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**HOUSE COMMITTEE ON URBAN AFFAIRS  
TEXAS HOUSE OF REPRESENTATIVES  
INTERIM REPORT 2000**

**A REPORT TO THE  
HOUSE OF REPRESENTATIVES  
77TH TEXAS LEGISLATURE**

**BILL CARTER  
CHAIRMAN**

**COMMITTEE CLERK  
DONNA CHATHAM**

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Committee On  
Urban Affairs

November 28, 2000

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-Sixth Legislature hereby submits its interim report including recommendations and drafted legislation for consideration by the Seventy-Seventh 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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Ron Clark

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Al Edwards

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Harryette Ehrhardt

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Fred Hill

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Terri Hodge

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Manny Najera

Kevin Bailey  
Vice-Chairman

Members: Lon Burnam, Ron Clark, Al Edwards, Harryette Ehrhardt, Fred Hill, Terri Hodge, Manny Najera

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## INTRODUCTION

At the beginning of the 76th Legislature, the Honorable James E. "Pete" Laney, Speaker of the Texas House of Representatives, appointed eight members to the Committee on Urban Affairs. The committee membership included the following: Kevin Bailey, Vice-Chairman; members: Lon Burnam, Ron Clark, Al Edwards, Harryette Ehrhardt, Fred Hill, Terri Hodge, and Manny Najera.

During the interim, the Committee was assigned four charges by the Speaker: (1) Study the needs of volunteer departments and evaluate their capacity to fulfill their mission of protecting the public; (2) Review the data used by the Texas Department of Housing and Community Affairs to make decisions affecting affordable housing. Determine the adequacy of the data as it relates to the scope, timeliness, and accuracy of information; (3) Assess the advantages and disadvantages of manufactured housing as one means to alleviate affordable housing deficits; and (4) Conduct active oversight of the agencies under the committee's jurisdiction.

The Urban Affairs Committee has completed its hearings and investigation and issued a final report. The members approved all sections of the report.

The Committee wishes to express appreciation to the citizens who testified for their time and effort on behalf of the committee.

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**HOUSE COMMITTEE ON URBAN AFFAIRS**

**INTERIM STUDY CHARGES**

CHARGE Study the needs of volunteer departments, and evaluate their capacity to fulfill their mission of protecting the public.

CHARGE Review the data used by the Texas Department of Housing and Community Affairs to make decisions affecting affordable housing. Determine the adequacy of the data as it relates to the scope, timeliness, and accuracy of information.

CHARGE Assess the advantages and disadvantages of manufactured housing as one means to alleviate affordable housing deficits.

CHARGE Conduct active oversight of the agencies under the committee's jurisdiction.

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**VOLUNTEER FIREFIGHTER CHARGE**

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## BACKGROUND

In 1999, following the 76th Legislature, Regular Session, the Urban Affairs Committee was charged with studying the needs of volunteer departments and evaluating their capacity to fulfill their mission of protecting the public.

The volunteer firefighters provide a valuable service to millions of Texans. Since the early years of the Republic of Texas, volunteer firefighters have answered the call to protect their communities. Currently, volunteer firefighters outnumber the paid service two-to-one, with more than 37,000 volunteers providing fire protection throughout the State of Texas.<sup>1</sup> In addition, volunteer firefighters fight the majority of wildland fires, making them responsible for vast expanses of land in Texas' rural areas.<sup>2</sup>

The volunteer fire service saves Texas taxpayers millions of dollars annually. According to the Texas Forest Service (TFS), \$31 million is a conservative estimate of annual cost savings associated with the volunteer fire service.<sup>3</sup>

The volunteer fire service is currently experiencing growing pains. Each year, more and more, volunteers are called on to fight fires in suburban and rural areas. However, the number of volunteer firefighters is dwindling. Volunteer fire departments cite the need for additional funds for infrastructure, training, and benefits to enhance recruitment and retention in their ranks.



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## PUBLIC HEARING FINDINGS

Testimony on the volunteer firefighter charge was heard at public hearings held on June 13, 2000, July 11, 2000, August 30, 2000, and September 18, 2000.

The bulk of the testimony was given at the June 13th hearing, held in Waco during the annual state firefighter convention. The majority of testimony in Waco focused on the basic needs of the volunteer fire service. These needs include: training, financial resources to pay for equipment, training, fire stations, etc., and disability/death/pension benefits for members. Additional issues raised at the hearings included:

