

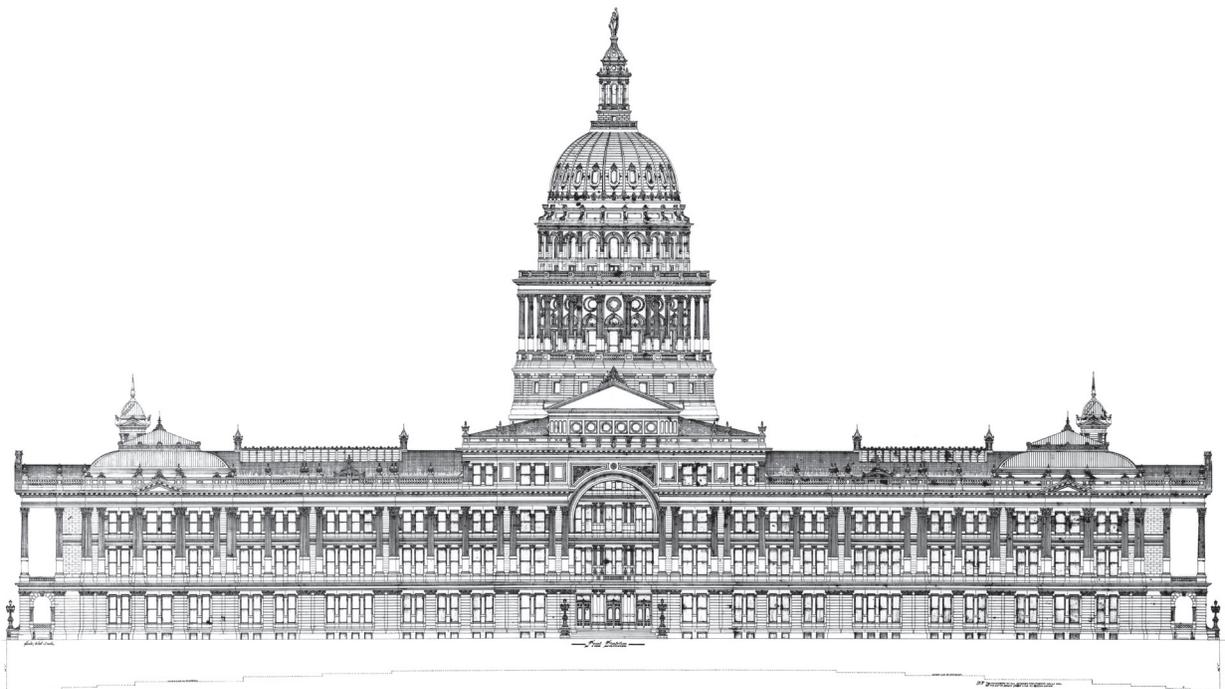


INTERIM REPORT

TO THE

82ND TEXAS LEGISLATURE

House Committee on
BORDER AND INTERGOVERNMENTAL AFFAIRS
January 2011



**HOUSE COMMITTEE ON BORDER AND INTERGOVERNMENTAL AFFAIRS
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2010**

**A REPORT TO THE
HOUSE OF REPRESENTATIVES
82ND TEXAS LEGISLATURE**

**VERONICA GONZALES
CHAIRMAN**

**COMMITTEE CLERK
DAVID WILKIE**



Committee On
Border and Intergovernmental Affairs

January 10, 2011

Veronica Gonzales
Chairman

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

The Honorable Joe Straus
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 Border and Intergovernmental Affairs of the Eighty-first Legislature hereby submits its interim report including recommendations and drafted legislation for consideration by the Eighty-second Legislature.

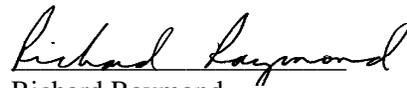
Respectfully submitted,



Veronica Gonzales



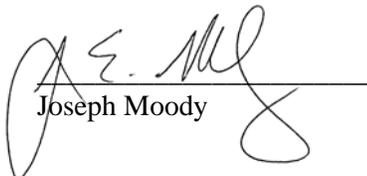
Dan Flynn, Vice Chair



Richard Raymond



David Leibowitz



Joseph Moody

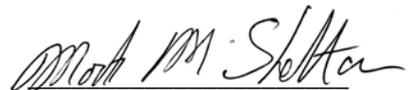
Kino Flores



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Mark Shelton

Dan Flynn
Vice-Chairman

Members: Kino Flores, Richard Raymond, Ryan Guillen, David Leibowitz, Dora Olivo, Joseph Moody, Mark Shelton

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INTRODUCTION

The border is a vast area with a range of communities and interests. The areas the committee has been asked to examine likewise involve large issues with a range of constituencies and complications. In order to attempt to do justice to the assigned tasks, the committee has collected and examined research on each of its charged areas and attempted to keep abreast of developments relating to them.

In the case of Mexican drug cartels and the ways the ongoing violence in Mexico is affecting the border, this has presented a challenge. In addition to the sheer frequency of significant events, obtaining accurate reporting from inside Mexico has been difficult due to the efforts of the cartels to censor the media through terrorism. However, the committee members, five of which live on the border, are confident that they understand the problems faced by the residents in border communities.

In addition to informal meetings and information gathering sessions with public and private entities, the committee held formal hearings on border violence and drug-related crimes on April 29, 2010 at the McAllen convention center in a joint hearing with the Committee on Public Safety. The chairman hosted a special meeting of McAllen area experts on economic development August 11, 2010. A hearing on food safety was held jointly with the Committee on Public Health August 26, 2010 and a formal hearing on economic development was held August 27, 2010 in Austin.

HOUSE COMMITTEE ON BORDER AND INTERGOVERNMENTAL AFFAIRS

INTERIM STUDY CHARGES

The committee received the following charges from the Speaker of the House:

1. Evaluate the effectiveness of state operations at controlling drug-related crimes and other violence along the Texas-Mexico border.
2. Identify any gaps in Texas laws that may prevent coordinated efforts, both statewide and on the border, to ensure a safe food supply.
3. Examine current state laws and regulations aimed at improving economic development in the state and determine their impact on communities along the Texas-Mexico border. Identify any changes that would improve economic development results along the Texas-Mexico border.
4. Analyze state laws and regulations and the efforts of the multiple state entities responsible for addressing the needs of Texas residents in colonias. Determine the effectiveness of such programs and suggest improvements.
5. Monitor the agencies and programs under the committee's jurisdiction.

