption could not be determined. With respect to the estimated levy loss, data issues include: lack of adjustment for partial or prorated exemptions for tax year 2001; unavailability of pending and forthcoming applications for year 2002; changing of property ownership; unreliable or outdated appraisal values; and inability to make adjustments to estimated loss when PILOTs are made. In

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regard to establishing the number of CHDOs, problems arose due to CHDO business practices and the certification process, specifically that there is no single oversight agency maintaining records of partnership arrangements or properties owned by CHDOs.

In spite of the aforementioned data issues, Legislative Council was able to limit its research scope to the ten County Appraisal Districts (CAD) that contain 70 percent of the property value of single-family and multifamily residential property in order to achieve more reliable estimates. The estimated combined levy loss resulting from the CHDO property tax exemption was \$18 million in 2001 and \$23 million in 2002 for taxing jurisdictions (cities, school districts, counties, etc.) in those 10 CADs. In nine of these CADs, there were 102 property owners who received a CHDO property tax exemption in 2001 and 113 for 2002 (estimate of property owners in Dallas CAD was unavailable). Analysis indicates that the number of property owners claiming the exemption increased by almost 11 percent from 2001 to 2002, and the levy loss increased more than 26 percent during that same period.

However, as previously stated, this research only considers the levy lost due to the exemption. It did not address the amount of public benefit garnered in the local communities as a result of the affordable housing and associated services provided by the CHDOs. Texas Association of Community Development Corporations (TACDC) has surveyed its membership regarding the CHDO tax exemption. According to data collected from TACDC member organizations, each dollar a CHDO saves in taxes results in an average of over \$4 in public benefit provided within the community.<sup>11</sup> The Legislative Council research also does not offset any PILOTs that a property may provide to a taxing entity, nor does it discuss possible discrepancies between initial appraised values and the final negotiated appraised values upon which taxes are levied.

Another issue concerning tax loss that has caught the attention of certain parties is the loss of State General Revenue as a result of this exemption. While the specifics of the school finance formula are out of the scope of this report, it is relevant to note that forgone tax revenue for public school districts is compensated through the State school finance formula, and this money is ultimately deducted from the State's General Revenue Fund.

**APPENDIX A. ESTIMATES OF PROPERTY TAX LEVY LOSSES FROM CHDO EXEMPTIONS  
FOR TAX YEARS 2001 AND 2002**

Tax Year*	Appraisal District	Number of CHDO Accounts	Number of CHDO Owners	Exempt CHDO Value**	Estimated CHDO Levy Losses***				Combined Levy Loss
					ISDs	Cities	Counties	Other Jurisdictions	
2001	Bexar CAD	93	22	\$158,155,259	\$2,737,533	\$898,607	\$808,255	\$577,679	\$4,722,074
2002	Bexar CAD	100	22	\$210,625,904	\$3,646,725	\$1,200,435	\$675,595	\$767,577	\$6,290,632
2001	Collin CAD	23	2		\$20,107	\$16	\$3,348	\$1,158	\$24,629
2002	Collin CAD <sup>1</sup>	23	2	\$1,338,441	\$20,107	\$16	\$3,348	\$1,158	\$24,629
2001	Dallas CAD <sup>2</sup>	261	ea	\$132,554,342	\$2,051,318	\$884,800	\$259,807	\$423,544	\$3,619,469
2002	Dallas CAD	261	ea	\$132,554,342	\$2,051,318	\$884,800	\$259,807	\$423,544	\$3,619,469
2001	Denton CAD <sup>3</sup>	52	1	\$4,032,785	\$73,789	\$22,021	\$10,160	\$345	\$106,315
2002	Denton CAD	62	1	\$4,279,576	\$78,253	\$23,265	\$10,782	\$345	\$112,645
2001	El Paso CAD <sup>4</sup>	18	6	\$36,473,107	\$571,871	\$262,545	\$131,826	\$114,149	\$1,080,391
2002	El Paso CAD	21	7	\$42,738,923	\$665,965	\$307,649	\$154,473	\$133,759	\$1,264,846
2001	Fort Bend CAD			CAD reports no CHDO property exemptions for 2001.					
2002	Fort Bend CAD			CAD reports no CHDO property exemption applications pending for 2002 (as of Feb. 2002).					
2001	Harris CAD <sup>5</sup>	267	29	\$170,689,065	\$2,818,744	\$918,643	\$1,103,112	\$116,827	\$5,017,326
2002	Harris CAD	267	29	\$206,962,470	\$3,417,759	\$1,186,616	\$1,337,536	\$141,654	\$6,083,565
2001	Tarrant CAD <sup>6</sup>	28	16	\$58,645,223	\$963,486	\$407,083	\$161,148	\$199,675	\$1,731,392
2002	Tarrant CAD	56	26	\$113,253,101	\$1,865,623	\$819,700	\$311,203	\$387,522	\$3,384,048
2001	Travis CAD <sup>7</sup>	223	22	\$67,444,876	\$1,044,451	\$310,044	\$300,804	\$33,722	\$1,689,022
2002	Travis CAD	223	22	\$67,444,876	\$1,044,451	\$310,044	\$300,804	\$33,722	\$1,689,022
2001	Williamson CAD	3	4	\$4,228,560	\$73,340	\$12,668	\$16,715	\$123	\$102,846
2002	Williamson CAD	6	4	\$14,780,839	\$256,338	\$12,668	\$58,427	\$74,874	\$402,307
2001	TOTALS	975	102	\$632,323,217	\$10,354,640	\$3,776,427	\$2,495,175	\$1,467,223	\$18,093,664
2002	TOTALS	1,019	113	\$793,978,472	\$13,049,540	\$4,745,393	\$3,091,261	\$1,964,456	\$22,871,164
	% Increase, 2001-2002			75.5%	26.0%	25.7%	23.5%	33.5%	26.4%

\* All 2002 data are cumulative--they consist of 2001 and pending and approved applications for 2002.

\*\* Appraisal districts provided information concerning CHDO property values exempt from taxation under Section 11.182 of the Texas Property Tax Code. This information was current as of February 2002.

\*\*\* Appraisal districts did not provide levy loss estimates. These were developed by TLC research staff using appraisal district information and 2001 tax rates. The "other jurisdictions" category consists of special districts (hospitals, community colleges) and may not be complete in all appraisal districts.

<sup>1</sup> Collin CAD reported at least one CHDO application pending from an out-of-state corporation. Information concerning the value of this pending application was not available when the CAD was contacted.

<sup>2</sup> Dallas CAD was unable to provide details about individual CHDO applications. Levy losses shown are based on assumption that all CHDO properties are in 5 taxing jurisdictions: Dallas County, City of Dallas, Dallas ISD, Dallas County Community College District, and Parkland Hospital. The 2001 exempt values may not have been exempt for all of 2001; consequently, levy losses for 2001 may be overstated.

<sup>3</sup> The 2001 exempt values for Denton may not have been exempt for all of 2001; consequently, levy losses for 2001 may be overstated.

<sup>4</sup> The 2001 exempt values for El Paso may not have been exempt for all of 2001; consequently, levy losses for 2001 may be overstated.

<sup>5</sup> The 2001 exempt values for Harris may not have been exempt for all of 2001; consequently, levy losses for 2001 may be overstated.

Harris CAD does not yet have a tally of CHDO property exemption applications for 2002, since applicants have until April 30 to apply.

<sup>6</sup> The 2001 exempt values for Tarrant may not have been exempt for all of 2001; consequently, levy losses for 2001 may be overstated.

<sup>7</sup> The 2001 exempt values for Travis may not have been exempt for all of 2001; consequently, levy losses for 2001 may be overstated.

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## **TDHCA RULE CONCERNING CHDO CERTIFICATION**

### **Background of TDHCA CHDO Certification**

A source of contestation pertaining to the CHDO property tax exemption stems from TDHCA's certification of CHDOs in areas designated by HUD as Participating Jurisdictions (PJs), as defined by 24 Code of Federal Regulations 92.105. PJs administer Federal HOME funds directly through HUD while TDHCA administers HOME funds to smaller cities and rural areas. TDHCA certifies whether an organization is a CHDO to determine their eligibility in applying for the 15 percent of funds set aside for CHDOS in the HOME program.

While TDHCA's involvement with CHDOs is derived exclusively from its administration of the Federal HOME program, certain organizations had been obtaining CHDO designations from TDHCA, not in conjunction with HOME funds but for the express purpose of the local property tax exemption. Some of the recent controversy surrounding this exemption concerned properties taken off tax rolls because a CHDO designation has been granted by the State without local input, thereby taking away from appraisal districts and local municipalities the ability to determine whether or not the entity meets the requirements of a CHDO. It is important to note that there is no clear statutory requirement for CHDO certification; 11.182 of the Texas Tax Code states that an organization must be organized as a CHDO, among other provisions, to receive the property tax exemption but does not mandate CHDO certification.

### **Adopted Rule Change**

In response to the controversy surrounding TDHCA's certification of CHDOs in PJs, and taking into consideration testimony provided at three public hearings, TDHCA staff proposed to the TDHCA Board changes in the Department's CHDO certification policy. These recommendations included certifying only organizations applying for and receiving the State HOME funds; the effect of this rule change is TDHCA would rarely certify in PJ areas, and would certify only if the organization is applying for the 5 percent HOME set aside for persons with disabilities within PJs. The staff recommended that in the event an organization is applying for the State HOME funds CHDO set aside and intends to serve a population within a PJ, the applicant must submit evidence of local taxing jurisdiction or local PJ CHDO certification. Also, TDHCA staff recommended that in the case of an applicant applying for State HOME funds to be used in a PJ, where neither the PJ nor the local taxing entity certifies CHDOs outside of the HOME application process, the State certification process for non-PJ areas should apply.

Publication of the TDHCA CHDO certification rule change for public comment was approved at the June 13, 2002 TDHCA Board meeting. The rules were published in the Texas Register on July 26, 2002 and the rule change concerning TDHCA CHDO certification formally went into effect September, 2002. The TDHCA rule concerning CHDO property tax exemption can be viewed in its entirety in Appendix C of this report.



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## NONPROFIT HOUSING IN OTHER STATES

**Property Tax Exemption:** In California, Florida, Illinois, and New York, (chosen because of their large populations) properties owned by CHDOs are not automatically exempt from local property taxes. In all of these States, CHDOs may apply to their local property assessor for exemptions available to charitable nonprofit organizations in general, but unlike Texas, none of these States have laws that provide CHDOs in particular with an exemption from property taxes.

New York vests authority over taxation and oversight with local governments. Consequently, variation exists in the level of involvement between local governments and CHDOs. In California, Florida, and Illinois tax exemptions for properties owned by CHDOs must be applied for and negotiated with the local taxing authority under the auspices of State taxation codes that govern nonprofit organizations in general.

In Illinois, property that is exclusively used for charitable purposes is exempt from property taxes. Such uses include nonprofit organizations providing services or the use of facilities related to the goals of educational, social, and physical development. Organizations applying for an exemption must provide to the local tax assessor affirmative evidence that they qualify as a 501(c)(3) organization. If granted an exemption, these organizations may be periodically reviewed by the Illinois Department of Revenue to determine if the waiver or reduction was a past policy or is a current policy (ILCS 200/15-35).

In Florida, organizations seeking a property tax exemption must submit an application to their County Property Appraiser on an annual basis (Florida Statutes 196.011, 196.193, 196.195).

**Certification of CHDO Status:** In California, Florida, Illinois, and New York, PJs in the HOME program are responsible for certifying organizations as CHDOs. There is no single authority in any of these States that acts as a single clearinghouse for CHDO certification.

As a general rule, PJs in each of these States operate independently of one another. In Florida, some organizations that have been certified as CHDOs by a local PJ might also apply to the Florida Housing Finance Corporation (FHFC); in those cases, the FHFC must independently certify the organization as well. In some cases, the FHFC has little knowledge of the process by which local PJs certify organizations as CHDOs; Florida considers its own compliance standards to be very strict.

The California Department of Housing and Community Development (CDHCD) has developed its own set of certification guidelines, in addition to those stipulated by HUD. For example, CDHCD requires applicants for CHDO HOME funds to possess one year of experience specifically in housing, not simply community development. The CDHCD feels the use of additional standards beyond HUD guidelines results in more legitimate applicants for HOME funds and prevents abuse of a nonprofit status. Finally, the CDHCD keeps a list of active, approved CHDOs in its jurisdiction,

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and applicants must be on the list of active CHDOs.

**Reinvestment Requirements:** Unlike Texas, neither California, Florida, Illinois nor New York has enacted reinvestment requirements for CHDOs into State law. However, housing authorities in each of these States indicate that strict compliance monitoring of all projects that receive funding is standard procedure. Typically, the Agency in each State that is analogous to TDHCA has an audit department that reviews financial disclosures of the housing projects that are awarded funds.

In New York, the Division of Housing and Community Renewal (DHCR) reviews audits of all of the projects to which it awards HOME funds, and if the project has excess cash flow at the end of a fiscal year, DHCR requires the CHDO to put that money back into project reserves (which are jointly controlled with DHCR), or that it be used to reduce rents.

**General Considerations:** Housing agencies in California, Florida, Illinois and New York identified strict compliance with HUD/HOME guidelines for eligible and ineligible uses of funds and the establishment of statistical thresholds that projects must meet before funds are granted (e.g. poverty levels in the neighborhood and income levels of the persons the project is intended to serve) as oversight methods of CHDOs and similar organizations.

According to Tom Kerry, Director of Energy and Rehabilitation Services in the New York DHCR, before funding a project, the DHCR encourages applicants to discuss directly with local government the specific needs of their particular community to ensure that the organization's proposal is consistent with the community's needs. He believes that the support of local government is highly desirable in order for a project to succeed, although he notes that one problem with this approach is that it sometimes favors only politically popular projects, such as senior housing.<sup>12</sup>

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## PUBLIC HEARING FINDINGS

Testimony on Interim Charge Two was taken at a public hearing held June 12, 2002 in Austin, Texas. The focus of this charge was to examine the definition and roles of Community Housing Development Organizations (CHDOs) and nonprofit housing entities and assess standards they should meet in order to qualify for set asides, tax exemptions and other forms of special consideration.

Various interests testified at this hearing, including several members of the nonprofit housing industry, as well as representatives of the Texas Association of School Boards, Harris County, and the City of Fort Worth. Edwina Carrington, Executive Director of Texas Department of Housing and Community Affairs (TDHCA), testified concerning the Department's involvement with the CHDO tax exemption. Although the charge broadly encompasses issues concerning nonprofit housing entities, the CHDOs property tax exemption dominated witness testimony. Housing advocates described the beneficial nature of this tax exemption in encouraging affordable housing in Texas, and emphasized the growing need for affordable housing in general. Other parties expressed concerns about the CHDO tax exemption, centered around the loss of local tax revenue and whether this tax exemption results in augmenting the affordable housing stock. There appeared to be general consensus that increasing access to affordable housing is critically important to Texas. In addition, all parties addressing the Committee appeared to concur that the current State statute governing the CHDO property tax exemption, Section 11.182 of the Tax Code, must be modified to some extent.

Housing advocates and those involved in the housing industry had a strong presence in testimony before the Committee. There was strong desire to maintain this tax exemption as a tool to encourage the development and preservation of affordable housing, while also endorsing that changes must be made to protect the integrity of the CHDO tax exemption and to ensure that this exemption is being used to address the housing and social service needs of low income families.

Reymundo Ocanas of Texas Association of Community Development Corporations (TACDC) stressed the importance of the community development, service-oriented component of the CHDO property tax exemption. Mr. Ocanas pointed out that the CHDO tax exemption was originally created in House Bill 137 (75th Session) as a charitable exemption, and emphasized that the charitable component of this affordable housing tool should not be overlooked. Sandi Williams of Alamo Area Mutual Housing further called attention to the word "community" in the term Community Housing Development Organization; CHDOs receiving the property tax exemption should be held accountable for the revenue taken away from the taxing unit and be responsible for adding public benefit to the local community. Multiple witnesses testified to the importance of local support for and local community benefit in the CHDO tax exemption. Ms. Williams felt that the CHDO exemption should be continued but the Legislature must modify the definition of CHDO to

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more strongly reflect the original intent of the exemption in HB 137, which is community-based and charitable.

Witnesses emphasized that tax revenue forgone from the local taxing jurisdictions due to the CHDO tax exemption must be accounted for through benefits to the community. Walter Moreau of Foundation Communities provided examples of how Foundation Communities applies tax revenue savings to maintain flat and affordable rents, and to provide critical resident services including an array of educational programs and a two-to-one match on individual development accounts (IDA) to increase the self-sufficiency of residents. Another witness, Rod Radle of San Antonio Alternative Housing, depicted how a CHDO can take an existing piece of multifamily property, and use multiple funding sources including the CHDO tax exemption to make significant capital improvements and rehabilitation of the property, thereby vastly improving the quality of life for the residents. Mr. Radle also described how the CHDO tax exemption can be used in conjunction with other sources of financing to develop new single family housing for homeownership, which ultimately benefits the local community and taxing jurisdictions by generating new taxes.

Testimony provided suggestions of how to reform the CHDO tax exemption in multifamily housing and close loopholes in the current law. A number of witnesses testified that the CHDO tax exemption as it stands can be a lucrative business for private individuals and that current law allows for this exemption to be unscrupulously misused. Mr. Moreau advocated the need for Texas to develop a new, stronger public benefit test for all properties receiving the CHDO tax exemption to ensure that the locally forgone tax money is being used to provide needed services, significant capital improvements, or measurable rent reductions that are beyond the norm. He discussed that the public benefit from the tax exemption should be easy to trace and to audit, and that this stringent public benefit test should apply not just to new CHDOs but to all properties receiving the tax exemption. Additionally, multiple witnesses from the housing industry asserted that the CHDO tax exemption would be better directed to serve the housing and service needs of Texans at or below 50 percent of area median family income (AMFI), as these individuals often have the most acute need.

William Lee, a for-profit developer who often partners with nonprofits to produce low income affordable housing, stated his direct opposition to any new public benefit test or other changes that would apply to all existing CHDO developments. Mr. Lee testified that modifications concerning the CHDO tax exemption should be on a forward-only basis to protect the integrity of financial transactions that took into consideration the CHDO property tax exemption as it is currently written in Tax Code, Section 11.182.

While many of the witnesses representing the housing industry emphasized the importance of services and increased accountability in public benefits, others focused largely on the shortage of affordable housing in Texas and the role that the CHDO tax exemption serves in increasing access to affordable workforce housing. Both Michael Eaton and Monique Allen testified to the importance of providing safe, decent and affordable housing for families with incomes between 50 and 80

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percent of AMFI; these families do not want or need social services as described by many others witnesses. They believe that the CHDO tax exemption should not necessarily include a mandatory social service requirement. Many lower income families, especially those closer to AMFI, do not need services and would prefer to receive benefits in the form of rent reductions. Furthermore, Mr. Eaton testified to the strict Federal Internal Revenue Service standards in determining which organizations qualify as 501(c)(3) nonprofits, and that additional State standards would be superfluous. He agreed with other witnesses that the State statute concerning the CHDO tax exemption should be rewritten, and added that rigorous attention should be paid to the technical complexities of tax law in order to improve the current vagueness in Texas Tax Code, Section 11.182.