1. **RFPDs/ESDs Unable to Raise Sufficient Funds to Meet Fire Service Needs:** Several RFPD/ESD commissioners and volunteer firefighters testified that the current tax rate caps on ESDs/RFPDs limit their ability to provide adequate fire protection. Witnesses requested legislation to raise the taxing limits for RFPDs/ESDs and also to eliminate statutes which prohibit overlapping RFPDs and ESDs.
2. **RFPDs/ESDs Need More Flexibility with Long Term Debt Finance:** Mr. Ken Campbell testified that ESDs were limited to a five-year term for debt repayment. He said that this makes financing large-scale construction and capital projects very difficult. Mr. Campbell suggested raising the limit from five to twenty years.
3. **RFPDs and ESDs Need Ability to Merge/Exchange Territory through Interlocal Agreements:** Mr. Ken Campbell testified that the current requirements to merge territory between RFPDs and ESDs are burdensome. He requested that the Health and Safety Code requirements for RFPDs and ESDs be amended to streamline the transfer of territory between districts. He testified that more "efficient" boundary change procedures would provide for more effective and efficient provision of services and allocation of resources and suggested that the revised powers could contain certain safeguards to prevent municipalities from the unilateral removal of territory already within a district.
4. **RFPDs/ESDs Need the Power of Eminent Domain:** Mr. Ken Campbell testified that RFPDs and ESDs need the power of eminent domain in order to acquire land for fire stations and other large scale facilities. Mr. Campbell said that fire departments, especially in suburban areas, constantly face difficulties with acquiring appropriate land for their facilities at a reasonable cost. He suggested that the power of eminent domain would give these districts recourse in situations where an "unfair," above market rate is quoted for land that they wish to acquire.
5. **RFPD/ESD Annual Report Requirement Should Be Eliminated:** Testimony was submitted requesting the elimination of the RFPD/ESD annual report to the Texas Secretary of State.

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6. **Volunteer Fire Departments Do Not Have Funds to Provide Death/Disability Benefits:** Several witnesses testified that many volunteer departments, especially those in the rural areas, do not have the financial resources to provide death/disability coverage for their volunteers. In addition, they indicated that death/disability coverage was a lower priority to these departments than training or basic equipment.
  7. **Volunteer Firefighters Need Tort Protection:** Mr. Ken Campbell provided testimony that volunteer firefighters need protection from lawsuits while serving in their official capacity as a volunteer firefighter. Mr. Campbell emphasized that the change is very important, because a volunteer is left without any protection, while a paid employee and the employer, whether an emergency services organization, municipality, or a special district, are immune from tort claim. This means that an individual, just because he or she volunteers, can be held solely liable for an automobile accident or other tort claim, while all the other involved individuals or entities are immune under Chapter 101 and other statutes.
  8. **Volunteer Retention Difficult Due to Lack of Training and Benefits:** Several witnesses provided testimony on the difficulty of recruiting and retaining members in the volunteer fire service. Specifically, Mr. Fred Windisch, Harris County Fire Marshal, testified that retention was a growing problem due to scarce financial and training resources. Mr. Windisch suggested that training would alleviate some of the retention problems and that a minimal level of benefits (i.e., workers compensation) would assist in volunteer departments' attempts to recruit and retain firefighters.
  9. **County Contributions to RFPDs and ESDs Should Be Prohibited:** Comal County Commissioner Jay Millikin testified that he did not believe that counties should provide funds to RFPDs and ESDs. He suggested that this was a conflict because the county as a taxing entity was subsidizing another taxing entity in the RFPD/ESD. He did not request legislative action on this issue.
  10. **Coordinating with Texas Forest Service (TFS) on Wildland Fires:** Mr. Keith Lewis, Chief of Comal County RFPD #4, testified that mobilization of resources on wildland fires was difficult because of TFS bureaucracy. He believes that it is unnecessary for a DPS officer to come to a fire scene before air assistance can be authorized through TFS. Instead, he believes that the volunteer departments have sufficient skill to determine if air resources are necessary. Mr. Bobby Young from TFS responded by saying that the air resources are very expensive for the state and oftentimes come from other states or the national guard which require certain steps before deployment of the air resources.
  11. **Attorney General Opinion on Whether City Council Members Can Serve as Volunteer Firefighters:** Mr. Domingo Montalue, Wharton City Councilmember and volunteer firefighter, testified that a recent AG opinion involving the City of Gilmer could negatively affect volunteer firefighters throughout the state. The AG ruled that a member of the Gilmer City Council could not also be a member of the volunteer fire department because the department is authorized

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under city charter and the members meet the city definition of employee. The decision was based on the fact that members of the volunteer department were minimally compensated and that the city had control over the volunteer department because of the city charter. Mr. Ken Campbell, an attorney and volunteer firefighter, testified that this is a unique situation to Gilmer and that it should not universally apply to all volunteer firefighters who also serve on the City Council.

12. **IRS Treatment as Taxable Income Free City Services Provided To Volunteer Firefighters:** Mr. Montalue also expressed concerns that volunteers are required to pay income tax on free services, i.e., water, sewer, trash, that some cities provide as benefits for their volunteer firefighters. This is not a state issue. U.S. Congressman Ron Paul has filed a bill to address this issue.<sup>4</sup>

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## RESEARCH FINDINGS

Research into the volunteer fire service in Texas found very little good data on the number and capacity of volunteer fire departments. In fact, although several agencies offer services to the volunteers, none of them could provide the Committee with a list of departments or an accurate count of the number of volunteer firefighters in Texas. This provided a significant challenge to assessing the needs of the volunteer fire service.