CHARGE 1:
Evaluate the effectiveness of state operations at controlling drug-related crimes and other violence along the Texas-Mexico border

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Background

It would be impossible to provide a fair evaluation of state operations at controlling drug-related crimes and other violence along the border without reference to and consideration of the ongoing armed struggles among rival criminal organizations in Mexico and the simultaneous efforts of the Mexican federal government to reduce the power and effectiveness of these organizations. The high murder rate and elevated fears of violent crime in Mexican cities are well known. Mexico, especially in the north, is on the verge of becoming a failed state. The pattern in Mexico today resembles in some ways the situation in Colombia prior to the implementation of Plan Colombia during the Clinton administration. The Mexican army has been obliged to take over the policing of numerous districts and cities because the local and federal police have been too thoroughly corrupted by organized crime to be an effective force. The army has also engaged in direct combat with the gangs. The comparison between Mexico and Colombia was made in September 2010 by Secretary of State Hilary Clinton, who also referred to the clashes of the drug cartels against the government of Mexico as a Colombia style "insurgency".¹ Her remarks were later endorsed by U.S. Representative Henry Cuellar, chairman of the subcommittee on Border, Maritime and Global Counterterrorism of the House Committee on Homeland Security. Representative Cuellar noted some of the significant differences between Mexico and Colombia, but nevertheless maintains that Mexico is essentially in the same position today as Colombia was in the 1980s and 1990s.² Colonel Steve McCraw, Director of the Department of Public Safety, has claimed that the current drug wars in Mexico are worse than Colombia's experience in the sense of the threat of violence to the stability of the government of Mexico.³ The breakdown of law and order in Colombia resulting from the power of the Cali and Medellin cartels together with the FARC rebellion and the paramilitary militias formed to oppose it was the driving force of that country's trouble. Likewise in Mexico, people have lost trust in local government and local officials in many places. The takeover of the majority of the institution of government in Mexico by organized crime is a real risk, and the prevention of such a takeover is central to the national interests of the United States and Mexico.⁴

In just the last half of 2010, there were countless incidents of violence, drug and arms interdictions as well as kidnappings which occurred along the Texas-Mexico border. Attached to this report is an Appendix detailing incidents reported by the Texas Department of Public Safety. This list of acts is not exclusive, but serves merely as an example of crimes occurring along the border of Texas and emphasizes why border security is so critical to the entire State.

For the Texas border, the preservation, restoration or establishment of a stable and less corrupt Mexico is a direct and vital interest. A large part of the extra stake Texas has in the outcome relates to the scope of its cross border trade. A very significant part of the economy of border cities in Texas is generated by sales of goods and services to Mexican citizens. Another Texas concern is made up of the personal interests of the people who reside and have family in both countries. Texans have had to face threats of violence to family members living in areas where cartels are active.⁵ Parents in towns along the border also must face the risk that their children

will be recruited to work for a drug smuggling organization.⁶ Perhaps the most insidious and politically important risk that arises from the situation in Mexico is the potential deterioration of our own legal and political institutions due to corruption generated by the drug cartels. Nate Blakeslee's article on the border in the August 2010 *Texas Monthly* recounts the recent arrest of the police chief of Sullivan City, who was charged with being on the payroll of both the Gulf Cartel and the Zetas gang. The city manager, interviewed about the matter, states that the cartels have always had men in Sullivan City, and that they have men in all the towns of the Rio Grande Valley.⁷ Regardless of to what extent this is true, it is clearly an extraordinary threat to the kind of honest government Americans have come to expect when rich and ruthless criminal gangs with a history of suborning corruption are actively operating along a border populated with poor people, poor cities and limited economic opportunities. In this context any extra attention paid by the state to this region may contribute to avoiding a breakdown in society along the lines of that which has occurred in Mexico. In the view of this committee, physical violence is by no means the only threat Texas has to fear from the drug cartels. The risk that our citizens and officials will be lured into their criminal activity is just as grave.

It appears to the committee, based on testimony and research, that the response of Texas to the border threat has been mixed in that it has included both enhancements to local law enforcement and direct increases to patrolling and interdiction with state personnel. State expenditures to enhance state capabilities in intelligence and intelligence sharing and coordination most likely address both of these areas, with the advantage easiest to see in border patrol. In the most recently completed biennium, the legislature appropriated \$110 million for border security. That amount was increased to \$118.6 million by the 81st Legislature for the current biennium. In the most recent appropriations bill, almost \$22 million was allocated to increased patrols, investigations and overtime for law enforcement in border areas along with approximately \$9 million for state police officers assigned to local border security. These efforts were intended to shore up and expand local police presence as well as help prosecute violent and drug related crime. In our view these efforts are directly responsive to the problems that exist and are appropriate. Other expenses have been for military style hardware and equipment, such as helicopters.

With regard to the effectiveness of additional police man hours, the testimony from police chiefs along the border indicates that the funds spent by the state to provide for overtime and other police functions have been helpful and are greatly appreciated. However, overtime alone has proved to be of limited usefulness, due primarily to physical limitations on the officers. Additional manpower may be a better solution and may avoid some inefficiencies associated with paying overtime. U.S. Customs and Border Protection seems to have come to a similar conclusion in June 2010 when it prohibited further overtime for its agents while at the same time requesting additional agents.⁸

The committee also heard testimony regarding the Border Prosecution Unit. The Border Prosecution Unit is a newly created entity, begun in 2010, which is designed to provide additional resources to the 16 district attorneys along the border to investigate and prosecute crimes committed by and for organized criminal cartels. The amount of funding is modest at \$1.7 million, which is managed and allocated by El Paso County. It is too early to assess this

program's effectiveness, but it seems to the committee to be addressing precisely the concerns that ought to be addressed. The benefits of this program are the additional deterrence derived from the increased likelihood of punishment and the increase in public confidence which arises when people see criminals investigated, caught, prosecuted and punished.

Border Security Council Report

The Border Security Council was created by Senate Bill 11 in the 80th Legislature to advise the governor on the allocation of state homeland security funds. The council issued its initial report in September 2008 after a series of public hearings and meetings.⁹ The general findings in this report include the following:

Powerful and ruthless Mexican crime cartels dominate the U.S. drug and human smuggling business, and they use former military commandos and transnational gangs to support their operations on both sides of the border.