Representatives of both the City of Fort Worth and Harris County testified to the importance of local involvement in the CHDO tax exemption process. George Hammerlein of the Harris County Tax Assessor/Collector's Office asserted that it is fundamentally wrong that one governmental unit usurp the taxing ability of another. The decision to grant a local property tax exemption has strong implications for the viability of the taxing entities and the City and/or County; therefore certification of an organization as a CHDO for the purpose of receiving the property tax exemption should be made on a local level. Note that new policy changes in CHDO certification by Texas Department of Housing and Community Affairs, available in Appendix C of this report, should help ameliorate some of these concerns.

Testimony provided by David Turkel, Economic Development Director of Harris County, suggested that the State should consider removing the statutory reference to community based, and stripping the exemption's association with charity/nonprofit, leaving a simple affordable housing exemption that would be available for creation of new and rehabilitated affordable units regardless of CHDO or nonprofit status. This proposal appears to be in direct opposition to the testimony provided by Rey Ocanas and other witnesses who advocated an increased emphasis on the charitable and community based component of the CHDO property tax exemption. Mr. Turkel furthermore purported that the percentage of a property's tax exemption should be determined in relation to the number of affordable units on a sliding scale basis. In addition, he suggested that in counties over one million, the tax exemption should only be applicable to 50 percent of the median income while in other areas, the income restrictions should be based on a mix of 50 percent, 60 percent and 80 percent of median income, due to the significantly higher incomes in urban areas. He also requested that larger urban cities and counties, such as Harris County, have the ability to opt out of the CHDO tax exemption if they so choose.

Witnesses discussed the problem of "flipping" existing multifamily housing properties off the tax rolls. Often the CHDO tax exemption is used to preserve affordable housing units. Rehabilitation of an existing property by a CHDO usually entails purchasing apartment complexes already on the tax rolls, and utilizing an organization's CHDO status to then remove these properties from the tax rolls. Complaints were voiced that CHDO rehabilitation drains local tax dollars while it does not lead to increased affordable housing units for low income Texans. According to testimony from the

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Harris County Tax Assessor/Collector's Office, there has been \$400 million dollars taken off the tax rolls, and only two new multifamily properties created with the CHDO tax exemption in Harris County.

Sarah Winkler of Alief Independent School District and the Texas Association of School Boards (TASB) detailed her opposition to the use of the CHDO tax exemption for multifamily rehabilitation projects. While production of new affordable units using the CHDO tax exemption provides noticeable benefits to the community by increasing the supply of affordable housing, Ms. Winkler has not in her experience recognized public benefit in taking existing properties off the tax rolls with the CHDO tax exemption, but noted that this exemption siphons funds away from school districts. The lost local revenue for school districts is ultimately made up through the State's public school finance formula, a separate concern for some parties because of the effect on the State's General Revenue Fund. TASB expressed that "flipped" properties endanger the education of all students in the affected school districts. TASB further advocated that CHDOs be required to pay school district ad valorem taxes or that the exemption should be repealed for rehabilitation projects. Discussion with the Committee ensued on the difficulty of balancing the need to maintain Texas' existing stock of affordable multifamily housing units, and addressing the issues described by taxing entities concerning recognizable public benefits from rehabilitated properties using the tax exemption.

TDHCA's testimony focused on the Department's certification process for CHDOs, and how this process relates to House Bill 137 (75th Session) and House Bill 3383 (77th Session). Executive Director Edwina Carrington detailed the Department's proposed rule and policy changes concerning CHDOs. In response to the controversy surrounding TDHCA's certification of CHDOs in urban areas (Participating Jurisdictions, or PJs), and taking into consideration testimony provided at three public hearings, Ms. Carrington spoke of the modifications that TDHCA staff was to propose to the TDHCA Board concerning the Department's CHDO certification policy. These recommendations include certifying only organizations applying for and receiving the State HOME funds; effectively meaning that TDHCA would rarely certify in the PJ areas. In the event an organization is applying for State HOME funds (CHDO set aside), and intends to serve a population within a PJ, the applicant must submit evidence of local taxing jurisdiction or local PJ CHDO certification. Also, in the case of an applicant applying for State HOME funds to be used in a PJ, where neither the PJ nor the local taxing entity certifies CHDOs outside of the HOME application process, the State certification process for non-PJ areas should apply.

In addition to the rule change proposed by TDHCA staff concerning CHDO certification, Ms. Carrington outlined a proposed policy change concerning TDHCA's Multifamily Bond Program. Modifications were proposed to the TDHCA Board regarding the Multifamily Bond Program to ensure local notification and use of payments in lieu of taxes (PILOTs) in TDHCA bond transactions for CHDOs. Staff's recommendations were that applicants to TDHCA's multifamily bond program who are owned or partially owned by nonprofits organized as CHDOs must provide to TDHCA notification of intent to apply for property tax exemption, confirmation of local CHDO status if in

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PJ area, and either a letter of non-opposition from the affected taxing units or the terms of PILOT agreements between the organization and the taxing units.

Note that, after the hearing on Interim Charge Two, the TDHCA Board voted to approve the aforementioned modifications to the CHDO certification rule, which went into effect in September 2002 and is available in Appendix C of this report. However, the policy change concerning the Multifamily Bond Program was tabled at the June 13, 2002 TDHCA Board meeting and has yet to be brought back before the Board.

The Committee would like to thank the following individuals who testified on June 12, 2002: Monique Allen, Edwina Carrington, Michael Eaton, Stephan Fairfield, George Hammerlein, Matt Hull, William Lee, Walter Moreau, Reymundo Ocanas, Rod Radle, Sherman Roberts, Gene Rollins, David Turkel, Sandra Williams, Sarah Winkler. Appreciation is also extended to State Representative Peggy Hamric for her participation in this hearing.

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## RECOMMENDATIONS TO THE 78th LEGISLATURE

It is imperative that the State increase access to affordable housing for low income residents. Preservation of existing affordable units and encouraging the development of new units must be a priority to address the shortage of affordable housing in Texas.

**The Community Housing Development Organization (CHDO) property tax exemption should be preserved as a tool for affordable housing in Texas. However, modifications to Section 11.182 of the Tax Code are necessary:**

- Develop more stringent public benefit requirements:
  - Significant rent reductions;
  - Substantial capital improvements; or
  - Appropriate social services for residents, including individual development accounts, subsidies to first time homebuyers, child care, scholarships, or educational facilities, equipment and staffing.
- Direct the CHDO property tax exemption to properties that serve the greatest need:
  - Units affordable to families at or below 50 percent of Area Median Family Income (AMFI); and
  - Units affordable to families at or below 50 percent of Statewide AMFI where the area median is below that of the State.
- Consider applying a sliding scale basis of percentage of tax exemption to the percentage of affordable units available to low income residents; and
- Create a name and definition unique to this State's ad valorem property tax exemption, such as Community-Based Housing Developer Exemption (CBHD), to avoid confusion with the U.S. Department of Housing and Urban Development (HUD) term and definition.

**Consideration to existing CHDOs receiving property tax exemption:**

- Whatever changes are necessary to protect the integrity of the CHDO tax exemption should take into consideration the financial agreements of existing CHDOs that may have based financing on the existence of this property tax exemption as it is currently written in Tax Code, Section 11.182.

**Support Texas Department of Housing and Community Development's (THDCA) rule change which discontinues the practice of State CHDO certification in Participating Jurisdictions (PJs), except in very specific and rare circumstances, and reaffirms the Agency's limited involvement with CHDO certification to the administration of Federal HOME funds.**



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**CHARGE THREE**

**STUDY THE POTENTIAL FOR IMPROVING THE PERFORMANCE OF PUBLIC INSTITUTIONS BY FOSTERING COOPERATIVE EFFORTS AMONG EMPLOYEES AND EMPLOYERS, INCLUDING THE LONG-STANDING CONTROVERSIES RELATED TO VARIOUS FORMS OF BARGAINING BY GROUPS THAT DO NOT ADVOCATE THE RIGHT TO STRIKE.**

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## **BACKGROUND AND RESEARCH FINDINGS**

### **HISTORY OF COLLECTIVE BARGAINING BY PUBLIC EMPLOYEES**

Chapter 617 of the Texas Government Code prohibits public employee collective bargaining and strikes. This Chapter originated as House Bill 105 in the 50th Texas Legislature, Regular Session (1947) and has never been amended, except for nonsubstantive recodification by the 73rd Legislature (1993).

Newspaper clippings in the 1940s in Texas cite increasing anti-strike sentiment. In 1941, Governor W. Lee O'Daniel introduced anti-strike legislation for national defense industries out of concern that strikes could weaken U.S. military security. The Attorney General deemed the bill to be unconstitutional, however legislation prohibiting and punishing violence in labor disputes did pass that year.

The 1947 legislation which created the ban on public employee collective bargaining and strikes arose largely in response to strikes by garbage collectors in Dallas, Houston, and Galveston, as well as by employees of the Lower Colorado River Authority (LCRA). The LCRA strike, according to one article, produced home and hospital power outages. Endangerment to public health was thus an issue in these instances. Public opinion in Texas at the time was very opposed to any right to strike against the government. Several other states passed similar prohibitions the same year, and U.S. Congress enacted the Taft-Hartley Act, which was seen as unfriendly by labor unions. Today, states that allow public employees the right to strike are rare.

Chapter 617 of the Government Code prohibits the State or political subdivisions of the State from engaging in collective bargaining with a labor organization or even recognizing such an organization for bargaining purposes. Sections 141.008 and 155.001 of the Local Government Code, nevertheless allow municipalities larger than 10,000 in population and counties to check off union dues for consenting employees. Moreover, the prohibition against collective bargaining is overridden for certain municipalities with respect to police officers and firefighters under Chapter 174, Local Government Code (The Fire and Police Employee Relation Act) and Chapter 143, Local Government Code (The Municipal Civil Service Law). Police and firefighter rights under the two chapters expressly exclude the right to strike.

### **OVERVIEW OF STATE STATUTES**

#### **Chapter 617, Texas Government Code**

##### **Prohibition of Collective Bargaining by Public Employees**

Public sector workers of the State of Texas or of any political subdivision of the State are prohibited by law from engaging in a formal process of negotiation between a labor organization and a public

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employer for the purpose of reaching a legally binding agreement regarding wages, hours, or conditions of employment of public employees.

Texas Government Code, Chapter 617 prohibits collective bargaining by public employees: Section 617.002 states that an official of the State or of any political subdivision of the State may not enter into a collective bargaining contract with a labor organization. This chapter moreover explains that a contract entered into in violation of Chapter 617 is void, and an official of the State or of a political subdivision may not recognize a labor organization as the bargaining agent for a group of public employees.

Furthermore, Texas Government Code, Chapter 617 prohibits strikes and work stoppages by public employees. This chapter also confirms right to work provisions in public employment; that is an individual may not be denied employment because of the individual's membership or nonmembership in a labor organization.

Chapter 617 does allow public employees of the State or a political subdivision to present grievances either individually or through a representative that does not claim the right to strike. Moreover, the prohibition on collective bargaining does not impede certain informal and non-binding forms of dialogue between public employee and employer. For example, although public school districts, as a political subdivision of the State, are barred from collective bargaining, exclusive consultation is a common practice. While consultation does not result in legally binding agreements between the employer and employees, a chosen representative of the employees may, at the school district's discretion, meet with the public employer to discuss wages, hours and working conditions. The efficaciousness of the informal process of consultation varies between school districts.

A number of Attorney General Opinions have been requested to clarify Chapter 617 of the Texas Government Code. Letter Opinion Number 97-038 questioned whether this chapter prohibits public sector employers from meeting with union representatives to discuss employee working conditions (opinion can be viewed in its entirety in Appendix D). Then-Assistant Attorney General Susan L. Garrison responded that:

The term "collective bargaining" necessarily contemplates a process in which officials of a political subdivision and representatives of a labor organization conduct negotiations with an eye toward reaching a binding, enforceable, bilateral agreement between the subdivision and the organization, while the presentation of grievances is a unilateral proceeding resulting in no loss of sovereignty to the political subdivision. Section 617.002 of the Government Code does not prohibit public sector employers from meeting with representatives of an employee union that does not claim the right to strike to discuss matters affecting employee working conditions. The governing authorities of the political subdivision must retain the right unilaterally to establish employment conditions.

Chapter 174 of the Local Government Code and Chapter 143 of the Local Government Code provide narrow exceptions to the prohibition of collective bargaining by public employees. These chapters allow either collective bargaining or the ability to meet and confer as a form of bargaining to specific

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types of public employees (firefighter and police personnel) in certain cities or counties. Without the adoption of Chapter 174 or applicability of the meet and confer provisions of Chapter 143 of the Local Government Code, public sector employment practices are governed by various sources, including State, County and Municipal ordinance and regulation, municipal civil service laws if applicable, or other authorities appropriate to the type of political subdivision.

## **Chapter 143, Local Government Code**

### **Meet and Confer**

Chapter 143 of the Local Government Code governs firefighters and police officers in municipalities that have voted to adopt Chapter 143, The Civil Service Code. These municipalities held elections to adopt Chapter 143, and thereby are required to follow the employment procedures and rules for firefighters and police officers outlined in The Civil Service Code. Local Government Code, Chapter 143 addresses all aspects of employment for civil service firefighters and police officers, ranging from pay requirements to grievance procedures and hiring protocol.

During the 1990s, the Legislature added sections to Chapter 143 that allow a meet and confer bargaining process for municipal firefighters and police officers in certain cities. The only Texas cities that currently participate in meet and confer for their police and fire personnel are Houston and Austin. Legislation passed during the 77th Session, pertaining to Fort Worth, provided that a municipality with a population over 460,000 and less than 560,000 that has not recognized a firefighters or police officers association before September 1, 2001 must receive voter approval before meet and confer practices are adopted. In Fort Worth, the adoption of meet and confer provisions has not yet been called to referendum. For Austin and Houston, this chapter was designed in a way that a public referendum was not necessary for firefighters and police to have the ability to negotiate through meet and confer.

Meet and confer provisions are governed by Chapter 143 of the Local Government Code, Subchapters H, I, and J:

- H. “Local Control. of Firefighter Employment Matters in Municipalities with Population of 1.5 Million or More”
- I. “Firefighter and Police Officer Employment Matters in Certain Municipalities”
- J. “Local Control of Police Officer Employment Matters in Municipalities with Population of 1.5 Million or More”

Meet and confer can be described as interest based negotiations concerning compensation, hours, and other conditions of employment, in which neither the public employer nor the employee association is mandated to meet or come to an agreement. This process allows for negotiation of a binding contract to be executed between the public employer and an employee association that would otherwise be void and in violation of Texas Government Code, Chapter 617. Adoption of meet and confer provisions allows the recognition by the public employer of an association of fire

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or police employees as the exclusive bargaining agent for covered employees.

Agreements reached under meet and confer are binding on all parties and preempt any contrary statute, executive order, local ordinance, or rule adopted by the State or a political subdivision. Written agreements made under meet and confer provisions are binding on the public employer, association, and the fire or police officers covered by the agreement only if both the municipality's governing body and applicable association ratify the agreement by majority vote; a binding written agreement is enforceable by the district court of the judicial district in which the municipality is located. The meet and confer process that is in place in Houston and Austin provides an opportunity for police and firefighters' unions to achieve a binding, negotiated agreement with the City, although the law does not formally compel the City to recognize the union, nor does it formally compel the City to engage in negotiations.

In addition to fire and police personnel, Houston Metropolitan Transit Authority peace officers have been given the right to meet and confer per Senate Bill 379 by Senator Gallegos (77th Session), and governed by Chapter 451 of the Texas Transportation Code.

## **Chapter 174, Local Government Code**

### **Collective Bargaining**

Collective bargaining is governed by Chapter 174 of the Local Government Code. Chapter 174 relates only to police and fire personnel and is aptly known as the Fire and Police Employee Relation Act. Adoption of the Fire and Police Employee Relation Act by a political subdivision occurs only after public referendum, initiated by a petition signed by qualified voters of the political subdivision in a number equal to or greater than the lesser of 20,000 or 5 percent of those who voted in the preceding election for State and county officers, approving the establishment of collective bargaining if a majority of the affected public employees favor representation by an employees association.

Collective bargaining can be described as interest based negotiations in which the public employer and the employee association are mandated to bargain collectively. This includes meeting at reasonable times, conferring in good faith, and executing a written contract at either party's request. As in meet and confer, collective bargaining does not require either a public employer or an association to agree to a proposal or make a concession.

Collective bargaining requires the recognition by the public employer of an association of fire or police employees as the exclusive bargaining agent for covered employees. An agreement reached through this process is binding on the public employer, association, and the fire or police officers. Furthermore, agreements reached under collective bargaining contracts are enforceable through District Court and preempt any contrary statute, executive order, local ordinance, or rule. Collective bargaining is a process that is more stringent and formal than meet and confer in that the public employer must recognize an exclusive bargaining agent of the employees and that parties are required to bargain in good faith.

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## **Prohibition on Strikes**

Neither meet and confer per Texas Local Government Code, Chapter 143 nor collective bargaining per Local Government Code, Chapter 174 lift the prohibition against strikes and work stoppages by public employees. Not only do these chapters maintain the prohibition, they also prescribe specific penalties for the individual, and in the case of collective bargaining for the association as well, for striking or engaging in work-slowdowns.