Research was conducted on the programs available on the State and Federal levels for financing, benefits, and training for volunteer fire departments. The findings are detailed below:

### **Financing**

1. *Rural Fire Prevention Districts (RFPD)/Emergency Services Districts (ESD)*<sup>5</sup>: Rural Fire Prevention Districts (RFPD) and Emergency Services Districts (ESD) may be created to provide a dedicated funding source for volunteer firefighters. RFPDs and ESDs are authorized under the Health and Safety Code Chapters 794 and 775 respectively. *The process to establish the two types of districts is very similar.*

The Legislature authorized the creation of RFPDs in 1949 and significantly revamped the regulations in 1989. RFPDs may, at a maximum, levy a tax of three cents on each \$100 of the taxable value of property in the district. Exceptions are provided for Harris County which may tax up to five cents per \$100 valuation. The Legislature authorized the creation of ESDs in 1987. ESDs may, at a maximum, levy a tax of ten cents on each \$100 valuation. Exceptions are provided for Harris County. All taxes are subject to voter approval.

Under the law, RFPDs have the power to:

1. Acquire, purchase, hold, lease, manage, occupy, and sell real and personal property or an interest in property;
2. Enter into and perform necessary contracts;
3. Appoint and employ necessary officers, agents, and employees;
4. Sue and be sued;
5. Levy and enforce the collection of taxes as prescribed by Chapter 794;
6. Accept and receive donations;
7. Lease, own, maintain, operate, and provide fire engines and other necessary or proper fire equipment and machinery to prevent and extinguish fires in the District;
8. Lease, own, and maintain real property, improvements, and fixtures necessary to house, repair, and maintain fire protection equipment;
9. Contract with other entities, including other districts or municipalities to make fire fighting facilities, fire extinguishment services, and emergency rescue and ambulance services available to the district;
10. Contract with other entities, including other districts or municipalities for reciprocal

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- operation of services and facilities;
  11. Lease, own, maintain, operate, and provide emergency rescue equipment, and emergency ambulance service, and other necessary and proper equipment to prevent loss of life or serious personal injury from fire or other hazards; and
  12. Perform other acts necessary to carry out the intent of Chapter 794.

RFPDs and ESDs may be created in single- and multi-county jurisdictions. Procedures differ slightly under the two systems.

To create an RFPD citizens must follow seven steps:

1. *Petition:* A petition must be signed by 100 qualified voters who own taxable real property within the proposed district. The petition must contain an agreement signed by at least two petitioners that obligates them to pay not more than \$150 of the costs incident to the formation of the district. In a multi-county district, petitions must be received from 100 qualified voters in each of the affected counties.
2. *Approval by Affected Municipality:* If the proposed district contains territory in a municipality's limits or extraterritorial jurisdiction, approval is necessary from the municipality's governing body. If approval is not given, the municipality has a designated amount of time to provide service to the affected area. If the municipality does not begin service, the proposed district may be implemented, without city approval, after meeting certain administrative requirements.
3. *Filing of Petition and Notice of Hearing:* The petition must be filed with the Commissioners Court which sets the date for a public hearing.
4. *Hearing:* A public hearing must be held which follows notification guidelines contained in Sec. 794.015. In a multi-county district, this must be done in each county.
5. *Petition Approval by Commissioners Court:* After the public hearing, the Commissioners Court must approve or disprove the district. If approved, the Commissioners Court sets the election date. In a multi-county district, this must be done in each county.
6. *Election:* An election must be held in which a majority of voters approve the creation of the district. Guidelines for wording of the ballot language are provided in Sec. 794.018. In a multi-county district, county judges for each affected county must agree on and set the election date.
7. *Commissioners Court Order:* If the election is successful, the Commissioners Court must officially order the creation of the district with specific proclamation language provided in Sec. 794.019.

In a single-county district, the Commissioners Court appoints a five-member board of fire commissioners to serve as the district's governing board. In a multi-county district, the county judges set a date for an election where voters select the fire commissioners. Therefore, in a multi-county district, member-counties are not guaranteed representation on the governing

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board.

Commissioners serve two-year terms. The board is required to hold regular monthly meetings and other meetings as needed; to keep minutes and records of its acts and proceedings; to give reports required by the state fire marshal and other authorized persons; to submit an annual report on the district's administration to the Commissioners Court; and to administer the district according to guidelines in Chapter 794. Fire commissioners do not receive compensation but may be reimbursed for reasonable and necessary expenses while performing official duties.