The citizens who live in the smuggling corridors along the border suffer the daily consequences of smuggling-related violence, burglary, vandalism and trespassing.

Drug and human smuggling organizations victimize illegal aliens in search of economic opportunities in the U.S.

A porous Texas-Mexico border threatens every region in the state and the nation.

An unsecured border provides potential terrorists and their supporters an opportunity to the U.S. undetected.

The federal government has not yet sufficiently staffed and equipped the Border Patrol to secure the Texas-Mexico border between ports of entry.

Border Security operations require substantial coordination, hard work and sacrifice by dedicated local and state law enforcement officers, Customs and Border Protection and other federal agencies, such as the U.S. Coast Guard. The Council found that an exceptional level of coordination and cooperation among the local, state and federal law enforcement community is essential for success.

The federal government has not sufficiently staffed and equipped the Office of Field Operations at the ports of entry to prevent smuggling at the ports of entry, nor have they provided for the secure and efficient movement of people and commodities to and from Mexico.

Until the federal government is able to secure the border, the State of Texas has an obligation to work closely with its local and federal partners to acquire and maintain operational control of the Texas-Mexico border.

The Texas Border Security Strategy established in February 2006 has been successful in reducing crime and enhancing border security.

RECOMMENDATIONS

The Border Security Council report recommended that because increased funding for border operations has led to a decrease in crime, Texas should sustain funding for border operations at the state level. The report also recommended that in order to remain eligible for state funds, local law enforcement agencies must cooperate with state led border operations and share information and intelligence with state, local and federal counterparts, as well as support the joint operations intelligence centers (JOICs). Texas currently has six JOICs and the Department of Public Safety and other law enforcement agencies have recently recommended expanding such number to eighteen in order to increase awareness on drug and human smuggling operations throughout the state and increase statewide interdiction of Mexican Cartel and gang-related activity. In addition, the report makes the following policy recommendations:

(i) Border security operations should include increased inspections to curtail the smuggling of cash, stolen vehicles and weapons to Mexico. It is estimated that \$10 billion is smuggled across the border each year. In 2008, the Department of Alcohol, Tobacco & Firearms (ATF) found that 6,700 of the 7,200 firearms turned over by the Mexican government originated from the United States.

(ii) The state should expand its use of technology to include implementation of the Virtual Border Neighborhood Watch Program, expand radio interoperability, and fully implement the Texas Data Exchange in the border region.¹⁰

The Border Security Council report to the governor is only two years old and, in the opinion of the committee, its findings are still valid. The committee also agrees generally with the recommendations of the report, in particular its suggestion that the state concentrate more of its efforts on interdiction of guns and money going south to Mexico. This is an area in which Texas may be able to avoid some of the jurisdictional difficulties that arise in immigrant smuggling cases.¹¹ Also, local police can provide intelligence and extra manpower in the efforts to find these south bound smugglers, where no amount of effort is likely to be too great. In fact, the primary disagreement the committee would have with the council is that the committee would prefer to emphasize the local manpower aspects of the state response and de-emphasize the more military-style and equipment oriented responses. This does not mean that the committee rejects the use of technology over manpower, especially where technology can be a force multiplier, but rather that a balance be struck for the best operational outcome. Texas would be better served by extra police personnel balanced with available technology, such as helicopters with night vision capability, than an exclusive focus on manpower or technology. This recommendation is based on near unanimous testimony from local police and other officials heard by the committee.

Other recommendations include:

1). ***Direct more Department of Homeland Security monies to the border.*** The United States Department of Homeland Security has awarded Texas an average of \$125 million a year over the last four years in grants. Disputes have arisen over what percentage of the monies have been directed to the Texas-Mexico border, some saying as little as 3%, others saying 17%. Regardless

of which number is correct, there is no dispute that security for our border should start along our border. Therefore, a recommendation is made that more of these monies be directed to securing the safety of Texas citizens starting at the Texas-Mexico border.

2). ***Continue funding the Southwest Border Initiative.*** This initiative reimburses local governments for prosecution costs of federally initiated criminal cases declined by United States attorneys. Texas should work with Congress to resume funding for this measure.

3). ***File suit against money launderers, find crime assets and forfeit them.*** Other states such as Arizona have reached multimillion dollar settlements going after illegal assets being wired back and forth between the United States and Mexico. The settlement monies have been used to provide grants that investigate and prosecute money laundering, human, drug and arms trafficking.

4). ***Focus on breaking up gangs.*** Drug cartels are using local gangs to commit kidnappings and crimes such as theft and murder. The FBI contends that the large majority of those kidnapped are involved in drugs or run businesses that involve the carrying of lots of cash. While prisons are supposed to be the most secure, gangs are running their operations from inside the prisons. A prison intelligence unit can be established to share information from inside to outside the prison so that interdiction is made more likely. The Department of Public Safety has also advised acquiring an advanced analytical tool to identify links, relationships and associations within and among the Mexican cartels and prison gangs operating in Texas and has pointed out that the Department currently does not have the ability to search across its stand-alone data base systems to locate critical information and identify relationships that may not be so obvious. The Department also does not have the ability to leverage technology to conduct communications trafficking analysis. The Department has advised that there are commercially available tools accessible through existing DIR contracts that could provide this high-end capability. The Department has also recommended establishing Texas Anti-Gang Centers (TAG) in high-threat urban areas throughout the State. Suggestions have been made to place such TAG Centers in Houston, where there has been a 71% increase in gangs and over 250% increase in gang related crime over five years as well as in McAllen because the Rio Grande Valley is inextricably linked to the Houston area, as US 59 is being used as a drug and human trafficking corridor.

5). ***Acquire a high-altitude aircraft with specialized surveillance capabilities to enhance border-wide interdiction operations.*** The Department has advised that due to the size and diversity of the border region, DPS border helicopters are often overwhelmed when it comes to call volume, station time, response time and distance to travel. The Department has requested a single-engine turbine aircraft with state of the art FLIR and optical technology that would allow high-altitude, stealth-surveillance and communication platform to maximize aerial impact on Cartel smuggling operations. Such an aircraft would increase range and flight time over current aircraft, (8 hours in the air as opposed to 2.5) and would be able to fly undetected at high altitudes.