## **POLITICAL SUBDIVISIONS SUBSCRIBING TO COLLECTIVE BARGAINING OR MEET AND CONFER**

### **Meet and Confer Cities (Chapter 143, Local Government Code)**

Houston  
Austin

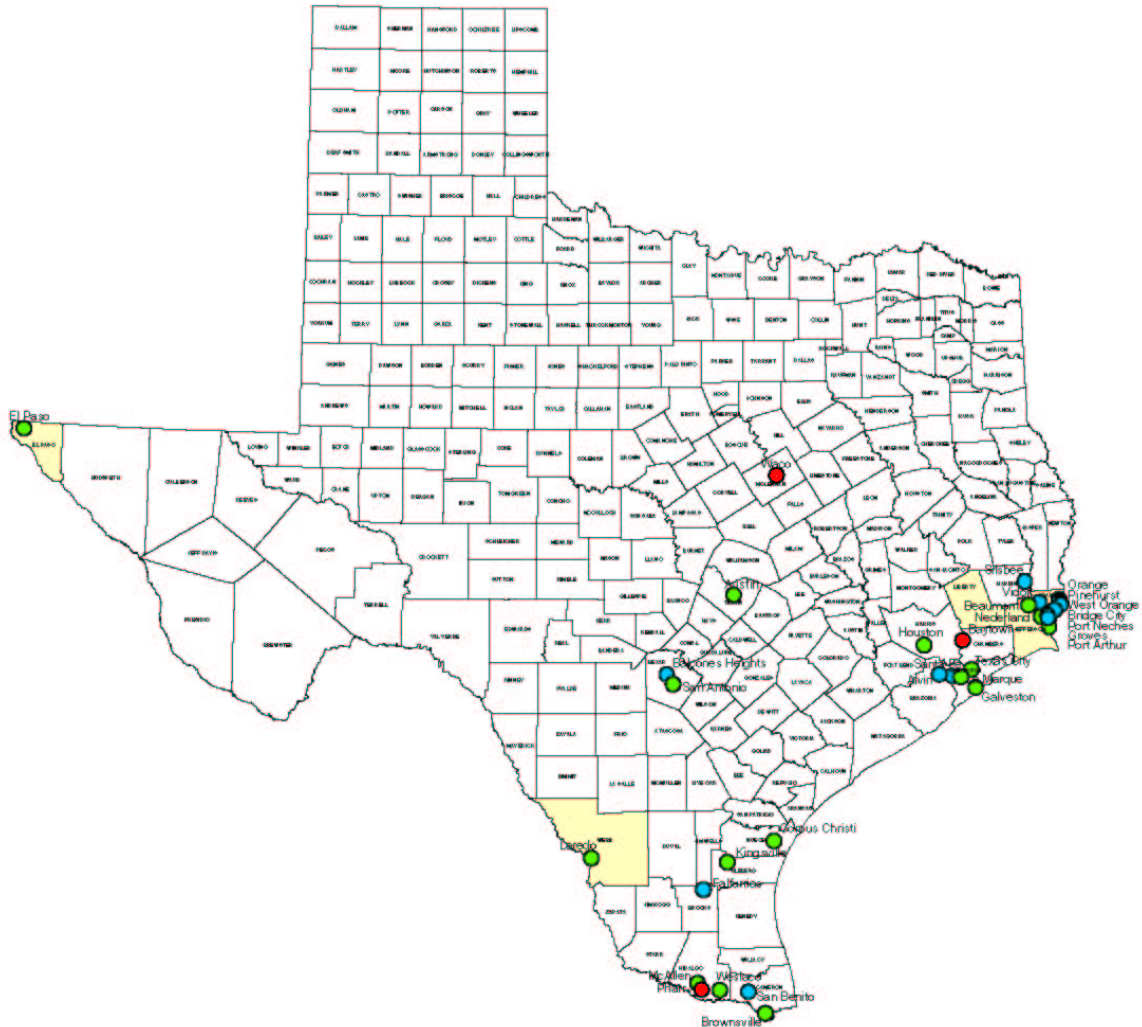
### **Collective Bargaining Cities (Chapter 174, Local Government Code)**

Alvin (police only)	Nederland
Balcones Heights (police only)	Orange
Baytown (fire only)	Pharr (fire only)
Beaumont	Pinehurst (police only)
Bridge City (police only)	Port Arthur
Brownsville	Port Neches (police only)
Corpus Christi	San Antonio
El Paso	San Benito (police only)
Falfarrias (police only)	Santa Fe (police only)
Galveston	Silsbee (police only)
Groves (police only)	Texas City
Kingsville	Vidor (police only)
La Marque	Weslaco
Laredo	West Orange (police only)
McAllen	Waco (fire only)

### **Collective Bargaining Counties/Sheriff Departments (Chapter 174, Local Government Code)**

El Paso County (police only)  
Jefferson County (police only)  
Liberty County (police only)  
Orange County (police only)  
Webb County (police only)

## Political Subdivisions Subscribing to Meet and Confer or Collective Bargaining for Firefighters and/or Police Officers



Note: Meet and confer provisions apply to the cities of Austin and Houston.

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## REVIEW OF LEGISLATION FROM 77th LEGISLATIVE SESSION

### Passed Legislation

Meet and confer rights had been granted by the Legislature to the Houston Fire Department in 1993, the Houston Police Department in 1997, and Austin Fire and Police Departments in 1995. In the past, residents of Fort Worth have voted against recognizing a police or firefighter association as the exclusive bargaining agent of the City's police officers and firefighters. Figures from the 2000 census show that recent growth in the City has placed Fort Worth over the 460,000 population limit at which a municipality was, prior to passage of this legislation, required to recognize a police officers or firefighters association as the sole and exclusive bargaining agent of its police officers and firefighters if a petition calling for that recognition is submitted. **House Bill 2384** by Representative Carter, effective May 28, 2001, provides that municipalities with a population over 460,000 and less than 560,000 that have not recognized a firefighters or police officers association before September 1, 2001 must receive voter approval before recognizing an association and operating under meet and confer provisions regarding firefighter and police officer employment matters (Section 143.3015, Local Government Code).

Prior to the 77th Legislature, the City of Houston had not adopted the provisions for municipal civil service to enable peace officers who work for the Metropolitan Transit Authority of Harris County to meet and confer with their employer through their peace officer association. **Senate Bill 379** by Senator Gallegos, effective September 1, 2001, requires the public employer to recognize an association representing a majority of the peace officers employed by the Metropolitan Transit Authority as the sole and exclusive bargaining agent for the peace officers and allows the authority to enter into a mutual written agreement governing State-mandated personnel issues with an employee association that does not advocate the illegal right to strike by municipal employees (Sections 451.753 and 451.754, Transportation Code). A similar bill had passed both chambers of the Legislature in the 76th Session, but was vetoed by Governor George W. Bush.

Prior to the 77th Legislature, the Houston Police Department did not have the ability to replace an employment negotiations bargaining agent even if a majority of its police officers chose to do so. **House Bill 2972** by Representative Talton, effective September 1, 2001, provides for the withdrawal of the recognition by a public employer of a police officer bargaining group in a municipality with a population of 1.5 million or more upon petition by 40 percent of the police officers (Section 143.354, Local Government Code).

### Failed or Vetoed Legislation

In the City of Houston, firefighters and police officers, including peace officers of Metropolitan Transit Authority, are covered by meet and confer provisions. There are no provisions, however, allowing bargaining regarding the employment matters of Houston's other various municipal employees. **House Bill 2677** by Representative Bailey would have authorized a municipality of 1.9 million to meet and confer with its employees to negotiate agreements on wages, benefits, and other



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policies affecting employees. This bill would have allowed an employee association to be recognized as the sole and exclusive bargaining agent for all City employees if the association submitted a written petition signed by a majority of the covered employees. This bill furthermore would have maintained the ban on public employee strikes. House Bill 2677 passed both houses of the State Legislature, but was vetoed by Governor Perry.

Under current law, an official of the State or a political subdivision of the State is prohibited from entering into a collective bargaining contract with a labor organization regarding wages, hours, or conditions of employment of public employees. **House Bill 1528** by Representative Bailey would have narrowed this prohibition to apply only to those labor organizations that advocate the right of a public employee to strike, thereby in effect opening the avenue of collective bargaining for public employee labor organizations, given they do not endorse the right to strike. House Bill 1528 was left in committee.

**Senate Bill 729** by Senator Barrientos/**House Bill 1345** by Representative Tillery would have removed the prohibition barring a political subdivision of the State from entering into a collective bargaining contract with a labor organization regarding wages, hours, or conditions of employment of public employees or recognizing a labor organization as the bargaining agent for a group of public employees. Both bills were left pending in committee.

Current State law does not provide firefighters in some municipalities with a formal process to facilitate change or improvements in their working conditions. **House Bill 320** by Representative Tillery /**Senate Bill 378** by Senator Gallegos would have granted firefighters in all cities who have voted to adopt Chapter 143 of the Local Government Code (the Civil Service Code) the right to meet and confer with a public employer over employment issues and negotiate binding agreements regarding such issues. This bill required a firefighters association that submits a petition to meet and confer signed by a majority of the firefighters employed by a civil service municipality to be recognized as the sole and exclusive bargaining agent. This bill also maintained the current prohibition on strikes and organized work stoppages by firefighters. House Bill 320 was tabled on third reading and Senate Bill 378 was left in committee.

Public employees are prohibited from collectively bargaining with their employers, except when a local referendum election has been held to adopt the Fire and Police Employee Relation Act. **Senate Bill 1635** by Senator Bersen would have extended the right of collective bargaining to municipal firefighters without a local referendum election to adopt the Fire and Police Employee Relation Act. Senate Bill 1635 had no action taken in committee.

**House Bill 3559** by Kitchen would have authorized a public employer in a municipality to recognize an employee association as the sole and exclusive negotiating agent of the employees and to enter into a mutual written agreement with an employee association that does not advocate the illegal right to strike by municipal employees. This bill only applied to municipalities with a population of not less than 550,000 and not more than 610,000. House Bill 3559 was left in committee.

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Under current law, a county is not authorized to enter into an agreement with an association that is the sole and exclusive bargaining agent for a group of public employees. **House Bill 1318/Senate Bill 763, House Bill 2708/Senate Bill 1017, House Bill 2720/Senate Bill 1694, and House Bill 926/Senate Bill 1254** would have authorized or would have required certain counties or municipalities to recognize an association submitting a petition for recognition signed by a majority of the peace officers of the county as the sole and exclusive bargaining agent for all such employees. The bills were all left pending in committee.

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## PUBLIC HEARING FINDINGS

Testimony on Interim Charge Three was taken at a public hearing held July 10, 2002 in Austin, Texas. The focus of this charge was to study the potential for improving public institutions through collective bargaining among public employees and employers.

Various representatives of firefighter associations, police associations, teacher organizations, and others provided the Committee with testimony pertaining to the charge. Much of the testimony was centered around the ability of police and firefighters in the municipalities of Austin and Houston to meet and confer with their respective public employer concerning wages, hours, and conditions of employment. The prevailing sentiment was in support of collective bargaining as provided for in Chapter 174 of the Local Government Code and meet and confer provisions of Local Government Code, Chapter 143.

Texas State Firefighters Association was strongly represented in testimony, as were several individuals representing various firefighting units and local firefighting organizations present as witnesses but opting not to testify. The majority of the testimony provided by the firefighters detailed the positive impact of the meet and confer process, especially in facilitating better communication between management and firefighters. The witnesses who spoke at the July 10, 2002 hearing lauded the process of meet and confer, and expressed that this form of bargaining has resulted in a sense of ownership of decisions among employees, and ultimately better delivery of service to the public.

Mike Higgins, Director of Research and Service at Texas State Association of Firefighters, described Attorney General Letter Opinion Number 97-038. In this letter, the Attorney General's Office asserts that Texas Government Code, Chapter 617 does not prohibit public sector employees from meeting with representatives of an employee union that does not claim the right to strike as long as the governing authorities of the political subdivision retain the right to unilaterally establish employment conditions. This Opinion clarifies that it is legal for union representatives to meet and discuss public employment matters. However, Local Government Code, Chapter 143 and Chapter 174 establish the process of securing a more formal, binding, and bilateral agreement for police and firefighters in Houston and Austin.

Police were represented in testimony before the Urban Affairs Committee by Combined Law Enforcement Association of Texas as well as the Austin Police Association. Charley Wilkison of Combined Law Enforcement Association of Texas testified to the Committee concerning the importance of communication between police and public employer, and that he feels collective bargaining is a vehicle for that communication. In the State of Texas, collective bargaining is established when a petition is submitted to place the issue of collective bargaining for police and/or firefighters on an election ballot, and the voters decide to adopt the structure of collective bargaining locally through a referendum. Mr. Wilkison asserted he advocates the State of Texas remove the existing prohibition on collective bargaining. He specifically requested that the Legislature repeal Chapter 617 of the Texas Government Code and the State establish nothing in its place, allowing the decision of whether to bargain to be determined locally. Discussion with the Committee ensued

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concerning the necessity of local approval of bargaining as a form of communication between public employer and employee, and the importance of establishing the process of collective bargaining through citizen approval.

Mike Sheffield of the Austin Police Association testified that meet and confer as a form of labor and management relations has been effective and beneficial for all parties. Mr. Sheffield asserted that meet and confer has allowed an efficacious partnership among the city council, the community, and the police. Austin police bargaining agents have shown determination to have an inclusive system of bargaining that ensures women and racial minorities have a voice. Members of the Committee complimented Mr. Sheffield for Austin Police Department's efforts of inclusion in the meet and confer process, and noted their ability to utilize meet and confer to effectively address local concerns.

Oran McMichael testified on behalf of the American Federation of State, County, and Municipal Employees (AFSCME). Mr. McMichael said that State, county and city employees do not share the same meet and confer or collective bargaining options that are available to certain police and fire personnel. He referenced that the 77th Legislature passed HB 2677 without opposition; this bill would have enabled City of Houston employees to meet and confer with their employer through a negotiating agent, but was vetoed by Governor Perry. Mr. McMichael articulated AFSCME's support of extending to certain local government employees either meet and confer provisions as in HB 2677 (77th Session) or the full scope of collective bargaining.

Although public education and related issues are not usually under the purview of the Urban Affairs Committee, three witnesses testified concerning issues of teacher and school district relations in addressing the broad interim charge of collective bargaining and public employees. Texas State Teachers Association (TSTA) testified concerning the high turnover among professional public school teachers in this State. Richard Kouri of TSTA specified that within five years of beginning, one half of new teachers in Texas vacate the profession. The most prevalent reason Mr. Kouri cited for leaving the field of teaching is working conditions and environment, which he opined was a function of a lack of appreciation for teachers, and school boards failing to take into consideration teacher opinions. Methods of ameliorating the problem of teacher attrition were discussed between the Committee and Mr. Kouri, including the use of site based decision making, a structure already in place in Texas law. Also discussed was whether removing the prohibition on collective bargaining while maintaining the ban on teacher strikes would reduce teacher shortages, and how introducing the possibility of collective bargaining on a district by district basis would affect the quality of education available to students.

Juan Guerra of the Corpus Christi American Federation of Teachers, affiliated with the Texas Federation of Teachers, praised the consultation process in place since 1979 in his school district. Corpus Christi ISD allows employees to elect an employee organization to exclusively represent them in nonbinding talks with the district over compensation, working conditions, and local educational policy. Agreements achieved in consultation, once approved by the school board, have led to extensive labor-management cooperation, including nationally recognized efforts to improve teaching skills, Mr. Guerra asserted. He noted that the State Comptroller has recommended the Corpus Christi consultation model to other school districts and provided the Committee a letter from his school board's president citing educational benefits of consultation. Mr. Guerra advocated providing school districts the option of entering into binding contracts with employees.

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Brock Gregg of the Association of Texas Professional Educators (ATPE) asserted ATPE's opposition to both the possibility of allowing collective bargaining into public schools and the existing process of exclusive consultation. The primary reasons stated for the organization's aversion to these forms of bargaining are that they do not allow for consideration and representation of all interested parties in negotiations and the adversarial environment they may create in public schools. An acute fear of teacher strikes, in spite of laws clearly banning this practice, was expressed, and Mr. Gregg noted other states that allow collective bargaining and prohibit strikes among teachers have nonetheless experienced teacher strikes. ATPE furthermore testified to the advantages of site based decision making, and their desire to strengthen this means of communication.

A letter was presented at the hearing to the Committee Members from Frank Sturzl, Executive Director of the Texas Municipal League (TML), providing comments concerning various forms of collective bargaining. Local Government Code, Chapter 174 currently allows that collective bargaining may be adopted for certain fire and police personnel through a petition and popular vote process. TML stated that Texas cities have opposed any legislation that would mandate collective bargaining for cities because mandatory bargaining would preempt local control of employment matters and municipal budgets. In addition, TML said that cities have opposed legislation that would allow a city council, by a simple majority vote, to institute collective bargaining with police and/or fire association. TML asserted this would destroy the long-standing petition and popular vote process and would furthermore be detrimental because city councils may enter into costly contracts that would bind future councils without the approval of the voters. Texas cities, with few exemptions, have opposed attempts to alter the current statute and the public referendum process.

The Committee would like to thank the following individuals who testified on July 10, 2002: Brock Gregg, Juan Manuel Guerra, Mike Higgins, Larry Keith, Richard Kouri, Mike Martinez, Oran McMichael, Mike Sheffield, Scott Toupin, Charley Wilkison.

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## RECOMMENDATIONS TO THE 78th LEGISLATURE

Collective bargaining and the meet and confer process between police and firefighter associations and public employers have been used as an effective tool of communication and cooperation.

**Continue to allow local political subdivisions the option to negotiate with police and firefighter associations about working conditions and salaries:**

- As long as local control is ensured through the current petition and public referendum process; and
- Ensure the prohibition on strikes is adamantly maintained.

**Encourage political subdivisions which have adopted Local Government Code, Chapter 174 or are covered under the meet and confer provisions of Local Government Code, Chapter 143 to utilize the bargaining provisions to facilitate beneficial local agreements.**

**Actively seek means to reduce teacher attrition by:**

- Encouraging open discourse between public school employees and independent school district boards about working conditions, salary and environment; and
- Strengthening processes statutorily in place, such as site based decision making, to improve teacher and school district relations.

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**CHARGE FOUR**

**ACTIVELY MONITOR AGENCIES AND PROGRAMS UNDER THE COMMITTEE'S  
OVERSIGHT JURISDICTION, INCLUDING IMPLEMENTATION OF SUNSET  
LEGISLATION, AND SPECIFICALLY INCLUDING REQUIREMENTS TO TARGET  
SINGLE FAMILY MORTGAGE LOANS TO UNDERSERVED GEOGRAPHIC AND  
ECONOMIC POPULATIONS AND NEW SECTION 8 HOMEOWNERSHIP  
INITIATIVES.**

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## **BACKGROUND AND AGENCY OVERVIEWS**

According to the House Rules, Section 35(8), the House Committee on Urban Affairs has two State agencies under their purview: Texas Department of Housing and Community Affairs (TDHCA) and the Texas Commission on Fire Protection. The Committee has jurisdiction over all matters pertaining to agencies under its oversight. In addition to general monitoring of agencies and programs, Interim Charge Four specified attention to implementation of TDHCA's Sunset Legislation, and included examining single family mortgage loans to underserved geographic and economic populations and the feasibility of a new Section 8 Homeownership Initiative. Although oversight was maintained over Texas Commission on Fire Protection, the Committee's primary focus on this charge was oversight of TDHCA, its implementation of Sunset Legislation, and studying both alternative/subprime lending products, and the potential for the creation of a Section 8 Homeownership Initiative.

### **TEXAS COMMISSION ON FIRE PROTECTION**

The mission of the Texas Commission on Fire Protection is to enforce Statewide laws and assist local governments in ensuring that the lives and property of the public are adequately protected from fires and related hazards. This Agency currently employs a total of 35 FTEs and receives an annual appropriated budget of approximately \$3.1 million.