*The most important difference between RFPDs and ESDs is the allowable rate of taxation. While RFPDs may tax up to 3 cents per \$100 property valuation, ESDs may tax up to 10 cents per \$100 property valuation. In the event that an area already has a RFPD but wishes to create a separate ESD, the ESD maximum taxation rate is reduced to 3 cents per \$100 valuation.*

Another key difference between the two types of districts is that ESDs may adopt a sales and use tax, upon election by the voters, at the rate of .5%, 1%, 1.5%, or 2%. Revenue from the sales and use tax may be used for any purpose allowed under the district guidelines. Only two Texas counties currently have a sales and use tax: Delta and Kimball. Both counties adopted a .5% rate.

According to 1998 data provided by the Comptroller, there are 126 RFPDs and 54 ESDs statewide (see Appendix A for full list of RFPDs/ESDs). However, these 180 tax districts exist in only 63 of the 254 counties in the state (24.8%). This is due to the fact that many counties (i.e., Harris) have multiple RFPDs and ESDs.

In addition, the 1998 revenues generated by RFPDs and ESDs varied greatly by county. The RFPD with the greatest revenue was Tarrant County RFPD (\$2,971,011), while the one with the least revenue was Pawnee RFPD in Bee County (\$2,966). Median revenue for RFPDs in 1998 was \$66,796. The ESD with the greatest revenue was Harris County ESD#9 (\$3,947,622), while the one with the least revenue was Delta County ESD#1 (\$5,087). Median revenue for ESDs in 1998 was \$235,959. Revenues are affected by the size of the taxing district, the amount of taxable property in the district, and the value of the taxable property.

2. *United States Department of Agriculture--Rural Development (USDA):* USDA provides funds to rural communities with populations of 20,000 or less. Funds are available through the Community Facilities Loans and Grants program (CF). \$199,000 in grant funds were spent in FY 2000, almost all of which went to the volunteer fire service. 90% of CF funds must be used for loans. Funds can be used to build fire stations and to acquire large fire equipment. A typical loan term will range from seven to ten years at an interest rate of roughly 5.8%, adjusted quarterly by Congress based on AMFI. The average loan is \$40,000-50,000. These funds are not exclusively for the fire service.<sup>6</sup>

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Mike Meehan, CF Loan Specialist with USDA Rural Development reported that \$5.8 million is available for Texas projects in FY 2000 of which only \$2 million has been expended.

Potentially, the department may have to return the remaining funds at the end of the federal fiscal year on October 1. Mr. Meehan said that returning the funds is not unusual, as projects vary from year to year and that a large surplus will not mean a reduced funding level for Texas in FY 2001. Mr. Meehan believes that a statewide debt service fund would help communities retire their debt and enable more rural areas to take advantage of the CF funds. He reported that volunteer departments that he speaks with cannot take on debt because they do not have a secure source to meet the debt service, unless they are in an RFPD/ESD or in a county which pledges to retire the loan.

Money is also available through USDA's Guaranteed Loan Program, however, rates are usually higher, as the loans are underwritten and interest rates are set by banks.

3. *Texas Commission on Fire Protection (TCFP)*<sup>7</sup>: The TCFP was created in 1991 to address three key aspects of fire prevention: prevention, suppression, and investigation. The TCFP's primary responsibilities are to establish minimum standards for education, training, and employment for firefighters; to certify *paid* firefighters and fire departments; to conduct fire and arson investigations and fire safety inspections; and to license and regulate the fire alarm, extinguisher, fire protection sprinklers, and fireworks industries.

The TCFP administers the Fire Department Emergency Grant/Loan Program which provides about \$1 million in annual emergency grants and loans to volunteer and paid fire departments. Statute requires that the funds be split 50/50 between rural and urban areas. Departments use the emergency funds to build stations, acquire trucks, equipment, clothing etc..., and pay for training for personnel. Staff reports that annual requests typically exceed \$5 million (five times the amount of funds available).

The primary duty of TCFP is to establish guidelines for and certify training of paid firefighters. The TCFP does not provide the training--it simply establishes the minimum standards. The training is usually done through Texas A&M. The TCFP provides guidance about and standards for volunteer fire fighter training certification. Volunteers may be certified by TCFP on a voluntary basis. This allows volunteers who wish to become paid firefighters to obtain the necessary training to move into the paid fire fighting sector.

In the early 1990's, legislation established a voluntary certification program for volunteer fire service personnel which is almost identical to the mandatory certification requirements of the paid fire service in Texas. There are some considerations allowed for volunteers in commission rules because of their special circumstances (i.e., training extended over a long period of time).

It is difficult for the commission to provide accurate numbers on how many volunteers are participating in TCFP-approved training programs. The best information that they are able to provide is that there are approximately 84 certified volunteer training facilities, 62 individuals

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participating in their phase program, and 302 certified volunteers.