6). ***Enhance Waterborne Operations.*** The Mexican Cartels have exploited Texas' lack of

maritime patrol capability on the Rio Grande River. Within minutes, cartels are able to retrieve drugs and cash via boats on the United States' side of the river. The Cartels have also smuggled drugs on two international lakes and have shot at U.S. citizens, killing at least one. The Department has requested multiple tactical boats that are able to operate in as little as three feet of water and at speeds up to 60 mph to deter attacks on the river. The Department has identified the types of aircraft, equipment and training needed and has obtained \$1.3 million in grant funds it intends to use to acquire three fully equipped boats, but needs monies for operational and deployment costs over the next biennium.

7). ***Focus on drug rehabilitation and prevention programs.*** Texas can continue to spend millions of dollars in interdiction and prosecution efforts, but if there is no demand, there will be no supply. The drug war occurring in Mexico is not just a problem for Mexico, but for the United States and especially for Texas, Mexico's neighbor to the North. The Border Patrol has created a video that it is showing in schools called "Operation Detour", which is intended to educate students on the dangers of drugs and the consequences of getting involved with gangs and cartels. Texas should replicate such a program or build upon it as well as focus on rehabilitation for those who become addicted to drugs and enter into cartels and gangs to earn a living and support their habit.

CHARGE 2:
Identify any gaps in Texas laws that may prevent coordinated efforts, both statewide and on the border, to ensure a safe food supply.

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After joint hearings on this charge with the Committee on Public Safety together with additional investigation by that committee's staff, the following recommendations were developed:

- 1. The Legislature should remove the exemption to licensure for persons, firms, or corporations that ship raw fruits or vegetables under Chapter 431 of the Health and Safety Code.**

State law currently provides an exemption to licensure for wholesalers of raw fruits and vegetables under Chapter 431 of the Health and Safety code. The exemption was granted by the Legislature due to historically low instances of food borne illness arising from the consumption of raw fruits and vegetables. However, the 2008 tomato and pepper salmonella outbreak and the 2009 peanut outbreaks, which both caused serious illness in Texas convinced state health officials to reevaluate the public health policy of allowing unlicensed facilities storing raw fruits and vegetables.

Further, as more food is imported from Mexico and other nations, warehouses storing fruits and vegetables are increasingly becoming a critical link in the food supply chain from the producers to the general public. Currently, Texas imports more fruits and vegetables from Mexico and other nations than at any other time in the state's history. According to the Texas Center for Border Economic and Enterprise Development, Texas imports from Mexico twice as much as Texas exports to Mexico. Considering this rapid rise in the importation of foreign grown fresh fruits and vegetables, the Legislature needs to act to better protect the public's health in this area. The storage and distribution of fruits and vegetables has become a critical but unregulated link in the state's food supply chain and thus warrants the removal of the licensure exemption.

- 2. The Department of State Health Services (DSHS) should incorporate an educational component that promotes best practices in food safety into the licensure and re-licensure process for all food manufacturers and distributors. The Legislature should add incentives to the licensure process to encourage the adoption of evidence based best practices in food safety.**

The committee heard compelling testimony from John Scott, Director of Quality Assurance at HEB, and Dr. Juan Anciso, PH.D representing Texas AgriLife Extension Service that safety cannot be tested or inspected into a food product, especially considering the vast amounts of food grown, shipped and sold every day in Texas. While, government regulation through licensure of facilities and inspections provide a necessary set of safeguards for consumer protection, these safeguards only offer a minimum standard of protection. In fact, the public should not hold the illusion that government licensure and inspection programs will ensure the safety of the food they eat. A clear theme from the testimony heard by the committee on this issue was the need to incorporate best practices and education into the

licensure process. Consumers also have a basic responsibility to protect themselves by knowing the basic safety precautions for buying, washing and cooking food.

In order to better study ways to develop ideas to incorporate food safety and best practices into the licensure process, Chair Lois Kolkhorst directed committee staff to hold an informal workgroup with representatives from the Department of State Health Services, the Food and Drug Administration, Texas AgriLife Extension and HEB. The workgroup concluded that one way to incorporate best practices into the licensure process would be to incentivize the food industry to enroll in educational training in best food safety practices and maintain ongoing continuing education requirements. DSHS would incentivize education incorporation by setting lower licensing fees and lower rates of inspection if education is incorporated by a licensee. However, a licensee that chooses not to incorporate education into licensure would face higher licensure fees and higher rates of inspection.

3. The Legislature should pass a resolution to Congress urging the protection of Federal Drug Administration (FDA) and United States Department of Agriculture (USDA) food safety workers and inspectors on the Texas border.

The committee heard disturbing testimony from USDA's Dr. Kevin Varner about the disruption of USDA inspections of cattle on the Mexican side of the border due to drug cartel violence. While no USDA workers have been injured, Dr. Varner reported that agency vehicles have been shot at by drug cartels and other individuals thus forcing USDA workers to avoid inspecting cattle in Mexico. USDA has established temporary holding cells on the Texas side of the border in order to continue necessary inspections along the Texas Mexico border. During an informal workgroup on the issue of food safety, a representative from the FDA also informed committee staff that violence along the Texas border is also a major concern for FDA inspection of imports into Texas from Mexico.

The U.S. Congress has not traditionally linked border security policies with food safety. Therefore, these two interconnected issues have no coordinated policies. For example, a 2009 report by the Congressional Research Office entitled *Mexico-U.S. Relations, Issues for Congress*, does not address the consequences of border violence for U.S. food safety workers and inspection efforts. The report does not link border violence and food safety at all. Further, the report only briefly touches on the topic of food safety by mentioning the FDA's confirmation that the source of the 2008 salmonella outbreak was Mexican grown jalapeño and serrano peppers. The Legislature should be concerned that a major report to Congress does not take into account the important role that a secure border plays in ensuring quality inspections of imported food.

However, the August 2010 joint hearing of the House Public Health and Border and Intergovernmental Affairs committees on food safety was an important first step for addressing the issue by making the public, the Legislature and the Congress aware of the link between and need for a border security policy that takes into account the logistics of inspecting imported food along the Texas-Mexico border.

4. The Department of State Health Services (DSHS) should continue to seek grant funding to study food safety inspection gaps along the Texas border.