The Commission on Fire Protection Personnel Standards and Education was created in 1969 by the 61<sup>st</sup> Texas Legislature. The authority was originally codified as Article 4413(35), V.T.C.S. The 75th Texas Legislature's Senate Bill 371 by Senator Armbrister, the Commission's Sunset Legislation, revised the Commission's scope considerably.

Chapter 419 of the Texas Government Code defines the Commission's duties. Under this chapter, the Commission's Fire Service Standards and Certification Division:

- Regulates paid fire protection personnel, fire departments and training facilities;
- Performs biennial inspections of fire departments, local government agencies providing fire protection, and facilities conducting training for recruits or fire protection personnel;
- Establishes minimum curriculum requirements for basic certification;
- Administers State certification examinations;
- Establishes minimum requirements for higher levels of certification;
- Enforces standards for protective clothing and self contained breathing apparatus to ensure fire fighter safety; and
- Administers a voluntary certification and regulation program for volunteer fire protection personnel, fire departments and training facilities.

The Commission annually renews certifications for over 21,000 individual firefighters, 582 fire departments and 175 training facilities. The Commission administers approximately 5,000 certification examinations each year and performs over 450 inspections and investigations annually.



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The Funds Allocation Advisory Committee oversees the distribution of appropriated funds from the Commission's Fire Department Emergency Funding Program. The program is designed to help Texas fire departments meet their most critical needs, and is aimed at those departments in rural and unincorporated areas. It provides funding for scholarships, grants, loans and other financial assistance to eligible local fire departments. In addition, the Ernest A. Emerson Fire Protection Resource Library is critical not only to the Commission's work in setting standards to ensure the safety of fire protection personnel, but also makes resources available to fire service members. The library houses hundreds of videos and books on fire protection. The audiovisual materials are available for lending to fire department training programs, researchers and the public.

The policy making body of the Texas Commission on Fire Protection is a 12 member Board of Commissioners appointed by the Governor and confirmed by the Senate. The members of the Commission represent a broad spectrum of the Texas fire service and serve staggered terms of six years.

### **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS (TDHCA)**

TDHCA's mission is to help Texans achieve an improved quality of life through the development of better communities. It serves as the State's lead agency for affordable housing, public and energy assistance programs, and also addresses colonia activities. The Department was created in 1991 by merging the Texas Department of Community Affairs, the Texas Housing Agency, and the Community Development Block Grant Program from the Texas Department of Commerce (now administered by the Office of Rural Community Affairs). TDHCA currently employs a total of 323 FTEs (including 87.5 FTEs within the Manufactured Housing Division) and receives an annual appropriated budget of \$137 million, which includes an annual operating budget of approximately \$32 million. The Department administers approximately \$430 million in Federal funds annually.

Chapter 2306 of the Texas Government Code is the governing statute for the Department. Under this chapter, TDHCA's purpose is to:

- Assist local governments in providing essential public services for their residents and overcoming financial, social, and environmental problems;
- Provide for the housing needs of individuals and families of low, very low, and extremely low income and families of moderate income;
- Contribute to the preservation, development, and redevelopment of neighborhoods and communities, including cooperation in the preservation of government-assisted housing occupied by individuals and families of very low and extremely low income;
- Assist the Governor and the Legislature in coordinating Federal and State programs affecting local government;
- Inform State officials and the public of the needs of local government;
- Serve as the lead agency for: addressing at the State level the problem of homelessness in this State; coordinating interagency efforts to address homelessness; and addressing at the State level and coordinating interagency efforts to address any problem associated with homelessness, including hunger; and
- Serve as a source of information to the public regarding all affordable housing resources and community support services in the State.

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This Department has experienced a significant amount of recent activity. TDHCA underwent Sunset Review during the 77th Legislative session, has seen notable changes in its Board of Directors, named a new Executive Director (Edwina Carrington) in Spring of 2002, is currently undergoing a complete agency reorganization, and has been implementing a number of mandates from the Department's Sunset Legislation.

### **Program Overviews**

TDHCA administers a number of housing and community programs through the following divisions: Community Affairs Division; Housing Finance Division; Housing Programs Division; Office of Strategic Planning/Housing Resource Center; and Office of Colonia Initiatives. In addition, the 77th Texas Legislature created a separate Division of Manufactured Housing within the Department, functioning under a distinct Executive Director and Board.

The Community Affairs Division provides assistance to poor and homeless persons, families, and local governments requesting technical assistance. This Division houses Community Services Block Grant (CSBG), Comprehensive Energy Assistance Program (CEAP), Emergency Nutrition/Temporary Emergency Relief Program (ENTERP), Emergency Shelter Grants Program (ESGP), and Weatherization Assistance Program (WAP).

- CSBG provides administrative support to a network of local community-based organizations that provide services to very low-income persons in all areas of the State. The funding helps provide such essential services as childcare; health and human services for children, families and the elderly; housing and other poverty-related programs.
- CEAP combines case management, education and financial assistance to help very low and extremely low-income consumers reduce their utility bills to an affordable level. Services include utility payment assistance, energy education and budget counseling.
- ENTERP provides emergency and energy-related assistance to low-income Texans. Aid is provided to county governments or nonprofits servicing all 254 Texas counties. Funds are used to provide emergency services such as utility assistance, housing, food, clothing, medical services and transportation in response to disasters.
- ESGP funds provide grants to eligible entities that provide shelter and related services for homeless persons, as well as intervention services to persons threatened with homelessness. Activities eligible for funding include renovations for use as homeless shelters; assistance in obtaining permanent housing; medical and psychological counseling and supervision; and developing and implementation of homeless prevention activities.
- WAP helps low-income Texans, particularly the elderly and persons with special needs, control energy costs to ensure a healthy and safe living environment. The program funds the installation of weatherization materials and provides energy conservation education.

The Housing Finance Division acts as a conduit issuer of taxable and tax-exempt bonds and issues mortgage revenue bonds (MRBs) to help lower income working families buy their first homes with below-market interest loans; or assist them with a down payment on a home. MRB investors accept

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a lower rate of return due to the tax-exempt nature of the bonds, and the Department passes those savings on to the homebuyers in the form of below-market interest rate mortgages. This Division administers the Down Payment Assistance Program (DPAP), Multifamily Mortgage Revenue Bond Program (MMRB), Texas First-Time Homebuyer Program (FTHB), and the HOME Investment Partnership Program (HOME).

- DPAP helps very low and low income families purchase a home by providing an interest-free loan ranging from \$5,000 to \$10,000, depending on the county in which the property is located. This assistance is for down payment and eligible closing cost, and the borrower pays the loan when the home is either sold or refinanced, or at the maturity of the original mortgage.
- MMRB issues mortgage revenue bonds to finance loans for qualified nonprofit organizations and for-profit developers. In an effort to target low income populations, properties financed are subject to unit set aside restrictions for low income tenants, such as rent limitations and other requirements set by TDHCA. Set asides vary, but typically target households at 80 percent, 60 percent, and 50 percent of area median family income (AMFI). Properties also set aside at least 5 percent of units for tenants with special needs. All properties provide support services tailored to resident needs.
- FTHB channels below-market rate mortgage money through participating Texas lending institutions to eligible families who are purchasing their first home, or to those who have not owned a home in the past three years. Although income limits may vary with each bond issue, the program is designed to serve extremely low to moderate income (30 percent to 115 percent of AMFI) Texas families.
- HOME provides grants and loans to help local governments, nonprofits, for-profit entities, and public housing agencies provide safe, decent, affordable housing to extremely low, very low, and low-income families. HOME allocates funds through four basic activities: Homebuyer Assistance, Rental Housing Development, Owner-Occupied Housing Assistance, and Tenant-Based Rental Assistance.

TDHCA's Housing Programs Division provides direct housing assistance to household in the form of housing rehabilitation, new construction, and rental/homebuyer assistance. The Low Income Housing Tax Credit (LIHTC) and Section 8 Voucher programs are federally funded; the Housing Trust Fund (HTF) is the Department's only State-funded housing program dedicated to increasing the State's supply of affordable housing.

- HTF awards funds on a competitive basis to nonprofit and for-profit organizations, local governments, public housing authorities, community housing development organizations (CHDOs), and income eligible individuals and families for the acquisition, rehabilitation, and new construction of affordable housing.
- Section 8 Vouchers provides rental assistance subsidies to income qualified families, the elderly, and persons with disabilities. The Statewide program is designed specifically for needy families in small cities and rural communities that lack a public housing authority or another entity to administer the HUD Section 8 Voucher program locally.
- LIHTC is the primary means of directing private capital toward the creation of affordable rental housing. Developers of low-income rental housing use the tax credit to offset a portion of their Federal tax liability in exchange for the production

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of affordable rental housing. To qualify for the tax credit, either 20 percent or more of the projects' units must be rent-restricted and occupied by individuals whose income is 50 percent or less of AMFI; or 40 percent or more of the units must be rent-restricted and occupied by individuals whose income is 60 percent or less of AMFI.

TDHCA also has an Office of Strategic Planning/Housing Resource Center (OSP/HRC) which acts as a central clearinghouse for information regarding TDHCA programs for general housing and housing related issues, providing educational materials and technical assistance to the public, organizations and other State or Federal agencies. OSP/HRC assistance emphasizes increasing the State's capacity to develop and deliver housing for extremely low, very low, low, and moderate-income Texans. This Division is also responsible for publications that TDHCA is required to submit to receive funds from both the State and Federal government, and for the certification of CHDOs for participation in HOME program in non-Participating Jurisdictions.

### **Office of Colonia Initiatives**

According to TDHCA, a colonia is a subdivision in an unincorporated geographic area located within 150 miles of the Texas-Mexico border that has a majority population composed of individuals and families of low and very low income, who lack safe, sanitary and sound housing, together with basic services such as potable water, adequate sewage systems, drainage, streets, utilities, dusty unpaved roads and no plumbing. With living conditions often compared to Third World countries, the colonias present one of the most critical housing needs in the State. Housing in the colonias is primarily constructed with scarce materials and professional builders are rarely used. Residents frequently start with makeshift structures of wood, cardboard or other materials, and as finances allow, continue to improve their homes.

Without the introduction of effective affordable housing programs, colonias will continue to flourish. While the colonias are increasingly receiving more attention, it appears that most efforts are focused on eliminating their presence rather than eliminating a major reason for their presence, the lack of affordable housing. While it is important to eradicate the conditions, it is equally as important to address the circumstances which enable such an environment to develop. State, local, nonprofit and for-profit entities must work together to increase the availability of affordable housing programs in these particular areas.

Office of Colonia Initiatives (OCI) coordinates TDHCA's programs to improve living conditions in the State's border colonias. OCI assists the Department's program divisions by coordinating activities in the colonias that provide consumer education on contract-for-deed issues and housing assistance. In addition, technical assistance for housing and community development is provided to colonia residents and local governments through field offices located in Edinburg, El Paso, and Laredo. OCI also oversees five Colonia Self-Help Centers, located in Cameron/Willacy, Hidalgo, Starr, Webb, and El Paso counties, which help local residents finance, refinance, construct, improve and maintain a safe, suitable home.

Programs administered by OCI include the Texas Bootstrap Owner-Builder Loan Program (Bootstrap) and the Contract for Deed Conversion Initiative.

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- The Bootstrap Program provides low-interest home mortgage loans of up to \$30,000 to low-income families who agree to help build their own home. Two-thirds of the total funds are used to allow residents of economically distressed areas, including border colonias and communities, to use “sweat equity” to build their own homes. The remaining one-third is available Statewide to low-income families. Funds for the initiative come from HOME program, HTF, and other sources. The program is administered through the Colonia Self-Help Centers and other nonprofit organizations across the State.
  - The Contract for Deed Conversion Initiative is available to resident who are currently purchasing residential property within 150 miles of the Texas-Mexico border and reside in a properly identified colonia. TDHCA assists residents in converting their contract for deed into a traditional note and deed of trust, and guarantees conversion loans made by private lenders.

### **Related Colonia Information**

During the 76th Legislative session (1999), legislators passed and Governor Bush signed Senate Bill 1421 which advanced efforts for colonia residents’ homes to be connected to waste and water services more expediently. As a major part of this new legislation, the Office of the Secretary of State hired a Director of Colonia Initiatives to work in Austin and supervise six Colonia Ombudsmen to work in border counties with the highest colonia populations. The Colonia Initiatives Program is part of the Texas Border and Mexican Affairs Division of the Secretary of State’s Office. The coordinators serve as advocates among border colonia residents, and also correspond with State agencies including TDHCA, as well as Attorney General’s Office, Texas Department of Health, Texas Natural Resource Conservation Commission, and Texas Water Development Board, local governments, and utility companies.

The term colonia is traditionally geographically limited to a set distance from the Texas/Mexico border, and colonia programs (including those administered by TDHCA’s OCI) are usually restricted to addressing problems of border colonias, without addressing colonia conditions inland, in non-border communities. During the 77th Legislative Session, Section 15.001 was added to the Texas Water Code; this Section defines a non-border colonia as a residential community located in an unincorporated area of a county, all parts of which are at least 150 miles from the international border of this state, in which water or wastewater services are inadequate to meet minimal needs of residential users and in which the average household income is less than the average household income for the county in which the community is located.

Concerning border and non-border/inland colonias, the Texas Water Development Board has been administering the Economically Distressed Areas Program (EDAP) since the program’s inception in 1989. EDAP is to be one of the few programs that addresses the water and wastewater needs of both border and inland colonias. This program provides financial assistance in the form of a grant, loan, or a combination of the two 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. An economically distress area is a county where residential water supply or wastewater systems are inadequate to meet minimal State standards and the financial resources are inadequate to provide services to meet those needs. To receive EDAP funds, projects must be located in

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counties defined as economically distressed areas, defined as counties with a per capita income 25 percent below the state average and unemployment 25 percent above the state average for the last three years, or counties next to an international border.<sup>13</sup>

Note that the Texas Senate Business and Commerce Subcommittee on Border Affairs is investigating several issues of interest related to colonias.

### **Manufactured Housing Board Update**

TDHCA has been responsible for the regulation of manufactured housing in Texas since 1995, when the regulation of manufactured housing was transferred from the Texas Department of Licensing and Regulation. The National Manufactured Housing Construction and Safety Standards Act of 1974 assigned the responsibility of administering the Act to the Department of Housing and Urban Development (HUD), and Federal law makes provision for state enforcement of the Act. TDHCA administers parts of the National Manufactured Housing Construction and Safety Standards Act on behalf of HUD and is the State Administrative Agency (SAA) for Texas.

During the 77th Legislative Session, SB 322 created a separate and independent Manufactured Housing Division (MHD) within the Agency. This Division receives an annual appropriated budget of \$4.7 million and an operating budget of \$5.3 million, answers to the Manufactured Housing Board and has its own executive director. TDHCA's MHD ensures that manufactured homes are well-constructed and safe, that homes are installed correctly, that consumers are provided fair and effective remedies, and that measures are taken to provide economic stability for the Texas manufactured housing industry. The MHD is broken up into the following sections: Titling, Licensing, Customer Service, Enforcement, Consumer Complaints, and Resolution.

MHD is an independent division within TDHCA, but operates with assistance from TDHCA in key areas such as information services, public relations and governmental affairs, facilities, purchasing, human resources, payroll, accounting, and auditing. Under an agreement between TDHCA and MHD, TDHCA provides these services to MHD for an agreed cost and also passes on to MHD its allocable portion of certain general overhead costs, such as utilities and insurance. TDHCA has dedicated appropriate resources which enable Manufactured Housing to take advantage of the pool of expertise and support provided by the larger TDHCA infrastructure.

Governor Perry has appointed the initial MHD Board of Directors, comprised of Chairman Don Stouder, Jack Davis, Pete Moreno, Joan Tavarez, and Cary Yates. The Board has worked to understand the MHD and issues confronting the manufactured housing industry in Texas, has overseen the promulgation of significant revisions to the rules that implement the Manufactured Housing Standards Act, reviewed information regarding the operating budget for the upcoming biennium, and addressed a number of orders relating to administrative actions.

2002 has been an eventful year for the manufactured housing standards industry in Texas and, as a result, an intense year for MHD. One of the key issues encountered by MHD has been the enactment of HB 1869 by Representative Wohlgenuth (77th Legislative Session). Among other things, HB 1869:

- Redefined the treatment of a manufactured home as real property for taxation

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- purposes;
  - Revised procedures for installing and titling a home deemed to be real property;
  - Revised requirements for the closing of a transaction involving a manufactured home deemed to be real property; and
  - Created new disclosure requirements about buyer’s responsibilities, such as taxes, sewage, water, zoning, and association dues.

The issue of how HB 1869 affected chattel lending on manufactured homes has created an active dialogue between the Legislature, MHD, and the industry. In public hearings on the MHD rules to implement HB 1869, testimony revealed the law effectively eliminated chattel lending on manufactured homes that were to be situated on property owned by the same person, and many in the manufactured housing industry felt this situation was not the law’s intent. In addition, there was testimony that regardless of HB 1869’s intent, the availability of chattel lending in manufactured housing is desirable. Contrary testimony was also provided that the curtailment of chattel lending is a positive step to protect consumers. While HB 1869, like any major piece of legislation, may be subject to some degree of after the fact debate among those impacted, the plain language of the bill seems to address issues of titling, and the MHD staff does not intend to recommend that the MHD board adopt further rules on the subject unless particular practices are identified that require clarification and such rules are clearly within the scope of the law.

MHD reports that major economic factors, including adverse trends at the State and national levels, combined with a build-up of foreclosure inventory, have impacted all facets of the manufactured housing industry. MHD reports that the requirements of HB 1869 have effectively curtailed chattel lending in a large sector of the manufactured home industry, creating additional pressures on the industry as the sales process has slowed in order to accommodate a shift to mortgage lending. The changes in lending practices brought about by HB 1869 caught much of the industry unprepared as practical mortgage lending issues, such as the creation and availability of workable appraisal criteria for manufactured homes, have created obstacles to manufactured home ownership in situations where previously it was an option.

Several major manufacturers and established retailers have exited the business. This is a continuing trend that has reduced available operating revenues for MHD while simultaneously driving up the number of complaints subject to resolution costs being borne by the Homeowners’ Recovery Fund (HORF). This increased financial pressure on the HORF has been exacerbated by financial troubles with several of the major surety companies that bond licensees. Those surety bonds are the HORF’s primary source of funds. Texas, despite problems with the manufactured housing industry, continues to enjoy a national leadership role in this arena. Texas rules, specifically complaint resolution and installation inspection rules, serve as a model for other states and indications are that HUD will require greater state activity in the supervision of manufactured housing.

### **TDHCA’s Sunset Review**

TDHCA underwent Sunset Review during the 77th Legislative Session. Senate Bill 322 (SB 322) by Senator Lucio continued TDHCA for a two-year probationary period rather than the usual 12-year extension, to provide for an evaluation of whether TDHCA has successfully carried out the Sunset recommendations before the 78th Legislative Session. A complete review of the Sunset

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Review process can be found on the Sunset Advisory Commission websight <[www.sunset.state.tx.us](http://www.sunset.state.tx.us)>.