There are two alternatives for a volunteer to receive the training necessary to become a certified fire fighter by the TCFP. One is through a commission certified training facility that offers, as a minimum, 468 hours of training in 31 different subjects. The commission's training regiment consists of either a combined Fire Fighter I and Fire Fighter II course or a five phase training program in which a volunteer can receive a recognition of training document at the completion of each phase. The combined Fire Fighter I and Fire Fighter II course has a state examination at the end of the training, and upon successfully passing the examination, the volunteer could apply for certification along with documentation of holding an Emergency Care Attendant (ECA) or higher certification through the Texas Department of Health (TDH). The five phase training program allows for a volunteer to test for Fire Fighter I after completing the fourth phase. Upon passing the Fire Fighter I exam and documenting ECA or higher certification through TDH, a volunteer would then be eligible to apply for an International Fire Service Accreditation Congress (IFSAC) seal for Fire Fighter I. Additionally, upon completion of the final fifth phase the volunteer could then test for Fire Fighter II. Upon passing the Fire Fighter II exam, the volunteer could apply for basic fire fighter certification and an IFSAC Fire Fighter II seal.

The other alternative is for a volunteer to receive an advanced fire fighter certification through the State Firemen's and Fire Marshals' Association (SFFMA). Upon documenting advanced SFFMA certification, the volunteer would then be eligible to take the commission's Fire Fighter I and Fire Fighter II combined state examination and become state certified after passing the examination. ECA or higher certification through TDH is also required for certification.

The training schedules for volunteers vary between departments. Some departments take an aggressive approach and finish the training requirements within a year or two. Other volunteer departments may only train two hours a week, which could take up to eight years to complete the training. One area that has been identified that slows the training process for volunteers is the influx of new members. Training coordinators/officers struggle with how to incorporate new members in an ongoing training program.

4. *Texas Forest Service (TFS)*<sup>8</sup>: The Texas Forest Service offers several training courses and provides the following programs for volunteer firefighters:

- *Federal Excess Personal Property*: Rural fire departments may “borrow” excess military equipment from the federal government. Due to federal regulations, the federal government maintains title to the equipment, however, the volunteer departments are given the equipment indefinitely. When equipment ages beyond usefulness, it is returned to the federal government for disposal.
- *Volunteer Fire Assistance Program*: Federal funds used for cost shares with eligible volunteer departments may be used to purchase trucks, slip-on units, and countywide



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communications systems. The cost-share rate is 50% of total cost not to exceed \$5,000.

- *Fire Safe Program:* TFS purchases protective clothing in volume and passes along the bulk purchase savings to fire departments serving communities of less than 10,000 population. Wildland fire equipment is also available through the program.
- *Dry Hydrant Cost Shares:* Any fire department is eligible for cost-share of purchases of materials and components to install dry or non-pressurized hydrant systems.
- *VFD Helping Hands Program:* TFS provides surplus fire equipment, SCBA's and other donated items to volunteer fire departments.
- *Volunteer Fire Department Motor Vehicle Self Insurance Program:* This program is only available to tax-exempt volunteer fire departments. The insurance program costs \$250/year and pays up to \$100,000 bodily injury per person not to exceed \$300,000 per occurrence and up to \$100,000 property damage per occurrence.

### **Death/Disability/Pension Benefits**

1. *U.S. Department of Justice--Office of Justice Programs (DOJ)<sup>9</sup>:* The U.S. Department of Justice through the Office of Justice Programs administers the Public Safety Officers' Benefits (PSOB) program. The PSOB was enacted in 1976 to assist in the recruitment and retention of law enforcement officers and firefighters.

The PSOB provides a one-time, lump-sum financial benefit to the eligible survivors of public safety officers whose deaths are the direct and proximate result of a traumatic injury sustained in the line of duty. The program also provides the same benefit to public safety officers who have been permanently and totally disabled by a catastrophic personal injury sustained in the line of duty, if that injury permanently prevents the officer from performing any gainful work. Each year, the benefit is adjusted to reflect the percentage change in the Consumer Price Index. In FY 1999, the benefit was \$143,943.

Volunteer firefighters are covered under the program if they are officially recognized or designated members of legally organized volunteer fire departments.

The Bureau of Justice Assistance also provides limited tuition assistance to children of deceased and disabled firefighters.

2. *Employee Retirement System of Texas (ERS)<sup>10</sup>:* The Employee Retirement System of Texas (ERS) provides death benefits for survivors of volunteer firefighters killed in the line of duty. This supplements the federal death benefit available to firefighters killed in the line of duty. The surviving spouse receives a lump-sum payment of \$50,000 with monthly benefits paid for minor

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children (\$200 for one, \$300 for two, \$400 for three or more). If there is no spouse or minor child, a surviving dependent parent or sibling may be eligible to receive the benefit. The funds for the program are from general revenue.

A Volunteer Fire Fighter is eligible for the death benefit if he or she is a member of an organized volunteer fire fighting unit which meets the following requirements outlined in Section 615.003 of the Local Government Code:

- Renders fire fighting services without remuneration;
- Consists of not fewer than twenty active members, a majority of whom are present at each meeting; and
- Conducts a minimum of two drills each month, each two hours long.