The committee identified several gaps in food safety ranging from outdated licensing exemptions, lack of best food safety practices, increasing border violence and uncoordinated food safety efforts. However, a more in depth study of the issue involving government, industry and academia is needed to better identify and grasp the gaps in food safety, especially along the border region. The Department of State Health Services (DSHS) testified that the department has been actively seeking a grant from the Robert Wood Johnson Foundation to study gaps in the Texas food safety system. DSHS has estimated that the study would need to be funded at \$500,000 to successfully provide a comprehensive report. Due to the large amount of food that is imported into Texas, the proposed study should be conducted because it would greatly enhance the state's ability to identify gaps in food safety and better position the Legislature to make future policy decisions.

5. The Department of State Health Services (DSHS) should better collaborate with all academic, federal and local partners to routinely review the safety of imported food into Texas.

The Department of State Health Services (DSHS) did not provide the committee any evidence of a clear plan for improving food safety in Texas. Further, the department did not provide testimony or comment on any current cooperation with or future plans for increased cooperation with federal, state, local or academic partners on food safety. The department's testimony before the committee only highlighted its current work, the department's knowledge of the roles of various federal agencies and the monitoring of federal legislation pertaining to food safety.

DSHS did inform committee staff that the department does work with the FDA on a daily basis. However this seemed to be on a case by case basis. DSHS did not identify any overarching goals or strategic plan for cooperation with the FDA. The committee also did not find evidence that the state's academic institutions were collaborating with DSHS on identifying food safety gaps or researching best practices. The Texas AgriLife Extension and HEB provided testimony and follow up comments that evidence best-based practices and industry education needed to be incorporated into the DSHS licensure process. This type of collaboration would require a higher level of coordination and planning from DSHS than the department's current track record with academic partners, industry representatives and the federal government.

CHARGE3:
Examine current state laws and regulations aimed at improving economic development in the state and determine their impact on communities along the Texas-Mexico border. Identify any changes that would improve economic development results along the Texas-Mexico border.

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Education

The committee received a great deal of testimony and other information regarding education and job training. This included presentations by state agencies, academic researchers and administrators, as well as interested citizens. The committee considers the improvement of education and job training crucial to the economic development of the Texas-Mexico border area. Existing state efforts include state universities and community colleges as well as job training and skills development programs such as those operated by the Texas Workforce Commission. The educational opportunities that exist along the border are in high demand, and increasing interest has been shown in science and engineering majors. The committee found that increased resources provided to educational programs in such areas or fields where there is a shortage of trained labor available, would be well-suited to the needs of the border area. The committee also believes that increases in education funding to the border area, which is experiencing high growth and may be relatively underfunded, would be a principled and wise use of state resources.

The committee notes that the border region's resources in higher education continue to be limited and that students must leave their home communities to study in a number of areas. The continued development of educational resources along the border will directly address this issue. As an example, the recent \$5 million gift to the University of Texas at El Paso for the Hunt Institute for Global Competitiveness was intended to support the increase of the economic development of El Paso to the level of other cities of its size. Mr. Woody Hunt commented at the time of the donation that giving the money was the easy part, and "the tough part on UTEP's side is to attract the talent to this institute to make it successful."¹² The efforts of El Paso to organize its economy around Fort Bliss, the defense industry and the medical field, like the efforts of the Rio Grande Valley to attract high tech manufacturers and provide more medical jobs, will depend in large measure on adequate educational resources.

HESTEC

The committee reviewed an educational innovation born at University of Texas Pan American in connection with this charge. This is the Hispanic, Engineering, Science and Technology (HESTEC) program. HESTEC consists of a week-long promotion of the STEM fields made to elementary, middle and high schools on UTPA's campus. In its nine years of existence, the program has received a very enthusiastic response and appears to be doing some real good in encouraging Hispanic students to enter technical fields. In the opinion of the committee, other institutions throughout Texas should consider creating a similar program. It would be an extremely low cost method of making a potentially enduring improvement.

Community College Baccalaureate Programs

A specific issue which was brought to the attention of the committee is the ability of community colleges to offer baccalaureate programs. The committee reviewed the legislation permitting a limited number of such programs in distinct fields. The statute allows a junior college to offer up to five 4 year baccalaureate programs in the fields of science or technology. In a specific instance, the committee heard testimony from South Texas College, which has been frustrated in its efforts to offer a degree program pursuant to authority granted in SB 286 of the 78th Legislature. The college developed a program in child development, which was not approved by the Higher Education Coordinating Board due to its failure, according to the board, to meet the "science or technology" requirements of the legislation. Without taking a side on this issue, the committee recommends that a process be put in place at the HECB which would enable it to inform a college attempting to fit a non-qualifying program under this statute that its proposed program would not be approved so as to save significant wasted effort.

Texas Enterprise Fund

One state program aimed squarely at economic development is the Texas Enterprise Fund. The fund takes applications for state financial incentives from businesses looking to make new investments in Texas which will lead to new jobs. The fund is administered by the office of the governor, with incentive awards requiring the unanimous consent of the governor, lieutenant governor and speaker of the House. The fund's application and diligence process is intended to avoid, to the extent possible, the waste of state resources on unnecessary or uneconomic expenditure of state resources.

The committee recognizes that serious questions have been raised about the effectiveness of the Enterprise Fund and whether such a fund is an appropriate use of state resources.¹³ At the same time, the committee believes that, to the extent the fund continues to operate, the location of a significant investment in the border area could yield important economic development benefits, some of which may be greater than those available in other areas of the state.

The committee heard testimony regarding the fund's experience in South Texas and around the state as well as the methods and formulas used by the fund to determine which projects are offered incentives. The fund assumes a return or benefit to the state equivalent to 1.5 percent of the amount of the salary of each job added as a result of an incentive award, then factors these amounts into its cost-benefit analyses. One consequence of this method that the committee discussed is that jobs carrying lower wages and salaries yield a lower return. Thus the formula carries a built in disadvantage for lower income areas of the state, such as the Rio Grande Valley.

The committee also explored a difficulty noted by the governor's Enterprise Fund staff in competing for investments by high technology companies requiring recurring capital

investments, such as new computer equipment. The committee heard testimony that some companies will require substantial investments in new computers about every two years, and the current structure of the sales tax creates a significant disincentive to locate in Texas for these types of businesses. The property tax effect on high capital investment business may be alleviated in some instances by Chapter 313 agreements with local school districts, but no similar option currently exists for sales taxes. The committee considered whether a mechanism for lowering the state sales tax on businesses which must make significant recurring capital purchases of this nature for a period of time such as 10-15 years would be advisable.