The Sunset Commission Report advised that TDHCA must increase the Department's public accountability and ensure that the Agency allocates resources to best meet the State's most pressing housing needs. SB 322 restructured the Department's Governing Board, required meaningful opportunities for public participation at Board meetings and public hearings, and made information about community resources and affordable housing easily accessible to the public. The bill required that the Department strategically plan to serve Texans with the greatest need, and that the Department use its multifamily housing finance programs to maximize resources and outcomes. In addition, the Sunset legislation ensured that the Department's programs provide fair access to housing. The Legislature added considerable implementation detail to many of the initial Sunset Commission recommendations, most notably concerning housing preservation and the administration of the Low Income Housing Tax Credit program. A copy of the Sunset Advisory Commission's Summary of SB 322 is available in Appendix E of this report, and more detailed information is also available on the Sunset Commission's websight.

### **Implementation of Senate Bill 322**

As of late August 2002, TDHCA reports it is 82 percent complete with achieving the reforms of SB 322 and anticipates being 92 percent complete by the end of December 2002. The progress on SB 322 is available online at the TDHCA websight in a publicly accessible database detailing developments on implementation.

The Sunset Commission staff is scheduled to begin its review of the status of TDHCA's implementation of SB 322 in late August/early September of 2002, with recommendations due to the Sunset Commission in mid-November. The Commission is tentatively scheduled to meet on December 10 and 11, 2002 to take public testimony on the recommendations and then again on January 15, 2003 to make its final decision. Legislation must be passed during the 78th Legislative Session to continue the existence of this Department.

Some of the most extensive changes resulting from SB 322 took place in TDHCA's Low Income Housing Tax Credit (LIHTC) program. During the 2002 program cycle, the Department featured its first pre-application period and scoring as well as online application features available to developers; applicants are now able to view scores of their application following the pre-application period. The Department also conducted numerous focus groups and Statewide public hearings to gather input on its Qualified Allocation Plan and Rules (QAP), which governs the tax credit program. The Department feels the current scoring process is more transparent and clear. The LIHTC program now also has an appeals process which allows applicants to file appeals to the governing board if its not satisfied with staff scoring of an application. This process was utilized during the 2002 funding cycle and proved to be a successful outlet for applicants and an enhancement of the program. In addition, per SB 322 TDHCA created an Executive Award and Review Advisory Committee that makes recommendations to the TDHCA governing board on funding and allocation decisions.

SB 322 also instructed the Department to increase its outreach efforts to the State's citizens most



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in need of affordable housing. Consequently, TDHCA launched a new online database in July 2002 that enables viewers to locate State-funded properties in their respective areas of the State. This database also refers individuals to local service providers in their areas, enabling people to gain access to appropriate local assistance.

Historically, the Department has been criticized for its extensive filing requirements. SB 322 addressed this in requiring TDHCA to develop a uniform application for its programs. In 2002, TDHCA implemented a uniform application for non-housing development, multifamily housing development, and single-family housing development activities respectively. TDHCA used this application for all housing development programs in fiscal year 2002 and surveyed users of the LIHTC and Housing Trust Fund applications to further fine tune the uniform document.

Funding patterns were also addressed in SB 322 and TDHCA was asked to develop a Regional Allocation Formula and subsequent Affordable Housing Needs Score system. The Department reports that these two elements have had a dramatic effect on where it allocates funding. The Department also has included an adjustment factor that considers other available State and Federal funding. While the Regional Allocation Formula determines the amount of TDHCA funding available to each uniform State service region, the Affordable Housing Needs Score helps identify the areas within each region that have the highest level of housing need. This model has been used by the LIHTC program, HOME, and Housing Trust Fund for fiscal year 2002 development activities. TDHCA believes the model helps it equalize the scoring between the higher density urban areas and the less dense suburban and rural areas.

Department staff is also working with the new Disability Advisory Council that advises the TDHCA governing board on the Department's policy towards and production of programs for persons with disabilities. This Council is composed of persons with disabilities, advocates, and TDHCA staff. The Council met several times during 2002 and presented a list of recommendations to the governing board in June 2002 for its consideration.

### **TDHCA'S SB 322 Implementation Chart**

Please refer to the Appendix, Section F to view TDHCA's SB 322 Implementation Chart, last updated by the Department September 4, 2002.

### **Regional Development Coordinators Update**

SB 322 created a network of Regional Development Coordinators (RDCs) to identify and address local affordable housing and community development needs. RDCs were designated for each of the eleven service regions to assist local communities in determining how to address affordable housing and community development needs, to establish regional planning and resource-sharing, and to facilitate the leveraging of available local, State, and Federal funds. House Bill 1 (77th Session), the General Appropriations Act, did not include any additional full-time equivalents (FTEs) or additional funding to the Agency for this program. In spite of static funding and FTEs, the Department was able to procure enough funds to initiate the first year of this program from a noncontinuous, within-Department source.

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In February 2002, TDHCA requested assistance from the Texas Association of Regional Councils of Government (TARC) to establish a Statewide network of RDCs and Regional Advisory Committees (RAC). In the original request, TDHCA asked Councils of Governments (COGs) to voluntarily provide a staff member to serve as a nominal RDC for their Uniform State Service Region. However, at the annual TARC meeting in March 2002, the attendees' consensus was that a COG in each State service region should designate a Regional Advisory Committee Coordinator (RACC) for their region, and this RACC will serve as a liaison between the COGs and the Department. The COGs also suggested having focus group meetings at the COG level and then combining the findings via the Regional Advisory Committee.

A Memorandum of Understanding (MOU) between TDHCA and the COGs was developed by TDHCA and distributed to each of the 24 Regional Councils of Government (COGs) in July 2002. Although SB 322 did not require an MOU, it was decided that such an agreement would be useful in implementing the legislation and would help foster improved, ongoing interaction between the COGs and TDHCA. The three-page document describes in very general terms the combined and individual responsibilities of the COGs and TDHCA. In essence, the agreement calls for the formation of a Focus Group for each COG region that will meet annually. The Focus Group observations will be forwarded to the RAC, which will in turn provide a Regional Advisory Committee Report to TDHCA. The meetings and report shall be timed to occur so that TDHCA will be able to use the findings in drafting the *State Low Income Housing Plan and Rules (SLIHP)*.

### **TDHCA Reorganization**

After evaluating recommendations from the Sunset Advisory Commission and the State Auditors Office (SAO), public comment collected during the last few years, and direction from the governing board, TDHCA Executive Director Edwina Carrington instituted a Department-wide reorganization effort in April 2002. Reorganization along functional lines should help the Department meet many of the goals of their Sunset Legislation. With assistance from the SAO's Management Advisory Services, executive management with approval from the governing board led a three-phase effort in reorganizing the human resources of the Department as well as re-engineering its processes. The Department asserts that the reorganization will help it become a state housing finance and community affairs agency that will be a model of professionalism and integrity. The reorganization will also enable TDHCA to design and implement its programs in a manner that is consistent with agency goals and strategic priorities through processes that are logical, transparent, and focus on production. According to TDHCA's progress report to the Sunset Advisory Commission Staff dated September 5, 2002, the Department as of this date is in the second phase of reorganization and expects reorganization to be fully implemented by December 31, 2002.

### **Subprime Lending**

TDHCA's Sunset Legislation mandates the Department to conduct a single family mortgage revenue bond (MRB) market study to assess home mortgage credit needs in underserved economic and geographic submarkets, and also to determine the feasibility of developing a subprime lending program for people who are not being fairly served by the traditional market. Subprime lending generally takes place among people with poor or no credit, and who may not be eligible for traditional loans. The Fannie Mae Foundation defines the subprime market as, "the credit source

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of last resort for households with poor credit histories, insufficient documentation of requisite financial resources or other important loan application information and other loan application shortcomings that would limit a prospective borrower's ability to secure credit from the prime market."<sup>14</sup> Subprime loans have higher interest rates and fees than prime loans, with justification that higher risk factors necessitate higher interest rates to offset the greater risk of the borrower. Fannie Mae estimates that subprime mortgages are routinely 3 to 4 percentage points or more higher than comparable prime market loans.

Predatory lending is a subcategory of subprime lending. According to Fannie Mae "predatory loans are characterized by excessively high interest rates or fees, and abusive or unnecessary provisions that do not benefit the borrower...despite a clear technical distinction between legitimate subprime lending and predatory lending, there exists a huge gray area between the two, in the form of excessive subprime lending."<sup>15</sup> Although there does not seem to be a precise definition of predatory lending, an article in the July 2002, ABA Banking Journal describes predatory lending as fraudulent and deceptive practices that prey on the elderly, minorities, low income individuals/families, and those that do not possess financial knowledge.<sup>16</sup>

Both subprime and predatory lending are becoming increasingly more common in home mortgages in Texas. According to a study by the Washington-based advocacy group Center for Community Change, Texas cities have the highest percentage of subprime mortgage refinance loans nationwide. El Paso had the highest percentage of subprime refinance loans, with 48 percent of all home refinance loans in this City falling under the subprime category. El Paso, along with Corpus Christi, Laredo, Killeen-Temple and Beaumont-Port Arthur compose the top five cities with the highest rates of subprime refinance loans in the nation.<sup>17</sup>

TDHCA has been originating alternative lending products on a limited basis since 1992, and has increased its efforts in this area since the 77<sup>th</sup> Legislative Session. TDHCA's Office of Colonia Initiative Contract for Deed Conversion Loan and the Texas Bootstrap Loan Program are two innovative alternative lending products offered by TDHCA that serve nontraditional credit markets. These two programs have limited but flexible underwriting guidelines that have allowed the Agency to originate 657 loans with an outstanding balance of \$8,788,197. TDHCA has committed an additional \$10 million for the Contract for Deed Conversion and Texas Bootstrap programs over this biennium, drawing from the Housing Trust Fund, HOME Investment Partnership program funds and Limited Taxable Junior Lien Single Family MRBs.

The results of the TDHCA market study on home mortgage credit characteristics of underserved areas have recently been released. Among the conclusions drawn from this study are:

- Rural areas have a 75 percent homeownership rate compared to 66.1 percent for metro areas;
- Nationally, 16.8 percent of owners in rural areas had mortgage interest rates over 10 percent; nearly double the percentage in metro areas;
- Over 20 percent of the homes in rural areas are mobile homes in TDHCA Uniform State Regions 3, 5, 8A, and 10;
- Pre-purchase homebuyer education dramatically reduces the likelihood of loan delinquency risk;
- Many victims of predatory lending are uneducated with regard to basic financing and

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- loan terms;
  - Subprime lending tends to flourish in low-income areas that may not be adequately served by traditional lenders and where borrowers may be unfamiliar with available mortgage products;
  - In some markets, it is estimated that between 35 percent and 50 percent of prime-rate qualified borrowers are receiving subprime loans as a result of lack of financial lending knowledge and/or aggressive sales tactics. Therefore, homebuyer education can dramatically minimize the possibility that a prime borrower will receive a subprime loan when in fact they qualify for traditional prime market lending products;
  - The Department acknowledges that lack of down payment funds are a significant barrier to homeownership. According to the available HMDA data, the main obstacle to receiving credit from both prime and subprime lenders in both urban and rural areas is poor credit history and insufficient debt-to-income ratios; and
  - Although rural areas are being served by local housing finance corporations and other prime and subprime lenders, only 14 of the 294 participating branch lenders in TDHCA's single family bond program are located in rural areas. However, over 34 percent of TDHCA branch lenders are located in the border areas.

Because subprime and manufactured housing borrowers may have a lack of down payment funds, poor credit histories and insufficient qualifying ratios, TDHCA's market study prompted the Department to market an appropriate product in those areas that have a high preponderance of subprime and manufactured home lenders. TDHCA has recently introduced Fannie Mae's Expanded Approval product as a first step in entering this market and has designated \$10 million of \$100 million low interest rate mortgage loan funds for this product. The Fannie Mae Expanded Approval product enables borrowers who have minor credit problems access mortgage credit; these borrowers would have otherwise been unable to obtain mortgage loans through the existing single-family bond product. In general, the product serves borrowers with A- credit. As part of the marketing plan for the Expanded Approval product, TDHCA held a press conference with Fannie Mae representatives and interested legislative parties to publicize the product. The Department intends to produce a video of the news conference that includes quotes from TDHCA representatives that will be distributed to approximately 200 television stations across the State, and is also negotiating the placement of public service announcements on radio stations.

Based on the results of the market study, TDHCA will direct its single-family mortgage loan efforts according to the volume and type of mortgage products originated throughout the various Texas regions and will focus its products, including homebuyer and credit education, subprime purchase loans, and subprime refinancing loans, to regions with high subprime loan concentrations. Note that TDHCA's market study can be viewed in its entirety on TDHCA's websight, specifically at [www.tdhca.state.tx.us/pdf/hrc/02-MktStdy-020812.pdf](http://www.tdhca.state.tx.us/pdf/hrc/02-MktStdy-020812.pdf).

The House Committee on Financial Institutions is studying the area of general subprime lending per their 77th Legislature Interim Study Charge Two: research trends and practices in the subprime lending market in Texas and identify any issues of public concern in those markets. The Senate Business and Commerce Committee is also addressing subprime lending in their interim research.

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## Section 8 Homeownership Initiative

Section 8 Vouchers are administered through local Public Housing Authorities (PHAs), and very rarely through TDHCA in the absence of a local PHA to distribute Vouchers. Section 8 Vouchers are funded through the U.S. Department of Housing and Urban Development (HUD). Traditionally, Section 8 Vouchers have allowed families to choose and lease privately-owned rental housing. These vouchers can also be used as Homeownership Vouchers, meaning that Federal money that would go towards a subsidized rental unit may be used towards homeownership. Section 8 Voucher money can be applied to home mortgage or other monthly homeownership expenses including: mortgage principal and interest; mortgage insurance premium; real estate taxes and homeowner insurance; and PHA allowances for utilities, routine maintenance, major repairs and replacements. Although HUD allows Section 8 Vouchers to be used for Homeownership, it is up to the discretion of individual PHAs to determine whether they choose to administer the Section 8 Homeownership program.

HUD sets forth minimum requirements for families to qualify for Homeownership Vouchers. First, families must be first-time homeowners or not owned or have had ownership interest in a home in the previous 3 years. Families must have a monthly income not exceeding 80 percent of area median income and not less than the Federal minimum hourly wage multiplied by 2,000 hours (currently \$10,300), as well as continuous employment on a full-time basis for at least one year. Homeownership counseling must be completed, and local PHAs can require additional eligibility requirements as well. Exceptions are made to the income and employment requirements in the case of older adults and persons with disabilities. Also, homeownership assistance is generally limited to 10 years, however there is no time limit for elderly households or persons with disabilities.

According to a survey completed by the staff of the Urban Affairs Committee (beginning on page 16 of this report), Section 8 Homeownership is gaining popularity among PHAs:

- 6 percent reported having a Section 8 Homeownership program;
- 15 percent reported planning to implement the program; and
- 22 percent expressed interest in learning how to implement the program.

At this point, only Waco PHA has successfully moved Section 8 Voucher holders into their own homes, and this PHA has approximately 16 new homeowners to their credit. A problem of Section 8 Voucher underutilization has been recognized primarily in rural PHAs due to a sparse stock of affordable rental housing meeting HUD standards; it is believed that these PHAs might be most interested in Section 8 Homeownership opportunities to increase the stock of affordable housing in their areas and better utilize Vouchers resources.

TDHCA has expressed interest in developing a partnership with local PHAs to produce an effective demonstration project to transition Section 8 Voucher families from renters into homeowners. In addition, TDHCA is investigating ways that programs administered by the Department might be used to further the goal of homeownership among Section 8 Voucher recipients, including using Single Family Mortgage Revenue Bonds and Down Payment Assistance programs to assist Section 8 Voucher holders purchase a home. In June of 2002, the TDHCA Board voted to allocate \$1 million of taxable Junior Lien Single Family Mortgage Revenue Bond proceeds to the Department's Section 8 Homeownership Initiative, provided for the passage of due diligence.

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## PUBLIC HEARING FINDINGS

Testimony on Interim Charge Four was taken at a public hearing held April 11, 2002 at the City Council Chambers in Houston, Texas. The focus of this charge was to actively monitor agencies and programs under the Committee's oversight jurisdiction, including implementation of TDHCA's Sunset Legislation, investigating requirements to target single family mortgage loans to underserved geographic and economic populations, and contemplation of a new Section 8 Homeownership Initiative. The House Committee on Urban Affairs has oversight over both the Texas Department of Housing and Community Affairs and the Texas Commission on Fire Protection. However, the Committee heard no testimony concerning the latter agency.

Edwina Carrington, Executive Director of TDHCA, was invited to address the Committee concerning Interim Charge Four. She updated the Committee concerning TDHCA's progress in meeting their Agency goals and in completing Sunset Recommendations, in addition to discussing single family mortgage loans to underserved areas and Section 8 Homeownership.

TDHCA's Sunset Legislation, Senate Bill 322 (SB 322), continued TDHCA for a two-year probationary period, rather than the usual 12 year extension, to determine whether TDHCA has successfully carried out Sunset Recommendations in SB 322 prior to the 78th Legislative Session. At the hearing on April 11, 2002, Ms. Carrington stated that the Department had completed over 50 percent of their Sunset Legislation objectives at that time (more recent progress noted in TDHCA's SB 322 Implementation Chart in Appendix F).

TDHCA presented several items that the Agency had highlighted as its most pressing priorities in implementation of SB 322. TDHCA's administration of the Low Income Housing Tax Credit (LIHTC) program and the various changes that the Department underwent in regard to this program were discussed by Ms. Carrington. The LIHTC program encourages development and preservation of rental housing for the low income, maximizes and maintains the number of quality, affordable rental units in the State, and provides for the participation of both for-profit and nonprofit organizations in the acquisition, development and operation of affordable housing developments. Numerous changes mandated through the Department's Sunset Legislation concerning LIHTC will make the process of applying for and receiving LIHTC, as well as the appeals process, more transparent and consistent. It appears that, prior to the Urban Affairs oversight hearing, the Agency had implemented most if not all the mandated changes concerning improvement of this program.

Sunset Legislation instructed TDHCA to become a consumer-friendly clearinghouse of information concerning affordable housing. During the hearing, Ms. Carrington testified that TDHCA was working towards this goal through making accessible online the availability of funding opportunities, information referral, and housing availability database information, searchable by a number of key variables, such as city, county, and rent. The Department created the clearinghouse to provide the citizens of Texas easy access to information on homebuyer assistance, rental housing assistance, home repair, and other community services throughout the State. Note that on July 2, 2002, TDHCA announced the launch of their new online *Housing Resource Center Information*

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*Clearinghouse.*

Also in adhering to the details of their Sunset Legislation, the Agency completed the establishment of a uniform application and funding cycle for all single-family and multifamily housing programs administered by the Department, and is also striving towards the use of uniform threshold requirements such as market studies and environmental reports.