According to staff of ERS, departments with fatalities do not have difficulties meeting the above stated requirements.

3. *Texas Higher Education Coordinating Board*<sup>11</sup>: Children of disabled volunteer firefighters and surviving children of public servants who died in the line of duty are exempted from the payment of all dues, fees, and charges at state-funded colleges and universities. The volunteer firefighter's injury must have occurred in the line of duty and must be certified by a physician designated by the United States Social Security Administration. The certification is submitted to the Coordinating Board, Texas College and University System. The child must maintain a scholastic average in "good standing" and may be exempted for eight consecutive semesters excluding summer semesters.
4. *Private Foundation Death/Disability Benefits*<sup>12</sup>: Several private foundations provide benefits for surviving family of volunteer firefighters:
  - *Fleetwood Memorial Foundation*: The foundation serves as another possible source of financial assistance to certified Texas peace officers and fire protection personnel who incur an injury or death in the line of duty. The foundation's purpose is to provide virtually instant no-strings-attached grants of \$1,000 to \$5,000 to help meet unexpected expenses until insurance or more permanent sources of funds can be arranged. The foundation's executive committee evaluates aid requests based on need and circumstances and usually makes funding aid decisions within hours.
  - *National Fallen Firefighters Foundation*: The foundation provides "Senator Paul Sarbanes Scholarships" for college tuition for spouses and children of firefighters who have died in the line of duty.
5. *Firefighters Pension Commission (FFPC)*<sup>13</sup>: The FFPC, created in 1937 by the Legislature,

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established authority for locally-controlled fire department retirement funds for paid and volunteer firefighters. In 1989, the Legislature reauthorized the act and renamed it the Texas Local Firefighters' Retirement Act (TLFFRA).

Under the TLFFRA (Article 624.e. Vernon's Texas Civil Statutes), the FFPC provides technical and administrative support to locally-controlled pension funds. FFPC serves in an advisory role--the pension funds are NOT invested or managed by FFPC. FFPC efforts include assistance and education to local boards, legal opinions, maintenance of all personnel files related to the pension funds, audits of annual reports, and oversight of benefit amounts.

In 1977, the Legislature passed the Statewide Volunteer Firefighters' Retirement Act, which established a statewide pension fund for volunteer firefighters. The state does not provide funding for the system which is financed through contributions from participating local government entities. In 1997, the Legislature amended the act to include emergency medical services personnel and renamed it the Texas Statewide Emergency Services Retirement Act (TSESRA).

Under the TSESRA (Article 624e.3 Vernon's Texas Civil Statutes), the FFPC manages and administers a statewide retirement fund for emergency services personnel. FFPC bills and collects contributions, invests reserve funds, distributes monthly annuity checks, maintains personnel records, and recruits new departments. *Currently, 10% (160) of volunteer departments participate in the statewide pension fund.*

FFPC manages TSESRA which provides pension, disability and death benefits to participating members. Contributions are made by governmental bodies overseeing the volunteer firefighter departments. The minimum monthly contribution is \$12/member. After 5 years with a participating department, a member is vested and will receive partial retirement benefits at age 55. To receive full benefits, a member must provide 15 years of service. Additional benefits are provided for work in excess of 15 years. Monthly retirement benefits are equal to 6 times the contributing governing body's average monthly contribution over the member's term of qualified service. For example, a 15-year member whose department contributed the minimum of \$12 would receive a monthly benefit of \$72.

TSESRA also provides disability and death benefits to members. The minimum on-duty disability payment is \$300/month as long as the member is unable to perform his duties for the participating department and the duties of any other occupation for which the person is reasonably suited by education, training, and experience. The benefit increases in proportion to the amount of monthly contribution. There are no off-duty disability benefits. Beneficiaries of the on-duty death benefit receive a lump sum payment of \$60,000, 2/3 of the 15-year monthly pension benefit, and an additional 1/3 of the pension benefit to minor children. Beneficiaries of the off-duty death benefit receive a lump-sum payment of at least \$2,160 and 2/3 of the monthly pension benefit calculated from the date of death.

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## Training

1. *Texas A&M University--Texas Engineering Extension Service (TEEX)--Emergency Services Training Institute (ESTI)*<sup>14</sup>: In 1931, the Legislature authorized Texas A&M to provide a firemen's training school under Education Code 86.16. The code has been amended to include industrial fire training in the school's mission. The Emergency Services Training Institute (ESTI), a division of TEEX, administers the firefighter training program. ESTI provides on-site training at its fire school in College Station and also provides extension training at fire departments throughout the state.