Economic Research

The committee heard testimony from the SABER Institute at Saint Mary's University. The SABER Institute is a think tank devoted to study and research of regional economies. It is an alliance of Saint Mary's and the San Antonio Hispanic Chamber of Commerce, and its primary work has been to write economic impact studies for local governments. In the 81st Legislature, the committee voted out a bill to create a bureau of appointed members to study the economy of the border region and make recommendations to the legislature. The bill passed the House and Senate, but then failed when an amendment was added onto it that did not make it out of the Senate. The committee believes that economists and economic impact research of the type ordinarily done by the institute can assist business interests in developing better plans for economic development. The committee contends that a bureau of this type could also assist the border region in developing long term regional economic goals and plans, as other regions of the state have done.

The institute informed the committee in 2009 that it was willing to host the bureau using its existing resources, which would allow for a bureau of economic research devoted to the border region at no cost to the state. The institute testified that it remains ready and willing to house the bureau if a similar bureau or commission is created by the legislature.

CHARGE 4
Analyze state laws and regulations and the efforts of the multiple state entities responsible for addressing the needs of Texas residents in colonias. Determine the effectiveness of such programs and suggest improvements

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The committee recognizes that one of its key functions is to oversee the state's efforts to address the serious problem that has been created by the extensive use of substandard housing and inadequate land engineering in the border region. Since 1989, Texas has spent large sums of money and devoted a great amount of state government effort to remediate the deficient aspects of existing colonias and to prevent the creation of new colonias. In that year, a bargain of sorts was struck with counties along the border which made significant funds available for this effort, but which required counties seeking these funds to adopt model subdivision rules and to actively police and enforce the development and construction of new housing in these counties.¹⁴

This arrangement has generally worked well to limit the spread of substandard housing along the border. The Attorney General has been active in prosecuting cases involving construction of substandard dwellings and sales of lots with inadequate infrastructure built or otherwise provided for under the law. These prosecutions, or the threat of a prosecution, is the primary tool which the state has at its disposal to control the actions of local jurisdictions with respect to this issue.

Proposed legislation on colonias tends to bring supporters and defenders along fault lines of competing interests, which include developers, county governments and low cost housing advocates. Legislation considered by the committee in the 81st Legislature typically sought to increase or decrease a requirement applied to counties and developers before services may be provided or a subdivision approved. The committee will continue to weigh the competing interests in this area, with the understanding that the establishment of new colonias is against state policy, and rules should not be relaxed to the point where they may be legally created.

The committee has reviewed the established state programs and the state agencies addressing colonias, which are many and varied. They include the Texas Water Development Board, the Texas Department of Housing and Community Affairs, the Office of the Attorney General, the Department of Transportation, the Department of State Health Services, the Secretary of State, the Texas Department of Rural Affairs (formerly the Office of Rural and Community Affairs), the Texas Health and Human Services Commission, the Texas Commission of Environmental Quality, and the Colonias Program of the Center for Housing and Urban Development at the College of Architecture at Texas A&M University.

The largest portion of the state's expenditures on colonias comes from the Economically Distressed Areas Program (EDAP), created by the 71st Legislature in 1989. The program is currently targeted to provide grants to residential subdivisions established before June 2005 which have neither adequate water supply nor sewer services to meet the minimal needs of residential users and inadequate financial resources to provide such services for themselves. The statutory definition of "economically distressed" does not require an area to be on the border, but the vast majority of EDAP funds have been directed there over the course of the program. In the last four fiscal years, the EDAP program has spent \$117.6 million on funding benefitting

colonias or economically distressed areas within 150 miles of the border. Since the beginning of the program, it has committed over \$650 million in grants and loans statewide for planning, acquisition, design and construction of basic water and wastewater infrastructure. This funding has alleviated the substandard conditions existing in the subdivisions it has reached, and is the most direct method of addressing the missing infrastructure in colonias.

Another element of the Texas Water Development Board's efforts with respect to colonias is the Colonia Self Help Program. This program provides financial assistance to "grass roots" initiatives to provide water and wastewater in economically distressed areas in border counties. The TWDB supplies grants for actual costs of providing the services, and local residents furnish volunteer labor or donate equipment, material and supplies. The grants are made to reimburse for actual out of pocket expenses incurred by a local project supplying needed services. By all accounts received by the committee, this program, though small, has been popular and highly successful. The committee would certainly recommend that it continue.

The Colonia Self Help Program should be distinguished from the Colonia Self Help Center Program, which was established by Senate Bill 1509 in the 74th Legislature in 1995. This statute creates a legislative directive for the Department of Housing & Community Affairs to establish Colonia Self Help Centers in Cameron, Willacy, Starr, Hidalgo, Webb and El Paso counties. The program is designed to select five colonias in each county to receive concentrated attention from its respective self help center (28 colonias are currently being served). This assistance is typically in the form of on-site technical assistance, but can also include legal and document assistance. Operation of the centers is carried out by local organizations overseen by a Colonia Advisory Committee, and the funding is provided by the federal government.¹⁵ Other programs administered by the TWDB include the federally funded Colonia Wastewater Treatment Assistance Program and Colonia Assistance Management and Support Program. Over the past 20 years, the foregoing efforts, combined with other TWDB programs, have committed over \$1.4 billion to colonias or economically distressed areas within 150 miles of the border.

As to whether state efforts have been effective, the committee heard testimony that the proliferation of colonias is far less than it was in the period before the adoption of the 1989 law and the start of the EDAP program together with the adoption of the Model Subdivision Rules by border counties. While obtaining good data on the actual conditions in the many existing colonias is extremely difficult due to their number, geographic dispersion and lack of state resources to audit them, the committee has found no reason to doubt that the model subdivision rules, the EDAP program and continuing governmental determination to stop the spread of new colonias have been effective. The committee notes particularly in this regard the active program of prosecution by the Office of the Attorney General in circumstances where subdivisions have been created without adequate infrastructure in violation of law, and believes the OAG has played an important role in reducing the spread of colonias.

The committee also notes that the total number of colonias identified by the Secretary of State in its identification system under SB 99 has remained flat from 2006 to 2010 while the severity of substandard conditions within existing colonias has somewhat diminished.¹⁶ It has also been

determined by a task force on uniform county subdivision regulation established under HB 2275 in the 81st Legislature that the grant of more authority to border counties effectively stopped the creation of more colonias on the Texas border by requiring land developers to install or guaranty basic infrastructure. ¹⁷.