Another Sunset Legislation component presented to the Committee was the adoption of a modified funding formula for each of the eleven Uniform Service Regions. Section 23.06.111(g) of SB 322 describes the funding priorities for Regional Allocation Formula. The funding formula includes considerations such as percent in poverty, available housing stock, and the availability of Federal and local funding sources. The Department prioritizes funding to ensure the following provisions are met: funds are awarded to applicants best able to meet affordable housing needs; when practical, the least restrictive funding source should be used to serve the lowest income residents; and funds awarded should be based on applicant's ability to serve the greatest number of quality residential units, serve the lowest income, serve a continuing public need, leverage other funding sources, and provide integrated affordable housing for different income levels. In addition, the Affordable Housing Needs Score helps identify the most acute housing needs on the local level, and appropriate funding levels.

Ms. Carrington addressed the issue of dwindling stock of affordable housing in Texas. Changes in HUD rules have allowed many formerly affordable rental properties to increase rents to the point they are no longer affordable to low income tenants, thereby decreasing the overall stock of affordable housing in the State. TDHCA's Sunset Legislation allowed that TDHCA's Housing Finance Division may provide loans and grants for preservation activities. Ms. Carrington described TDHCA's dedication to preserving affordable housing in Texas through housing rehabilitation loans and grants to political subdivisions, housing finance corporations, PHAs, for-profits and nonprofits, and income eligible individuals and families to preserve affordable housing in Texas.

Another important aspect of the Sunset recommendations concerns TDHCA Board training. TDHCA Board training educated Board members about legislation that created TDHCA and the Board, programs within the Department, roles and functions, TDHCA rules, budgets, recent audit results, along with various requirements relating to public office, and State and Federal laws which would affect the Department, such as the Civil Rights Act, Fair Housing Amendment Act and Americans with Disabilities Act.

Both the Department and the Committee felt strongly in favor of Regional Development Coordinators (RDCs) in each of the eleven Uniform Service Regions. TDHCA's Sunset Legislation provided for the creation of RDCs to assist local communities in determining how to address affordable housing and community development needs, in establishing regional planning and resource-sharing, and in facilitating the leveraging of available local, State, and Federal funds. According to Ms. Carrington, at the time of the hearing, the Department was still collecting information on the topic and no RDCs had been hired. Although the Sunset Bill instructed the Agency to employ or contract with Regional Coordinators, the Legislature provided no additional funding or full-time equivalents (FTEs) for this program. The Committee expressed support for the implementation of the RDC program; they articulated the importance of local involvement in affordable housing planning and implementation,

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and that RDCs would be valuable in assisting local communities to address their unique housing needs.

Although never specifically detailed in the Sunset Legislation, Departmental reorganization seemed an implied component of remedying several problem areas laid out in the Sunset Review. Among the many directives in SB 322 was that the Agency establish a functional organizational structure, ensure the State's objectives regarding housing and community support services are fulfilled, ensure the State's most critical housing and community support needs are identified and met, achieve the best use of State resources, and establish project compliance procedures to ensure that TDHCA programs provide fair access. TDHCA is in the process of restructuring the Department along functional lines to increase efficiency, effectiveness, and accountability.

TDHCA discussed their Single Family Mortgage Revenue Bond Program (MRB), funded through the Private Activity Bond program. TDHCA provides homebuyer assistance through the Texas First-Time Homebuyer Program in the form of below market interest rate mortgage loans, down payment and closing cost assistance. The MRB program targets very low to moderate income households (30 to 115 percent of area median family income), households who have not owned a home in at least 3 years, and who meet traditional lending criteria for standard mortgage loans. TDHCA also discussed their current activity with alternative lending products. The Department began in 1992 originating alternative lending products on a limited scale for very low income residents who do not meet traditional lending criteria and cannot obtain mortgage financing through the market. Contract for Deed Conversion Loan and the Texas Bootstrap Loan Program are available to help loan seekers who do not meet traditional mortgage loan standards.

SB 322 mandated TDHCA (or its designee) to conduct a market study to assess home mortgage credit needs in underserved economic and geographic submarkets. According to the Sunset Legislation, TDHCA Board is required to adopt by rule a market study methodology for determining the home mortgage credit needs in specified submarkets. The Agency must conduct the market study and make necessary recommendations to the Board. Depending upon the results of the market study, TDHCA may issue single family mortgage revenue bonds to make home mortgage credit available to economic and geographic submarkets not adequately served by the conventional loan market.

John Henneberger of the Texas Low Income Housing Information Service testified before the Committee on the topic of subprime lending. According to Mr. Henneberger, subprime mortgage lending has become much more prevalent in recent years, and its occurrence has increased at a rate significantly higher than the prime mortgage market. HUD reports that between 1993 and 1998, the number of subprime refinance loans grew tenfold, and the dollar volume of subprime loans grew sevenfold. Mr. Henneberger's testimony also stated that HUD estimates indicate between 30 percent and 50 percent of borrowers with a subprime loan could qualify for a prime loan. Targeting households to the subprime market when they could qualify for a prime market loan greatly undermines the long term asset building potential of those households, and also greatly hinders the advancement of the community where the loans are targeted. In 2000, 7 percent of all home purchase loans and 34.5 percent of home refinance loans in the Houston Metropolitan Statistical Area (MSA) were made by subprime lenders, according to Mr. Henneberger. In Houston and other Texas cities, subprime loans are heavily concentrated in lower income and minority communities. Testimony distinguished the difference between predatory loans and subprime loans. While subprime



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lending may not always be appropriate, it can serve a legitimate function in the market of serving consumers that the traditional market will not serve. Predatory loans, conversely, charge unnecessarily high interest rates or fees, and do not in any way serve to benefit the consumer or community.

In order to ameliorate problems associated with abusive subprime and predatory lending, Mr. Henneberger offered several suggestions. First was tailoring TDHCA lending products and marketing strategies to reach at-risk borrowers; marketing the availability of prime rate single family loans to underserved credit markets would reduce the number of individuals applying for subprime loans when prime loans would be more appropriate. Mr. Henneberger noted the dearth of available data regarding loan transactions and asserted that better data would help policy makers and others interested in the industry more accurately understand and address problems associated with subprime lending. Aggressively enforcing fair lending, equal credit and consumer protection laws, while outlawing predatory lending practices and offering consumer financial education and outreach programs could all enhance financial service options for lower income and minority households. Committee members seemed receptive to further investigation into subprime and predatory lending in order to stop the abuse in many communities across Texas.

The third component of the interim charge addressed at this hearing concerned development of a new Section 8 Homeownership initiative by TDHCA. While this is not a topic alluded to in the Agency's Sunset Legislation, it is an innovative means to encourage homeownership among families with lower incomes. U.S. Department on Housing and Urban Development (HUD) allocates Section 8 Vouchers, also called Housing Choice Vouchers, to public housing authorities (PHAs) for local distribution. The vouchers provide deep subsidies to the very low income and have traditionally been used in the provision of an affordable rental unit. TDHCA is in the process of researching the possibility of using Section 8 Vouchers towards homeownership, and determining the feasibility of a demonstration project with local PHAs.

Using Section 8 Vouchers towards the purchase of a home is a new avenue to encourage homeownership and ultimate self-sufficiency. Furthermore, if feasible, Section 8 Vouchers would maximize the use of federally allocated resources. Locating units to utilize Section 8 Vouchers is a problem in many rural areas because of an inadequate supply of available units. Allowing Section 8 participants to own affordable homes in areas where there is a problem of voucher underutilization may help address this problem. Also, TDHCA is considering leveraging other TDHCA programs to provide further subsidy to Section 8 Voucher recipients who participate in the homeownership initiative. One potential problem that may arise with Section 8 Homeownership is that Section 8 Voucher recipients, unless they are elderly or have disabilities, are limited to receiving this subsidy for 10 years, meaning that voucher recipients must become self-sufficient within ten years; this may prove to be a limitation on the widespread applicability of this initiative. In general though, the program seems promising and the Department will continue to investigate partnering with PHAs to move Section 8 Voucher recipients from renters to homeowners.

The Committee would like to thank the following individuals who testified on April 11, 2002: Edwina Carrington, Ruth Cedillo, John Henneberger, Byron Johnson, William A. King, Reymundo Ocanas, and Gordon Quan. Appreciation is also extended to State Representative Talmadge Heflin for his participation in this hearing and to Mayor Lee Brown for his presence and support.

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## RECOMMENDATIONS TO THE 78th LEGISLATURE

The Committee supports Texas Department of Housing and Community Affairs' (TDHCA) efforts in meeting the goals of their Sunset Recommendations and urges legislation to provide for the continuation of this State agency.

### **Monitor TDHCA's partnership with local PHAs in utilizing Federal Section 8 Vouchers for voucher recipients to transition from renters to homeowners:**

- Support a demonstration project between TDHCA and local PHAs which would allow PHAs to administer such a program;
- TDHCA should research optimal eligibility requirements and methods of determining how to choose among qualified Section 8 homeowner participants; and
- Promote the leveraging of TDHCA administered programs and funds in relations to the Section 8 Homeownership Initiative:
  - Single Family Mortgage Revenue Bond Program,
  - Down Payment Assistance Program.

*Note that this Recommendation is duplicated in Interim Charge One (PHA Charge)*

### **TDHCA should address abusive subprime and predatory lending in home mortgage loans:**

- TDHCA is involved in a study examining subprime and predatory lending; and
- Based on the information gathered, TDHCA should continue to work to identify lending and marketing products to reduce abusive subprime lending practices in Texas, especially in home equity loans.

### **Legislature should provide support for Regional Development Coordinators Program:**

- A Statewide network of Regional Development Coordinators and Regional Advisory Committees will be an effective means to develop and implement regional and local planning for affordable housing; and
- Necessary funds and additional full time employees should be appropriated by the 78th Legislature to TDHCA specifically for the Regional Development Coordinator program as described in Section 2306.079 of the Government Code, and per Article 5 of TDHCA's Sunset Legislation.

### **TDHCA should continue to focus on development of family-oriented housing projects, with an emphasis of moving families from renters to homeowners.**

### **Support the efforts of TDHCA's Office of Colonia Initiative in improving the standard of living for families in Colonias:**

- TDHCA Office of Colonia Initiative should continue to address the issue of substandard housing within 150 miles of the Mexico border by administering programs including Contract for Deed Conversion and Bootstrap Loan Program, both enabling Colonia residents to have safe, sanitary and decent housing;
- TDHCA's Office of Colonia Initiatives programs depend on the existence of adequate

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infrastructure and it is necessary to develop this infrastructure, such as water and waste water services, in Colonias. Encourage the Secretary of State's Office of Texas Border Colonia Initiative, along with the Office of Rural Community Affairs (ORCA) and the Texas Water Development Board (TWDB) to develop infrastructure in areas of the State where infrastructure is lacking; and

- The State should explore ways to address the housing and infrastructure needs of inland Colonias.

**Continue to monitor the actions of the Manufacture Housing Board.**

**In light of the tragic national events of September 11, 2001:**

- The Texas Commission on Fire Protection anticipates expanded roles and responsibilities in ensuring the public's safety;
- Specifically, the Texas Commission on Fire Protection anticipates an increase in the development of additional curriculum and associated test banks to meet the new diverse training requirements that are related to domestic events, terrorism and associated threats brought about by the catastrophic events of September, 11, 2001; and
- The Legislature should make available appropriate mechanisms of support for the Texas Commission on Fire Protection taking into consideration growing security issues.

*(Other TDHCA related recommendations are listed under Interim Charge One Recommendations, concerning Public Housing Authorities.)*

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**APPENDIX A**

**TEXAS LOCAL GOVERNMENT CODE, CHAPTER 392  
HOUSING AUTHORITIES ESTABLISHED BY MUNICIPALITIES AND COUNTIES  
SUBCHAPTER C - COMMISSIONERS AND EMPLOYEES**

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## SUBCHAPTER C. COMMISSIONERS AND EMPLOYEES

### § 392.031. Appointment of Commissioners of a Municipal Housing Authority

(a) Each municipal housing authority shall be governed by five, seven, nine, or 11 commissioners. The presiding officer of the governing body of a municipality shall appoint five, seven, nine, or 11 persons to serve as commissioners of the authority. An appointed commissioner of the authority may not be an officer or employee of the municipality. Appointments made under this section must comply with the requirements of Section 392.0331, if applicable.

(b) A commissioner may not be an officer or employee of the municipality. A commissioner may be a tenant of a public project over which the housing authority has jurisdiction.

(c) A certificate of the appointment of a commissioner shall be filed with the clerk of the municipality. The certificate is conclusive evidence of the proper appointment of the commissioner.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 888, § 1, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 1009, § 1, eff. Sept. 1, 1993.

Amended by Acts 1999, 76th Leg., ch. 436, § 1, eff. Sept. 1, 1999.

### § 392.032. Appointment of Commissioners of a County Housing Authority

(a) Each county housing authority shall be governed by five commissioners. The commissioners court shall appoint five persons to serve as commissioners of the authority. An appointed commissioner of the authority may not be an officer or employee of the county. Appointments made under this section must comply with the requirements of Section 392.0331, if applicable.

(b) A commissioner of the authority may not be an officer or employee of the county.

(c) A certificate of the appointment of a commissioner shall be filed with the county clerk. The certificate is conclusive evidence of the proper appointment of the commissioner.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 1009, § 2, eff. Sept. 1, 1993.

### § 392.033. Appointment of Commissioners of a Regional Housing Authority

(a) The commissioners court of each county in a regional housing authority shall appoint a person to serve as a commissioner of the authority. Subsequently, the commissioners court of each county shall appoint successors to the commissioner of the authority appointed by that commissioners court. An appointed commissioner of the authority may not be an officer or employee of the county.

(b) If the area of operation of an authority is increased to include another county, the commissioners court of that county shall appoint a person to serve as a commissioner of the authority and, subsequently, the successors to that commissioner.

(c) If there are only two counties in the housing authority, the commissioners of the authority appointed by the commissioners courts shall appoint an additional commissioner to serve as commissioner of the authority. Subsequently, the commissioners of the authority appointed by the commissioners courts shall appoint a person to succeed the additional commissioner if the successor's term of office begins during their term of office. If the area of operation of the authority is increased to more than two counties, a successor to the additional commissioner is not appointed.

(d) If the housing authority contains only one county, the commissioners court of that county shall appoint three persons instead of one person to serve as commissioners of the authority. Subsequently, the commissioners court of the county shall appoint successors to the commissioners of the authority appointed by that commissioners court.

(e) A certificate of the appointment of a commissioner appointed by a commissioners court shall be filed with the county

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clerk. The certificate is conclusive evidence of the proper appointment of the commissioner.

(f) A certificate of the appointment of an additional commissioner by the commissioners of an authority composed of only two counties shall be filed with the records of the authority. The certificate is conclusive evidence of the proper appointment of the commissioner.

(g) Appointments made under this section must comply with the requirements of Section 392.0331, if applicable.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 1009, § 3, eff. Sept. 1, 1993.

**§ 392.0331. Appointment of Tenant Representative as Commissioner of Municipal, County, or Regional Housing Authority**

**(a) This section applies only to:**

**(1) a municipality; or**

**(2) a county that has a county housing authority or is a member of regional housing authority and the total number of units in the authority is more than 750.**

**(b) In appointing commissioners under Section 392.031, a municipality with a municipal housing authority composed of five commissioners shall appoint at least one commissioner to the authority who is a tenant of a public housing project over which the authority has jurisdiction. In appointing commissioners under Section 392.031, a municipality with a municipal housing authority composed of seven or more commissioners shall appoint at least two commissioners to the authority who are tenants of a public housing project over which the authority has jurisdiction.**

**(c) In appointing commissioners under Section 392.032, a county shall appoint at least one commissioner to a county housing authority who is a tenant of a public housing project over which the county housing authority has jurisdiction.**

**(d) In appointing commissioners under Section 392.033, a county or counties comprising a regional housing authority shall appoint at least one commissioner to a regional housing authority who is a tenant of a public housing project over which the regional housing authority has jurisdiction. If more than one county comprises a regional housing authority, the counties shall agree to a method for appointing the tenant member to the regional housing authority.**

(e) A commissioner appointed under this section may not be an officer or employee of the municipality or county that appoints the commissioner.

(f) A commissioner appointed under this section may not serve more than two consecutive two-year terms.

(g) A commissioner appointed under this section may not participate:

(1) in any vote or discussion concerning the termination of the commissioner's occupancy rights in public housing or the rights of any person related in the first degree by consanguinity to the commissioner; or

(2) in a grievance or administrative hearing in which the commissioner or a person related in the first degree by consanguinity to the commissioner is a party.

(h) If a commissioner appointed under this section ceases to reside in a housing unit operated by the public housing authority during the commissioner's term, a majority of the other commissioners shall decide whether to request that a new commissioner be appointed. A majority of the commissioners may decide to allow the commissioner to serve the remaining portion of the commissioner's term.

(i) If a commissioner appointed under this section fails to attend three consecutive regularly called meetings of the housing



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authority commissioners during the commissioner's term, a majority of the commissioners shall decide whether to declare the position vacant and request that a new commissioner be appointed. A majority of the commissioners may decide to allow the commissioner to serve the remaining portion of the commissioner's term.

Added by Acts 1993, 73rd Leg., ch. 1009, § 4, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 834, § 1, eff. Aug. 28, 1995.

Amended by Acts 1999, 76th Leg., ch. 175, § 1, eff. May 21, 1999; Acts 1999, 76th Leg., ch. 436, § 2, eff. Sept. 1, 1999.

§ 392.034. Terms of Office of Commissioners

(a) Two of the original commissioners of a county housing authority shall be designated to serve one-year terms from the date of their appointment, and three shall be designated to serve two-year terms. Subsequent commissioners are appointed for two-year terms.

(b)(1) The original commissioners of a municipal housing authority shall serve terms as follows:

(A) for an authority with five commissioners, two shall be designated to serve one-year terms and three shall be designated to serve two-year terms;

(B) for an authority with seven commissioners, three shall be designated to serve one-year terms and four shall be designated to serve two-year terms;

(C) for an authority with nine commissioners, four shall be designated to serve one-year terms and five shall be designated to serve two-year terms; and

(D) for an authority with 11 commissioners, five shall be designated to serve one-year terms and six shall be designated to serve two-year terms.

(2) Subsequent municipal housing commissioners are appointed for two-year terms.

(c) Commissioners of a regional housing authority are appointed for two-year terms.

(d) Vacancies shall be filled for the unexpired term.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

Amended by Acts 1999, 76th Leg., ch. 436, § 3, eff. Sept. 1, 1999.