In the Biennium 1998-99, Texas A&M trained 24,749 students from 237 Texas counties. These students included volunteer, municipal, and industrial firefighters who participated in 464,215 hours of training. The counties in which no firefighters were trained by A&M were the following: Borden, Concho, Edwards, Glasscock, Hudspeth, Irion, Kenedy, King, Loving, Marion, Mason, McMullen, Mills, Newton, Terrell, Throckmorton, and Zavala. ESTI reports that for every request for extension training filled, two are denied and that consistently, extension trainers are booked six months in advance.

Appropriations for the fire school are made through TEEX. There is not a line item for the fire school and there are not any performance measures which relate specifically to the fire school. Instead, the performance measures pertain to total number of public employees trained in all programs provided through TEEX and total number of industrial employees trained in TEEX programs.

In the 2000-2001 Biennium, TEEX received \$23,592,978 and \$23,594,006 respectively to meet Goal A: Provide Training. The amount in each biennium is split almost evenly between training for the public and industrial sectors. Listed outcomes are (1) percent increase in the number of employees trained in response to State mandated certification programs--targeted at 6%; and (2) percent increase in the number of industrial employees participating in training programs--targeted at 5%. Identified outputs are total number of individuals trained with 67,000 as the target for the public sector and 59,600 as the target for the industrial sector. Total appropriations for TEEX in the 2000-2001 Biennium were \$36,123,603 and \$38,124,640 respectively.<sup>15</sup>

Although TEEX has not submitted its official Legislative Appropriations Request (LAR) for the Biennium 2002-2003, the fire school submitted information to the Committee on a \$5.4 million exceptional item request for the fire school. The agency is requesting \$2.7 million in 2002 and 2003 for the following purposes:

- \$1.4 million for 3,500 scholarships to annual fire schools (Spring School, Emergency Response School, or Municipal School). This would cover the \$400 cost of training only. Meals and lodging would not be provided.

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- \$1 million for 8 additional extension instructor positions to provide on-location training for departments. The request includes salaries, travel expenses, training equipment, and vehicles.
  - \$300,000 for mobile training aids.

The request for additional training instructors states that the school currently trains over 15,000 volunteer firefighters and that the additional instructors would allow for training for an additional 12,000 volunteers annually. Performance measures for the exceptional item requests were not included in the information provided to the Committee.

ESTI reports that the annual cost to support the physical facility at the fire school and to pay for administration staff is \$6,000,000. Operating costs for the annual school are estimated at \$1,300,000. ESTI estimates that for every \$1 in general revenue received from the state ESTI leverages \$9 in federal funds and contract revenue. Year to date, ESTI reports that contract services, primarily through industrial fire service training, have generated \$7,715,157. ESTI has 102 FTEs of which ten are funded with general revenue.

2. *Texas Forest Service (TFS)*<sup>16</sup>: Although TEEEX provides the bulk of firefighter training in Texas, TFS serves as the primary source of training for wildland fires. TFS provides on-location training and also holds an annual school, the Texas Wildfire Academy, in conjunction with the U.S. Forest Service, the U.S. Fish and Wildlife Service, and the National Park Service.

In the 2000-2001 Biennium, TFS received \$27,938,947 and \$10,730,954 respectively for Goal A: Develop Forest Resources. This includes wildland training. An output of Goal A is number of contact hours of firefighter training which is targeted at 22,100 in 2000 and 23,500 in 2001.<sup>17</sup>

In FY 1999, TFS trained approximately 1,852 firefighters for a total of 24,289 hours of fire training. Of the 1,852, 90% were volunteers (1,667).<sup>18</sup>

3. *State Firemen's & Fire Marshals' Association of Texas*<sup>19</sup>: The State Firemen's & Fire Marshals' Association of Texas has a membership of over 18,000 members, serving both volunteer and paid fire departments in the State. Membership is made up of approximately 80% volunteer and 20% paid departments and members.

The Association provides a Certification Program for volunteers, co-sponsors Fire Training Schools at Texas A&M University, provides scholarships and vouchers for members to attend training classes, hosts an annual Training Conference and Convention, actively participates in the legislative process at the State and National level, nominates to the Governor for appointments to State Fire Service Boards and Commissions, provides an Industrial Fire Services Support, provides monthly publications for members, and hosts a fire service web site.

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4. *National Fire Academy (NFA)*<sup>20</sup>: The United States Fire Administration (USFA) provides training through the NFA. The NFA holds training throughout the year at its campus in Emmitsburg, MD. NFA training targets “middle- and top-level fire officers, fire service instructors, technical professionals, and representatives from allied professions.” NFA reports that many volunteer personnel do not have the time or resources to attend training at the Maryland campus. NFA also holds State Weekend training on-campus which are sponsored by a state fire training agency. These weekends are targeted at states which do not have adequate training resources and facilities and are designed to train firefighters with a minimum of three years experience.

NFA also offers a Regional Delivery program in conjunction with state training institutions. Two programs were held in Texas (Austin and Garland) during the week of July 17, 2000. In addition, NFA maintains a Train-The-Trainer program which targets specific firefighter personnel for expert training which, in turn, is passed on at the state and local level. Texas is not a participant in this program.