The regulations seem to be having their intended effect, and the committee recommends that they be maintained. Remediation of existing substandard housing will take time, and the pace will depend on the willingness of interested parties to devote resources to the problem. The legislative efforts, however, have made a significant difference in the effort to ensure the problem does not get worse.

APPENDIX

In just the last half of 2010, subsequent to the Border & Intergovernmental Affairs hearing in McAllen, numerous notable incidents involving drugs, violence, kidnappings and smuggling of arms occurred along the Texas -Mexico border. This appendix serves to note those incidents, as reported by the Texas Department of Public Safety.

Brownsville, Texas (Cameron County) /Matamoros, Mexico and surrounding areas

- **August 24, Matamoros, Mexico**- An explosive device was detonated near the Mexican Customs office and prompted the closure of the B&M International Bridge leading into Brownsville. DHS Customs and Border Protection Rapid Response teams were placed on standby following the bridge's reopening.
- **August 28, San Fernando, Mexico (90 miles south of Brownsville)**- A massacre of 72 undocumented immigrants from Central America was discovered when an escapee informed the Mexican military of the location. Investigators believed the Zetitas (younger Zeta gang members) are responsible
- **September 4, Brownsville, Texas** - Stray bullets from a gun battle in Matamoros struck a University of Texas Brownsville-Texas Southmost College building and a car, prompting closure for two days. Campus police asked students to leave after bullets struck near the campus' south side.
- **September 30, Brownsville-** Two male Mexican Nationals were found dead with gunshot wounds to the chest inside a vehicle with Mexican plates near the US Border Patrol station and Cameron County Sheriff's office. The victims were identified as Oscar Castillo Flores (aka Omar Castillo Flores), 25, and Jose Guadalupe Perez (aka Guadalupe Perez Chavez), 38. Flores is the brother of slain Gulf Cartel member Alberto "Beto Fave" Castillo Flores, who was executed by the cartel in May 2010. The brothers retaliated and as a result were targeted by the Gulf Cartel.
- **November 5, Matamoros, Mexico** - Mexican military killed Ezequiel Cardenas Guillen, brother of former drug lord Osiel Cardenas Guillen, and four of his henchmen in a gun battle.
- **November 6, Brownsville, Texas** - Multiple shootouts in Matamoros prompt the closing of UTB-TSC Fort Brown campus and all three international bridges.

Rio Grande Valley, Texas (Hidalgo County), /Reynosa, Mexico

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- **August 9, Granjeno, Texas**- Local authorities pursued a narcotic load to the Rio Grande River, where 30 shots were then fired in the air causing local authorities and US Border Patrol to take cover. No muzzle blasts were seen in either direction.
 - **August 9, Pharr, Texas** -Pharr Police Officer Jaime Alejandro Beas was arrested in connection with a McAllen kidnapping. Investigation revealed Beas participated in drug escorts and provided weapons to the Zeta cartel. Beas had obtained weapons from his uncle, who was stationed in Corpus Christi with the U.S. Navy. Beas was linked to former Pharr and Hidalgo Peace officer Rene De Hoyos who used "tactical training" in the kidnapping of two men near a Wal-Mart in McAllen.
 - **August 12, San Juan, Texas** - Navid Gabriella Hurtado, 18, was kidnapped and transported into Mexico. She was released in an open field after the kidnappers allegedly discovered they had abducted the wrong person.
 - **September 12, Mission, Texas** - Border Patrol agents surrounded a vehicle as a result of a pursuit near the Anzalduas Dam point-of-entry. Border Patrol agents were fired upon and their boat was hit, prompting agents to return fire.
 - **September 9, Alton, Texas** - A former Mexican police officer residing in Alton is kidnapped at gunpoint. State and federal investigators believe the kidnapping may have been staged by the victim.
 - **October 28, Los Ebanos, Texas** - U.S. Border Patrol Agents seize high-powered weapons and ammunition including 3 assault rifles, a shotgun, a handgun and nearly 9,000 rounds of ammunition from a truck.
 - **October 30, McAllen, Texas** - Valluco gang members assault four National Guardsmen assigned to the US Border Patrol Rio Grande Valley sector outside a bar and two suspects were apprehended.
 - **October 31, Mission, Texas** - The Anzalduas Dam operator reports being shot at by two individuals on the Mexican side of the border. At least four shots were fired which hit the dam operator's building.

Roma (Starr County)/ Ciudad Miguel Aleman

- **September 12, Roma, Texas** - US Border Patrol receives information regarding a criminal organization attempting to gather US Custom and Border Protection employee license plates to identify home addresses.
- **October 10, Fronton, Texas** - Border Patrol agents were caught in a gun battle between a Drug Trafficking Organization (DTO) and the Mexican military while conducting a

tour for new agents. Approximately 60 rounds were exchanged while the DTO member attempted to flee to the U.S.

- **November 10, Ciudad Mier, Mexico-(approximately 10 miles from Texas border)** - Residents from Ciudad Mier fled the city due to threats by the Zetas. A refugee camp was established in Ciudad Miguel Aleman for 300 people. As a result Roma, Texas has seen an increase in student enrollment of approximately 295 students. Mexico deployed 3,000 troops to the border cities to combat this threat.

Falcon Lake/ Ciudad Guerrero

- **August 13, Falcon Lake, Texas** - Falcon Lake pirates attempted to stop an American fisherman on Falcon Lake using a small boat with the label "Game Wardin" on the side, possibly mimicking the Texas Parks and Wildlife boats. Fishermen fled the premises due to previous reporting on pirates and drug courier activity in the area issued by the Texas Department of Public Safety.
- **September 8, Falcon Lake**- Unknown drug traffickers utilize a cloned Texas Park and Wildlife boat on the Mexican side of the reserve labeled "Game Wardeen."
- **September 30, Falcon Lake**- American David Hartley was shot and killed while on a jet ski in the Mexican waters on Falcon Lake while attempting to flee from armed men on boats. On October 12, Tamaulipas State Police Commander and lead Mexican investigator in the case, Rolando Armando Flores Villegas, was found beheaded.