§ 392.035. Compensation

A commissioner of a housing authority may not receive compensation for service as a commissioner. A commissioner is entitled to receive reimbursement for the necessary expense, including traveling expenses, incurred in the discharge of duties as a commissioner.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

§ 392.036. Vote Required for Action

Unless the authority's bylaws require a larger number, when a quorum is present an authority may take action on a vote of a majority of the commissioners present.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

§ 392.037. Chairman and Vice-Chairman of a Municipal or County Housing Authority

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(a) The mayor shall designate one of the initial commissioners of a municipal housing authority as chairman. The commissioners court shall designate one of the initial commissioners of a county housing authority as chairman. Subsequently, when the office of chairman becomes vacant the authority shall select one of the commissioners as chairman.

(b) A municipal or county housing authority shall select one of the commissioners as vice-chairman.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

§ 392.038. Other Officers and Employees of a Municipal or County Housing Authority

A municipal or county housing authority may employ a secretary, who shall serve as executive director, and may employ technical experts and other officers, agents, and employees, permanent or temporary, the authority considers necessary. The authority shall determine the qualifications, duties, and compensation of the persons employed.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

§ 392.039. Officers and Employees of a Regional Housing Authority

(a) The commissioners of a regional housing authority shall elect a chairman from among the commissioners.

(b) The commissioners of a regional housing authority may select or employ other officers and employees the commissioners consider necessary.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

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**APPENDIX B**

**42 UNITED STATES CODE 1437**

**TITLE 42 - THE PUBLIC HEALTH AND WELFARE  
CHAPTER 8 - LOW-INCOME HOUSING  
SUBCHAPTER I - GENERAL PROGRAM OF ASSISTED HOUSING**

**Sec. 1437. Declaration of policy and public housing agency**

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TITLE 42 - THE PUBLIC HEALTH AND WELFARE  
CHAPTER 8 - LOW-INCOME HOUSING  
SUBCHAPTER I - GENERAL PROGRAM OF ASSISTED HOUSING  
-HEAD-

Sec. 1437. Declaration of policy and public housing agency organization

-STATUTE-

(a) Declaration of policy

It is the policy of the United States -

(1) to promote the general welfare of the Nation by employing the funds and credit of the Nation, as provided in this chapter -

(A) to assist States and political subdivisions of States to remedy the unsafe housing conditions and the acute shortage of decent and safe dwellings for low-income families;

(B) to assist States and political subdivisions of States to address the shortage of housing affordable to low-income families; and

(C) consistent with the objectives of this subchapter, to vest in public housing agencies that perform well, the maximum amount of responsibility and flexibility in program administration, with appropriate accountability to public housing residents, localities, and the general public;

(2) that the Federal Government cannot through its direct action alone provide for the housing of every American citizen, or even a majority of its citizens, but it is the responsibility of the Government to promote and protect the independent and collective actions of private citizens to develop housing and strengthen their own neighborhoods;

(3) that the Federal Government should act where there is a serious need that private citizens or groups cannot or are not addressing responsibly; and

(4) that our Nation should promote the goal of providing decent and affordable housing for all citizens through the efforts and encouragement of Federal, State, and local governments, and by the independent and collective actions of private citizens, organizations, and the private sector.

**(b) Public housing agency organization**

**(1) Required membership**

**Except as provided in paragraph (2), the membership of the board of directors or similar governing body of each public housing agency shall contain not less than 1 member -**

**(A) who is directly assisted by the public housing agency; and**

**(B) who may, if provided for in the public housing agency plan, be elected by the residents directly assisted by the public housing agency.**

**(2) Exception**

**Paragraph (1) shall not apply to any public housing agency -**

**(A) that is located in a State that requires the members of the board of directors or similar governing body of a public housing agency to be salaried and to serve on a full-time basis; or**

**(B) with less than 300 public housing units, if -**

**(i) the agency has provided reasonable notice to the resident advisory board of the opportunity of not less than 1 resident described in paragraph (1) to serve on the board of directors or similar governing body of the public housing**

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**agency pursuant to such paragraph; and  
(ii) within a reasonable time after receipt by the resident advisory board established by the agency pursuant to section 1437c-1(e) of this title of notice under clause (i), the public housing agency has not been notified of the intention of any resident to participate on the board of directors.**

(3) Nondiscrimination

No person shall be prohibited from serving on the board of directors or similar governing body of a public housing agency because of the residence of that person in a public housing project or status as assisted under section 1437f of this title.

-SOURCE-

(Sept. 1, 1937, ch. 896, title I, Sec. 2, as added Pub. L. 93-383, title II, Sec. 201(a), Aug. 22, 1974, 88 Stat. 653; amended Pub. L. 97-35, title III, Sec. 322(c), Aug. 13, 1981, 95 Stat. 402; renumbered title I, Pub. L. 100-358, Sec. 5, June 29, 1988, 102 Stat. 681; Pub. L. 101-625, title V, Sec. 572(2), Nov. 28, 1990, 104 Stat. 4236; Pub. L. 105-276, title V, Sec. 505, Oct. 21, 1998, 112 Stat. 2522.)

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**APPENDIX C**

**TDHCA RULE CONCERNING CHDO CERTIFICATION**  
**Effective September, 2002**

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Title 10. COMMUNITY DEVELOPMENT  
Part I. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
Chapter 53. HOME INVESTMENT PARTNERSHIPS PROGRAM  
10 TAC <8>53.63. Community Housing Development Organization (CHDO) Certification  
<new><\*>53.63. Community Housing Development Organization (CHDO) Certification

(a) Definitions and Terms. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

Applicant--A private nonprofit organization that has submitted a request for certification as a Community Housing Development Organization (CHDO) to the Department.

Articles of Incorporation --A document that sets forth the basic terms of a corporation's existence and is the official recognition of the corporation's existence. The documents must evidence that they have been filed with the Secretary of State.

Bylaws--A rule or administrative provision adopted by a corporation for its internal governance. Bylaws are enacted apart from the articles of incorporation. Bylaws and amendments to bylaws must be formerly adopted in the manner prescribed by the organization's articles or current bylaws by either the organization's board of directors or the organization's members, whoever has the authority to adopt and amend bylaws.

Community--For urban areas, the term "community" is defined as one or several neighborhoods, a city, county, or metropolitan area. For rural areas, "community" is defined as one or several neighborhoods, a town, village, county, or multi-county area, but not the whole state. Low income--An annual income that does not exceed eighty percent (80%) of the median income for the area, with adjustments for family size, as defined by the U.S. Department of Housing and Urban Development (HUD).

Memorandum of Understanding (MOU)--A written statement detailing the understanding between parties.

Moderate income or Low to Moderate income--An annual income that does not exceed eighty percent (80%) of the median income for the area, with adjustments for family size, as defined by the U.S. Department of Housing and Urban Development (HUD).

Neighborhood--A geographic location designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation that is within the boundary but does not encompass the entire area of a unit of general local government; except that if the unit of general local government has a population under 25,000, the neighborhood may, but need not, encompass the entire area of a unit of general local government.

Nonprofit organization--Any private, nonprofit organization (including a State or locally chartered, nonprofit organization) that-

(A) is organized under State or local laws,

(B) has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual,

(C) complies with standards of financial accountability acceptable to the Secretary of the United States Department of Housing and Urban Affairs, and

(D) has among its purposes significant activities related to the provision of decent housing that is affordable to low-income and moderate-income persons.

) Resolutions--Formal action by a corporate board of directors or other corporate body authorizing a particular act, transaction, or appointment. Resolutions must be in writing and state the specific action that was approved and adopted, the date the action was approved and adopted, and the signature of person or persons authorized to signed resolutions. Resolutions must be approved and adopted in accordance with the corporate bylaws.

(b) Application Procedures for Certification of CHDO. An Applicant requesting certification as a CHDO must submit an application for CHDO certification in a form prescribed by the Department. The CHDO application must be submitted with an application for HOME funding under the CHDO set aside. The application must include documentation evidencing the requirements of this subsection.

An Applicant must have the following required legal status at the time of application to apply for certification as a CHDO:

Organized as a private nonprofit organization under the Texas Nonprofit Corporation Act or other state not-for-profit/nonprofit statute as evidenced by:

Charter, or

Articles of Incorporation.,

The Applicant must be registered with the Secretary of State to do business in the State of Texas.

No part of the private nonprofit organization's net earnings inure to the benefit of any member, founder, contributor, or individual, as evidenced by:

Charter, or

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Articles of Incorporation.

The Applicant must have the following tax status:

A current tax exemption ruling from the Internal Revenue Service (IRS) under Section 501(c)(3), a charitable, nonprofit corporation, or 501(c)(4), a community or civic organization, of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS that is dated 1986 or later. The exemption ruling must be effective on the date of the application and must continue to be effective while certified as a CHDO; or

Classification as a subordinate of a central organization non-profit under the Internal Revenue Code, as evidenced by a current group exemption letter, that is dated 1986 or later, from the IRS that includes the Applicant. The group exemption letter must specifically list the Applicant; and

A private nonprofit organization's pending application for 501(c) status cannot be used to comply with the tax status requirement under this subsection.

The Applicant must have among its purposes the provision of decent housing that is affordable to low and moderate income people as evidenced by a statement in the organization's:

Articles of Incorporation,

Charter,

Resolutions, or

Bylaws.

The Applicant must have a clearly defined service area. The Applicant may include as its service area an entire community as defined in subsection (a)(4) of this section, but not the whole state. Private nonprofit organizations serving special populations must also define the geographic boundaries of its service areas. This subsection does not require a private nonprofit organization to represent only a single neighborhood.

An Applicant must have the following capacity and experience:

Conforms to the financial accountability standards of 24 CFR 84.21, "Standards of Financial Management Systems" as evidenced by:

notarized statement by the Executive Director or chief financial officer of the organization in a form prescribed by the Department,

certification from a Certified Public Accountant, or

HUD approved audit summary.

(B) Has a demonstrated capacity for carrying out activities assisted with HOME funds, as evidenced by:

resumes and/or statements that describe the experience of key staff members who have successfully completed projects similar to those to be assisted with HOME funds, or

contract(s) with consultant firms or individuals who have housing experience similar to projects to be assisted with HOME funds, to train appropriate key staff of the organization.

(C) Has a history of serving the community within which housing to be assisted with HOME funds is to be located as evidenced by:

statement that documents at least one year of experience in serving the community, or

for newly created organization formed by local churches, service or community organizations, a statement that documents that its parent organization has at least one year of experience in serving the community; and

The CHDO or its parent organization must be able to show one year of serving the community prior to the date the participating jurisdiction provides HOME funds to the organization. In the statement, the organization must describe its history (or its parent organization's history) of serving the community by describing activities which it provided (or its parent organization provided), such as, developing new housing, rehabilitating existing stock and managing housing stock, or delivering non-housing services that have had lasting benefits for the community, such as counseling, food relief, or childcare facilities. The statement must be signed by the president or other official of the organization.

An Applicant must have the following organizational structure:

(A) The Applicant must maintain at least one-third of its governing board's membership for residents of low-income neighborhoods, other low-income community residents, or elected representatives of low-income neighborhood organizations in the Applicant's service area. Low-income neighborhoods are defined as neighborhoods where 51 percent or more of the residents are low-income. Residents of low-income neighborhoods do not have to be low income individuals themselves. If a low-income individual does not live in a low-income neighborhood as herein defined, the low-income individual must certify that he qualifies as a low-income individual. This certification is in addition to the affidavit required in this clause (ii) of this subparagraph. For the purpose of this subparagraph, elected representatives of low-income neighborhood organizations include block groups, town watch organizations, civic associations, neighborhood church groups, Neighbor Works organizations and any organization composed primarily of residents of a low-income neighborhood as herein defined whose primary purpose is to serve the interest of the neighborhood residents. Compliance with this subparagraph shall be evidenced by:



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written provision or statement in the organizations By-laws, Charter or Articles of Incorporation, affidavit in a form prescribed by the Department signed by the organization's Executive Director and notarized, and

current roster of all Board of Directors, including names and mailing addresses. The required one-third low-income residents or elected representatives must be marked on list as such.

The Applicant must provide a formal process for low-income, program beneficiaries to advise the organization in all of its decisions regarding the design, siting, development, and management of affordable housing projects. The formal process should include a system for community involvement in parts of the private nonprofit organization's service areas where housing will be developed, but which are not represented on its boards. Input from the low-income community is not met solely by having low-income representation on the board. The formal process must be in writing and approved or adopted by the private nonprofit organization, as evidenced by:

- organization's By-laws, Resolution, or

- written statement of operating procedures approved by the governing body. Statement must be original letterhead, signed by the Executive Director and evidence date of board approval.

A local or state government and/or public agency cannot qualify as a CHDO, but may sponsor the creation of a CHDO. A private nonprofit organization may be chartered by a State or local government, but the following restrictions apply:

- The state or local government may not appoint more than one-third of the membership of the organization's governing body.

- The board members appointed by the state or local government may not, in turn, appoint the remaining two-thirds of the board members.

- No more than one-third of the governing board members may be public officials. Public officials include elected officials, appointed public officials, public employees, and individuals appointed by a public official. Elected officials include, but are not limited to, city council members, aldermen, commissioners, state legislators, or members of a school board. Appointed public officials include, but are not limited to, members of a planning or zoning commission, or of any other regulatory and/or advisory boards or commissions that are appointed by a Participating Jurisdiction official. Public employees include, but are not limited to, employees of public agencies and schools or departments of the Participating Jurisdiction's government.

- Public officials who themselves are low-income residents or representatives do not count toward the one-third minimum requirement of community representatives in subparagraph (A) of this paragraph.

- Compliance with clauses (i) – (iv) of this subparagraph shall be evidenced by:

- organization's By-laws, Charter, or

- Articles of Incorporation.

- If the Applicant is sponsored or created by a for-profit entity, the for-profit entity may not appoint more than one-third of the membership of the Applicant's governing body, and the board members appointed by the for-profit entity may not, in turn, appoint the remaining two-thirds of the board members, as evidenced by the Applicant's:

- By-laws, Charter, or

- Articles of Incorporation.

- An Applicant may be sponsored or created by a for-profit entity provided the for-profit entity's primary purpose does not include the development or management of housing, as evidenced in the for-profit organization's By-laws. If an Applicant is associated or has a relationship with a for-profit entity or entities, the Applicant must prove it is not controlled, nor receives directions from individuals, or entities seeking profit as evidenced by:

- organization's By-laws, or Memorandum of Understanding (MOU).

- Religious organizations cannot qualify as a CHDO, but may sponsor the creation of wholly secular private nonprofit organizations. If Applicant is sponsored by a religious organization, the following restrictions apply.

- The Applicant must prove that it is not controlled by the religious organization.

- The developed housing must be used exclusively for secular purposes and the housing owned, developed or sponsored by the Applicant must be made available to all persons regardless of religious affiliations or beliefs.

- There are no limits on the proportion of the board that may be appointed by the religious organization.

- Compliance with this clauses (i)-(iii) of this paragraph shall be evidenced by:

- organization's By-laws, Charter, or

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Articles of Incorporation.

(c) An application for Community Housing Development Organization (CHDO) Certification will only be accepted if submitted with an application to the Department for HOME funds. If all requirements under this Section 53.63 are met, the Applicant will be certified as a CHDO upon the award of HOME funds by the Department. A new application for CHDO certification must be submitted to the Department with each new application for HOME funds under the CHDO set aside.

(d) If an Applicant submits an application for CHDO certification for a service area that is located in a local Participating Jurisdiction, the Applicant must submit evidence of the local taxing jurisdiction or local Participating Jurisdiction certification or designation of the Applicant as a CHDO.

(e) In the case of an applicant applying for HOME funds (CHDO set aside) from the Department to be used in a Participating Jurisdiction, where neither the Participating Jurisdiction nor the local taxing entity certifies CHDOs outside of the local HOME application process, the Certification process described in this section applies.

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**APPENDIX D**

**ATTORNEY GENERAL OPINION 97-038**

**Re: Whether Section 617.002 of the Government Code prohibits public sector employers from meeting with union representatives to discuss matters affecting employee working conditions (ID # 39350)**

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Office of the Attorney General  
State of Texas

Letter Opinion No. 97-038  
April 14, 1997

Re: Whether Section 617.002 of the Government Code prohibits public sector employers from meeting with union representatives to discuss matters affecting employee working conditions (ID # 39350)

The Honorable Keith Oakley  
Chair  
Committee on Public Safety  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768-2910

Dear Representative Oakley:

You ask whether section 617.002 of the Government Code prohibits public sector employers from meeting with union representatives to discuss matters affecting employee working conditions. This statute provides in part:

(a) An official of the state or of a political subdivision of the state may not enter into a collective bargaining contract with a labor organization regarding wages, hours, or conditions of employment of public employees.

....

(c) An official of the state or of a political subdivision of the state may not recognize a labor organization as the bargaining agent for a group of public employees.

You state as follows:

Some Texas cities contend that [section 617.002 of the Government Code] . . . prohibits cities from recognizing the union as a representative for the cities' employees (the union's members) for any reason.

For example, if a union officer approaches city representatives to discuss employee concerns, city representatives will refuse to talk with the union representative. These cities apparently take the position that discussing any matter concerning working conditions with union representatives amounts to "collective bargaining" in violation of . . . [section 617.002].

Chapter 617 of the Government Code was adopted by a single bill and was codified as former article 5154c, V.T.C.S. Section 617.002 must be read together with other provisions of this law. Section 617.005 provides as follows: "This chapter does not impair the right of public employees to present grievances concerning their wages, hours of employment, or conditions of work either individually or through a representative that does not claim the right to strike."

Attorney General Opinion JM-156, which addressed questions related to the one you ask, stated as follows:

Section 1 [of former article 5154c, V.T.C.S., now section 617.002(a) of the Government Code] prohibits officials of political subdivisions from entering into "a collective bargaining contract with a labor organization respecting the wages, hours, or conditions of employment of public employees." In our opinion, the term "collective bargaining" necessarily contemplates a process in which officials of a political subdivision and representatives of a labor organization conduct negotiations with an eye towards reaching a binding, enforceable, bilateral agreement between the subdivision and the organization.

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It cited *Beverly v. City of Dallas*, 292 S.W.2d 172 (Tex. Civ. App.--El Paso 1956, writ ref'd n.r.e.), in which the court explained the difference between collective bargaining and the presentation of grievances:

The presentation of a grievance is in effect a unilateral procedure, whereas a contract or agreement resulting from collective bargaining must of necessity be a bilateral procedure culminating in a meeting of the minds involved and binding the parties to the agreement. . . . [I]t is clear that the statute carefully prohibits striking and collective bargaining, but does permit the presentation of grievances, a unilateral proceeding resulting in no loss of sovereignty by the municipality.

Attorney General Opinion JM-156 determined that the political subdivision could discuss employment conditions with employee representatives without violating the predecessor of section 617.002. The opinion continued:

[A]lthough political subdivisions may not recognize a labor organization as the "bargaining" agent for any group of public employees, they may certainly allow such an organization to act as spokesman for employees in "consultations."

The political subdivision is not obligated to implement anything discussed during the consultations, and it retains the right unilaterally to prescribe employment conditions.

Attorney General Opinion JM-156 also determined that the predecessor of section 617.005 did not apply only to formal grievances filed by an individual. Thus, an individual grievance is not necessary to authorize a political subdivision to discuss employee working conditions with a labor organization representing employees.

Accordingly, section 617.002 of the Government Code does not prohibit public sector employers from meeting with representatives of an employee union that does not claim the right to strike to discuss matters affecting employee working conditions. The governing authorities of the political subdivision must retain the right unilaterally to establish employment conditions.

#### Summary

The term "collective bargaining" necessarily contemplates a process in which officials of a political subdivision and representatives of a labor organization conduct negotiations with an eye toward reaching a binding, enforceable, bilateral agreement between the subdivision and the organization, while the presentation of grievances is a unilateral proceeding resulting in no loss of sovereignty to the political subdivision. Section 617.002 of the Government Code does not prohibit public sector employers from meeting with representatives of an employee union that does not claim the right to strike to discuss matters affecting employee working conditions. The governing authorities of the political subdivision must retain the right unilaterally to establish employment conditions.

Yours very truly,

Susan L. Garrison

Assistant Attorney General

Opinion Committee

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**APPENDIX E**

**SUNSET ADVISORY COMMISSION**

**SUMMARY OF SENATE BILL 322  
TDHCA'S SUNSET LEGISLATION**

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## Sunset Advisory Commission Summary of Legislation - 77th Legislature

### Texas Department of Housing and Community Affairs

S.B. 322 Lucio (Gallego)

#### Summary

The Texas Department of Housing and Community Affairs (TDHCA) seeks to ensure affordable housing for low-income families, promotes community development and assistance, and regulates the State's manufactured housing industry. The Department was created in 1991 by merging the Texas Department of Community Affairs, the Texas Housing Agency, and the Community Development Block Grant Program from the Texas Department of Commerce. The Department's programs assist low income individuals and families in obtaining affordable housing by allocating or awarding funds to for-profit and non-profit organizations, local governments, lenders, and developers. The Department also provides funding for infrastructure (e.g., water, sewers, streets); makes grants to homeless shelters and for various services designed to address poverty issues; and provides funding to repair or weatherize the homes of very low income people and to pay their utility bills when necessary. The Department operates with an annual budget of \$201 million and has 343 employees.

S.B. 322 primarily contains recommendations of the Sunset Commission designed to increase the public accountability of the agency and its Governing Board and to ensure the agency allocates resources to best meet the state's most pressing housing needs. The Legislature continued TDHCA for a two-year probationary period, rather than the usual 12-year extension, to provide for an evaluation of whether TDHCA has successfully carried out the Sunset recommendations before the next legislative session. In addition, the Legislature added considerable implementation detail to many of the initial Sunset Commission recommendations, most notably concerning housing preservation and the administration of the Department's low income housing tax credit program. Sunset Commission recommendations transferring the Community Development Block Grant program from TDHCA and constituting it as a new Office of Rural Community Affairs were enacted in separate legislation. The list below summarizes the major provisions of S.B. 322, and a more detailed discussion follows.

#### Sunset Provisions

1. Restructure the Department's Governing Board.
2. Provide the Public With Meaningful Opportunities to Participate in Board Meetings and Agency Public Hearings.
3. Require Strategic Planning and a Simpler Funding Cycle to Serve Texans With the Greatest Need.
4. Require the Department to Use Multi-Family Housing Finance Programs to Maximize Resources and Outcomes.
5. Ensure That the Department's Programs Provide Fair Access to Housing.
6. Preserve Expiring Affordable Housing Stock.
7. Ensure Consideration of Applicants' Compliance History Before Approval of Newly Proposed Projects.
8. Create a Colonia Advisory Committee and Require Plans to Meet Colonia Resident Needs.
9. Make Information About Community Resources and Affordable Housing Easily Accessible to the Public.

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10. Create a Separate Governing Board for the Regulation of Manufactured Housing.

11. Continue TDHCA for a Two-Year “Probationary” Period to Ensure That Needed Changes Are Implemented.

## **Sunset Provisions**

### **1. Restructure the Department’s Governing Board.**

#### **1.1 Restructure the Department’s governing body as a seven-member Board composed of public members with demonstrated interests in housing and community support services issues.**

The Legislature adopted the Sunset Commission recommendation to reduce the size of the Board from nine to seven members, and appointments will no longer have to meet specified representation requirements. The Governor will appoint a new Board by September 1, 2001, composed of public citizens with broader interests in housing and community support services.

The new Board will be required to employ an Executive Director and develop a strategic action plan to implement changes mandated through the Sunset process and adopted by the Legislature. The Executive Director will be required to evaluate the organizational structure of the agency and key management positions, and to make any necessary organizational changes to facilitate implementation of the strategic action plan.

#### **1.2 Remove references in law that constrain the Board’s ability to set policy agencywide or to reorganize divisions to best implement changes in policy.**

This removes specific references related to the Board’s authority over individual programs or divisions of the agency, clarifying the Board’s broad policy role over all of the agency’s programs and allowing the staff to more fully integrate policies and programs across the agency.

### **2. Provide the Public With Meaningful Opportunities to Participate in Board Meetings and Agency Public Hearings.**

#### **2.1 Require Department staff to publish and make available all relevant meeting materials at least seven days before a Board meeting.**

#### **2.2 Require Board meeting agendas to contain each individual item of discussion.**

#### **2.3 Require the Board to provide for public comment after the staff presentation on each agenda item.**

#### **2.4 Require the Board to develop and implement rules that give the public a reasonable time frame in which to testify at Board meetings.**

#### **2.5 Require the Board to develop and implement rules outlining a formal process to appeal Board decisions.**

Under these provisions, the Department is required to make information available to Board members as well as the public. Board meeting agendas must state each individual project the staff has recommended that the Department fund.

#### **2.6 Require the Department to consolidate its numerous public hearings into a single public hearing process.**

#### **2.7 Require Department staff to publish all relevant meeting materials at least one week before each consolidated public hearing.**

The legislation requires the agency to consolidate hearings to the extent possible, holding a single consolidated public hearing in each uniform service region of the state. All material to be discussed at each public hearing must be sent to interested parties, posted on the Department’s Web site,



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made available in hard copy at the agency, listed in the Texas Register, and disseminated through any other means required by the Department's enabling statute or by the Open Meetings Act.

**2.8 Require the Department to provide for public input before developing rules for programs with Requests for Proposal and Notices of Funding Availability.**

This provision ensures that rules affecting Requests for Proposal and Notices of Funding Availability address important public concerns, and will also eliminate the Department's need to republish materials based on ad hoc comments.

**2.9 Require the Department to develop and implement rules outlining formal rulemaking procedures for the Low Income Housing Tax Credit Program and the Multi-Family Housing Mortgage Revenue Bond Program.**

This provision requires a more formal process to ensure adequate public input for the Department's largest programs in terms of funding and people affected. Rules must include procedures for allowing any interested person to petition the Department requesting adoption of a new rule or amendment of an existing rule, notice requirements and time frames in accordance with the Administrative Procedure Act, and provision for public hearings.

**3. Require Strategic Planning and a Simpler Funding Cycle to Serve Texans With the Greatest Need.**

**3.1 Require the Department to develop a strategic plan, customized by region, to provide affordable housing and community support services.**

The Department must conduct a more thorough assessment of not only the need for housing and community support services in the state, but also the supply. The Councils of Government will be used in developing the strategic plan. In addition to regional priorities, this provision requires the Department to establish objectives for each income category.

**3.2 Allocate funds to meet regional housing and community service priorities.**

This provision requires the Department to establish priorities to ensure that awards go to the applicants who are best able to meet the needs as established by the Department, and that the most flexible funds are used to serve the lowest income residents when possible.

**3.3 Create a uniform application and funding cycle for housing programs that supports projects that meet established need.**

The legislation requires the Department to consider project proposals together and assess their ability to meet regional objectives. All allocation decisions and applicant scoring will give the greatest weight to those projects that go the furthest to meeting the State's established housing and community service objectives.

**3.4 Require the Department to establish an Executive Award Review Committee to make funding allocation decisions.**

The Department must establish a special committee to set priorities in each region of the state and make funding decisions to meet the need, subject to Board approval. This committee will provide the agency, or the Board where appropriate, with a multi-disciplinary, unified approach to awarding funds to projects.

**4. Require the Department to Use Multi-Family Housing Finance Programs to Maximize Resources and Outcomes.**

**4.1. Improve the administration of the low income housing tax credit program.**

The Legislature added considerable implementation detail to the original Sunset Commission recommendations designed to require TDHCA to take better advantage of the competition for tax credits to encourage and reward developers who bid higher-quality developments, as opposed to the current system that encourages bidding to the minimum standards. Added provisions include details regarding eligibility requirements, the application process, maintenance of an application log,

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the evaluation of applications, the allocation of tax credits, and the appeal of decisions. The legislation also requires the Department to make available public information about applications, awards, and required public hearings. The Board must adopt a policy providing for debarment from participation in the program if developers violate program rules. Finally, the legislation includes conflict of interest provisions that prohibit participation in low income housing tax credit applications by former Board members, Executive Directors, and certain key employees until two years after service or employment.

**4.2 Require the Department’s tax credit allocation process to reward applications that propose to defer developer’s fees.**

The legislation requires the Department to adopt a system to reward both for-profit and non-profit developers willing to defer developer’s fees and invest more tax credit equity into the project.

**4.3 Require the staff to document its recommendations for project selection and prohibit the Board from changing staff recommendations except for good cause, which must be documented as a part of the public record of the Board’s proceedings.**

This provision increases the accountability of the Department by ensuring the public is apprized of the Board’s reasoning for making changes to the initial project selection recommendations.

**4.4 Require Board approval for projects that undergo substantial change, including change of ownership, between initial approval and final commitment.**

This provision ensures that the projects ultimately approved by the Department are materially the same projects that were judged favorably during the project selection process.

**4.5 Provide the Department with direct allocation authority over a portion of the multi-family bond funds currently distributed through the Bond Review Board lottery.**

This provision allows the Department to strategically allocate 25 percent of the existing multi-family bond set aside to meet state need. The Department’s allocation of private activity bond funds will now be coordinated with complimentary programs such as tax credits and HOME.

**4.6 Modify the statutory requirements for 501(c)(3) bonds by removing the overall dollar cap and the requirement that 50 percent of the funds be allocated for new construction.**

In addition to removing the Bond Review Board’s cap for the 501(c)(3) bond program, this provision removes the statutory barriers to the 501(c)(3) bond program’s ability to fully function and allows non-profits greater access to this significant source of funds for affordable housing development.

**4.7 Increase the allocation of private activity bonds available for housing.**

The Legislature increased the portion of the state allocation available for multi-family housing projects from 16.5 percent to 23 percent and the portion for single-family mortgage assistance from 25 percent to 29.6 percent. The bill also requires the Bond Review Board to apportion the bond set aside for housing finance corporations among the uniform state service regions according to population.

**4.8 Make home mortgage credit available to historically underserved areas.**

The Legislature added a provision to the bill that requires TDHCA, if feasible, to issue single-family mortgage revenue bonds to make home mortgage credit available for the purchase of single-family homes to submarkets that have been substantially underserved.

**5. Ensure That the Department’s Programs Provide Fair Access to Housing.**

**5.1 Require the Department to obtain certifications of compliance with anti-discrimination laws by applicants for all housing-related programs.**

**5.2 Require the Board to establish procedures, in rule, to monitor and enforce**

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**compliance with fair housing laws.**

The legislation requires all housing-related program applicants to certify compliance with state and federal fair housing laws, including laws protecting people with disabilities from discrimination in obtaining housing. The Legislature also added provisions requiring the owner of each housing development that receives financial assistance from TDHCA to submit an annual fair housing sponsor report and requires TDHCA to establish a system that requires owners of state or federally assisted housing developments to publicly report information regarding housing units designed for persons with disabilities.

**5.3 Require the Department to adopt a policy, in rule, that identifies reasonable Section 8 admittance policies for all tax credit properties.**

These rules must include a reasonable minimum income policy for Section 8 tenants and address other factors that can preclude Section 8 tenants access to tax credit housing.

**5.4 Require the Department to establish procedures, in rule, to monitor and take action against tax credit properties that, as policy, refuse to accept tenants with Section 8 vouchers.**

This provision increases the Department's role in ensuring that tax credit properties are in compliance with federal rules regarding the acceptance of Section 8 vouchers. This provision requires the Department to develop a range of sanctions to use against tax credit properties that refuse to accept tenants with Section 8 vouchers.

**6. Preserve Expiring Affordable Housing Stock.****6.1 Require the Department to create a staff function with the responsibility to develop and implement policies designed to preserve affordable housing.**

The legislation specifies that the Department's duties will include, but not be limited to, maintaining data on housing at risk of being lost, advising other housing program areas on policies that can enhance preservation strategies, and developing policies that ensure that the Department's existing housing portfolios remain intact.

**6.2 Require the Department to establish incentives for longer or permanent affordability periods for multi-family housing.**

The legislation requires the Department to encourage applicants, through a competitive process, to extend the affordability period of proposed projects as long as possible rather than simply meeting minimum requirements. The Legislature also added provisions requiring TDHCA to set priorities for developments to preserve multi-family housing and to establish and administer a housing preservation incentives program to provide incentives through loan guarantees, loans, and grants for the acquisition and rehabilitation of priority multi-family housing developments.

**7. Ensure Consideration of Applicants' Compliance History Before Approval of Newly Proposed Projects.**

The legislation requires all projects to be reviewed for past compliance before being sent to the Board for approval. The Board must fully document and disclose any situations where funding is approved despite compliance problems.

**8. Create a Colonia Advisory Committee and Require Plans to Meet Colonia Resident Needs.****8.1 Create a Colonia Advisory Committee to advise the Board on the needs of colonia residents and the effectiveness of Department policies.**

The legislation specifies that the advisory committee consist of one colonia resident, one representative of a non-profit organization that serves colonia residents, one local government representative, one person to represent private interests in banking or land development, and one public member.

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**8.2 Require the Department to develop an annual assessment of colonia resident needs and a biennial action plan to address the needs.**

The legislation requires the Department to collect information on the demand for contract for deed conversion, self-help housing, consumer education, and other colonia resident services in counties within 100 miles of the Texas-Mexico border. The Department's Office of Colonia Initiatives will prepare a biennial action plan to list policy goals for its colonia programs, the strategies to meet the goals, and the expected outcomes.

**8.3 Establish a colonia model subdivision program.**

The Legislature added provisions requiring TDHCA to establish the colonia model subdivision program to promote the development of new, high-quality residential subdivisions that provide alternatives to substandard colonias. The bill also requires TDHCA to establish a colonia model subdivision revolving loan fund to support the program.

**9. Make Information About Community Resources and Affordable Housing Easily Accessible to the Public.****9.1 Require the Department to establish a central housing and community services clearinghouse, and clarify the Department's statutory role as an information provider.**

The Department must create a central information office to act as a clearinghouse to provide plain language information to the public, local communities, housing providers, and other interested parties.

The office will also maintain a resource listing all existing affordable housing resources in communities, readily available in hard copy and in a user-friendly format on the Department's Web site.

**9.2 Require the Health and Human Services Commission to include the Department's programs in Texas Information and Referral Network resources.**

The bill directs the Health and Human Services Commission to include information about the Department's housing and community affairs programs in its I&R Network resources, including *Health and Human Services in Texas: A Reference Guide*.

**9.3 Require the Board to adopt, by rule, policies and procedures to ensure agency compliance with the Public Information Act.**

This provision will help ensure that the Department upholds its duties under the Public Information Act. As part of this provision, the agency must train its employees on Public Information Act requirements, and the Executive Director must ensure that the staff implements these policies and procedures.

**10. Create a Separate Governing Board for the Regulation of Manufactured Housing.****10.1 Retain the manufactured housing regulatory program's administrative attachment to TDHCA, but with a separate governing Board to manage the program.**

This provision provides for a separate Board composed of five members of the public, appointed by the Governor for staggered six-year terms. Funds for manufactured housing regulation initially will be appropriated to TDHCA and then transferred to the manufactured housing function. The newly created Board will have the authority to set the budget and allocate expenditures to the various manufactured housing regulatory activities. The Board will enter into appropriate interagency agreements with TDHCA to share administrative costs for rent, data processing, human resources, legal, and other services.

**11. Continue TDHCA for a Two-Year "Probationary" Period to Ensure That Needed Changes Are Implemented.****11.1 Continue the Department for a two-year "probationary" period, and require the Sunset Commission to re-evaluate the agency and its efforts to ensure**

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**that needed changes have been implemented before the legislative session in 2003.**

The legislation specifies the following criteria be used to decide whether TDHCA has successfully implemented the requirements enacted in S.B. 322.

Establishment of a functional governing body that values public input and allows Board members to develop the expertise necessary to make informed decisions about and ensure accountability of the Department and its programs.

Effective development and implementation of a needs assessment and associated fund allocation process that:

- ensures the state’s most pressing needs are identified and met,
- incorporates input from local entities,
- maximizes the objective of preserving the state’s existing affordable housing stock,
- ensures the State receives the best value for its resources, and
- maximizes the State’s objectives for its housing and community support services.

Development of policies and procedures that clearly define the appropriate roles of the Board members and agency staff.

Establishment of compliance procedures that actively ensure the Department’s programs provide fair access to housing.

The Department will be required to report to the Sunset Commission by September 1, 2002, on the status of these recommendations as part of the re-evaluation of the agency during the next interim.

**Removed Provision**

**1. Transfer the Community Development Block Grant Program From TDHCA and Constitute It as the New Office of Rural Community Affairs.**

The Legislature enacted this provision through the passage of H.B. 7 and it was subsequently removed from the Sunset bill.

**Fiscal Implication Summary**

The changes made as part of S.B. 322 will have a net cost to the State of about \$345,500 per year.

Each issue with a fiscal impact is discussed below, followed by a five-year summary chart.

The provision reducing the size of the Board will save \$20,000 per year from reduced per diem and travel expenses. Board member expenses are funded through appropriated receipts and earned federal funds.

The provisions requiring consolidation of public hearings will save \$20,000 per year in General Revenue from reduced travel expenses.

The provisions related to increased responsibilities for underwriting and compliance functions will require eight additional staff. Costs for additional staff will be offset by an appropriate increase in the project application and/or compliance fee paid by developers who apply and receive funding from the Department. These costs will total \$385,000 per year for salaries and associated costs.

This document is available online at <http://www.sunset.state.tx.us/sunset/77.htm>

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**APPENDIX F**

**TDHCA IMPLEMENTATION OF SENATE BILL 322 CHART**

**Available online at  
<http://www.tdhca.state.tx.us/sunset/implementation.pdf>**