Laredo/Nuevo Laredo

- **June 1, Laredo, Texas** - Laredo Police and Webb County Sheriff Department seize 147 AK 47 rifles, 263 magazines, 53 bayonets and 10,000 rounds of ammunition suspected of heading to Mexico.
- **August 31, Laredo, Texas** - Mexican authorities apprehend US Citizen and drug leader Edgar Villarreal aka "La Barbie" of the Beltran Leyva Cartel in Mexico. Villarreal is known as a ruthless killer and is wanted by the American authorities for drug trafficking. Villarreal is in the process of extradition to the U.S.
- **September 23, Laredo, Texas** - Laredo police receive three 9-1-1 calls related to bomb threats to several point-of-entries. The calls originated from Mexico near the World Trade Bridge and prompted the closure of the three bridges.
- **December 16, Laredo, Texas**- Zapata deputies found three rifles and 30 pineapple grenades in the trunk of a vehicle. The grenades were filled with gun powder and missing a detonator.

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- **December 17, Nuevo Laredo, Mexico**- A prison break occurs at penal institute #2 in Nuevo Laredo. Zeta boss Miguel Angel Trevino's nephew, Rollie Trevino was suspected of running the prison where 151 prisoners escaped, the majority of which have links to the Zeta cartel. During military operations, Rollie would allow Zeta members to pose as prisoners in the institutions in order to avoid apprehension by the Mexican military. Rollie was able to move in and out of prison as he pleased. A car bomb was detonated outside of the city's Secretary of Public Security office to serve as a diversionary tactic during the prison break.

Del Rio/Ciudad Acuna

- **June 22, Del Rio, Texas**- Del Rio police seize a load of assault rifles, handguns and ammunition believed to be heading to Mexico. The load included 4 Ak-47 rifles, 3 M16 rifles, 4 M4 rifles, 123 boxes of ammunition, 61 loaded assault rifle magazines, holsters and other tactical gear.

El Paso/ Ciudad Juarez

- **July 1, Ciudad Juarez, Mexico**- Barrio Azteca gang leader Jesus Ernesto Chavez Castillo was arrested by Mexican authorities in connection with the March murders of US consulate personnel in Ciudad Juarez.
- **July 15, Ciudad Juarez, Mexico** - a 22 pound car bomb killed four people in a blast detonated by cell phone. The bomb was linked to the Vicente Carrillo Fuentes organization currently at war with the Sinaloa cartel.

October 20, Ciudad Juarez- US National Guardsman Jose Gil Hernandez and a second victim were shot multiple times in Ciudad Juarez and 18 casings were found at the scene. Hernandez had no criminal history or gang affiliation.

ENDNOTES

¹ Devonia Smith, "Clinton vs Obama on national security: Mexico 'insurgency' an 'increasing threat'"; September 15, 2010; www.examiner.com.

² Steve Taylor, "Cuellar: Clinton was right to compare Mexico with Colombia" September 10, 2010, Rio Grande Guardian

³ Brandi Grissom, "Worse than Colombia", March 31, 2010, The Texas Tribune; www.texastribune.org

⁴ Ibid.

⁵ Nate Blakeslee, "Near/Far", Texas Monthly, August 2010. This is a very well crafted piece which addresses a number of issues relevant to this committee, including the lack of "spillover violence" in urban areas, official corruption, drug legalization and the human aspects of the drug wars.

⁶ Ibid. The committee also heard testimony from Customs and Border Protection agents regarding a program the agency executes named Operation Detour. The agency shows video material to high school students in a "scared straight" type effort to convince them that the risks of becoming involved with drug trafficking organizations is substantial and not worth the reward. The Customs program arose out of the recognition that a number of young U.S. students had in fact been recruited to conduct a range of tasks for Mexican drug gangs.

⁷ Ibid.

⁸ Jerry Seper, "Reduced overtime stymies Border Patrol", Washington Times, June 23, 2010, takes the opposite side of the argument and concludes that the reduced overtime will hurt enforcement operations. An interesting analysis by the author of the weblog *Mexico's Drug War* dated June 25, 2010 discusses the article and provides a more nuanced understanding.

⁹ The council was a blue ribbon commission whose members included Cameron county Judge Carlos Cascos, DPS former chairman Robert Braxton Holt, former Secretary of State Phil Wilson, Brewster County Judge Val Beard, Fred Burton of STRATFOR, Hudspeth County Judge Becky Dean Walker, TCEQ chairman Buddy Garcia, Maverick County Sheriff Tomas Herrera, trucking company president Scott McLaughlin, Victoria County Sheriff T. Michael O'Connor and DPS Commission chairman Allan Polunsky. The full report of the Border Security Council may be found on the governor's website at governor.state.tx.us.

¹⁰ The Texas Data Exchange is a system that compiles law enforcement incident records and other non-intelligence criminal justice information into a central state repository for sharing across jurisdictional lines. The information is available for law enforcement and criminal justice purposes. Access to the Texas Data Exchange is provided by the Texas Department of Public Safety to authorized users at no cost to the local agency. From the DPS website

www.txdps.state.tx.us

¹¹ Of course, the federal government is involved in this area. The Bureau of Alcohol, Tobacco, Firearms and Explosives has agents along the border and has recently set up teams concentrating on the efforts of Mexican cartel operations to purchase guns in the United States and smuggle them into Mexico, primarily through Laredo. These teams will be set up in Dallas, Oklahoma City, Atlanta, Las Vegas and Miami as well as the border cities of Sierra Vista, Arizona and Brownsville. Article: "ATF setting up teams in Dallas, 6 other cities to stanch flow of guns to Mexico", September 21, 2010, Avi Selk, Dallas Morning News

¹² El Paso Times August 11, 2010, UTEP gets \$5 Million for Hunt Institute, by Ramon Bracomantes

¹³ See, e.g., "Phantom Jobs: The Texas Enterprise Fund's Broken Promises", *Watch Your Assets*, September 8, 2010.

¹⁴ One complaint that some in border counties have made is that the laws and regulations applying to them as a result of the colonias laws are different and more burdensome than laws applying to other jurisdictions which might also seek state financial aid. A task force conceived of by Representative Richard Raymond of this committee was appointed under his HB 2275 in the 81st Legislature to study the model subdivision rules and the variation in rules applying to subdivision development among the counties in Texas. The committee staff attended meetings of this task force and kept informed regarding the issued which it has addressed. The task force has published its report which can be found at the web site of the Texas Water Development Board.

¹⁵ See, TDHCA website-*office of colonia initiatives*

¹⁶ See, Secretary of State Report to the 82nd Legislature under SB 827, Dec. 1, 2010.

¹⁷ See, Report of the Task Force on Uniform County Subdivision Regulation