4. *Texas Department of Housing and Community Affairs (TDHCA)*<sup>21</sup>: TDHCA, through its Local Government Services division, provides technical support and training to counties that create Rural Fire Prevention Districts (RFPD). The division administers funds from general revenue designated for “local services.” Mr. Rudy Davila coordinates the program which provides assistance to fire departments which request aid in coordinating an RFPD election and training to a district’s five-member governing board. Mr. Davila provides ongoing support, advises the localities on how to build grassroots support, and ensures that localities abide by the statute. After a successful election, Mr. Davila provides voluntary board training and continues to advise the districts as needed.

Mr. Davila reported that he is overwhelmed by requests from localities interested in forming RFPDs. He is the only staff member assigned to support RFPDs and cannot meet the demand for training and advice due to time and travel budget constraints. Mr. Davila suggested that additional financial resources were needed to adequately assist localities with RFPD elections. He also recommended that the Legislature consider mandatory RFPD board training.

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## RECOMMENDATIONS TO THE 77TH LEGISLATURE

### Clean-up Legislation

The Committee recommends a clean-up bill to improve and make uniform the RFPD and ESD statutes. The clean-up bill should include the following provisions:

- **Expand Long Term Financing Ability of RFPDs/ESDs:** Currently RFPDs and ESDs have limited ability to finance the purchase of capital items and the construction of new facilities and equipment under the Health and Safety Code 775.085. This statute authorizes an RFPD/ESD board to secure a loan guaranteed with tax revenues, with unencumbered funds on-hand or with the equipment acquired with the borrowed money. If tax revenues are pledged, the law requires that the loan mature no later than five years from its execution.

The Committee recommends extending the maximum repayment period to ten years for capital items and twenty years for real property acquisition and facility construction.

- **Authorize “Validation Clause” to Ensure Ability of ESD to Incur Bond Debt:** Currently, ESDs have difficulties with gaining approval from the Attorney General on a bond issuance due to an inability to meet administrative requirements to provide documents authenticating the creation of the ESD. This has proven a cumbersome and detrimental process for ESDs that wish to incur debt through bonds.

The Committee recommends approval of a “savings” or “validation” clause which will eliminate the need for ESDs to provide creation documentation.

- **Revise ESD Statute to Ensure Conformity with State Statute on Bond Indebtedness:** The Committee recommends including in Health and Safety Code Chapters 794, 775, and 776 references to Government Code Chapter 1201 and 1207 to ensure the ESD statute conforms with other state bond statutes.
- **Allow RFPDs and ESDs to Merge/Exchange Territory through Interlocal Agreements:** The Committee recommends that the Health and Safety Code requirements for RFPDs and ESDs be amended to streamline the transfer of territory between districts and to allow districts to enter into Interlocal agreements to exchange territory.
- **Revise RFPD and ESD Statutes to Ensure Uniformity:** The Committee recommends that

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statutes authorizing RFPDs and ESDs be amended to make them more uniform.

### **Legislative Changes**

1. **Provide Tort Protection for Volunteer Firefighters in their Official Capacity:** The Committee recommends that the Texas Civil Practice and Remedies Code Section 78.001 be amended to ensure non-liability for volunteer firefighters in their official duties. The amendment will be modeled after provisions in Texas Civil Practices and Remedies Code Section 78.0532 pertaining to marine firefighters.
2. **Raise the Cap on RFPDs/ESDs:** The Committee recommends legislation to raise the cap on the tax levy for RFPDs and ESDs. This would require a Constitutional Amendment authorizing an increase in the cap for ESDs to \$.15 per \$100 valuation and for RFPDs to \$.10 per \$100 valuation.
3. **Allow ESDs and RFPDs to Levy Full Tax in Overlapping Areas:** The Committee recommends amending the Health and Safety Code 775.018(a-b) to allow an ESD to levy the full \$.10 regardless of whether any area of the district is also included within an RFPD. This would mean that an area with an overlapping RFPD and ESD could have a maximum combined tax rate of \$.13 per \$100 valuation, except Harris County which would have a combined tax rate of \$.15 per \$100 valuation.
4. **Allow ESDs to Overlap and Authorize Each to Levy Maximum Tax Rate:** The Committee recommends amending the Health and Safety Code 775.020 which expressly prohibits overlapping ESDs. This would mean that in the overlapping territory the maximum tax levy could be \$.20 per \$100 valuation (\$.10 going to each ESD).
5. **Restrict ESDs/RFPDs to a total of \$0.20 per \$100 Valuation:** Should any of the above recommendations #2-4 be enacted, the Committee recommends that the Health and Safety Code be amended to ensure that a property owner's total tax paid to his/her local RFPD(s) and/or ESD(s) may not exceed \$.20 per \$100 valuation.

### **Additional Funding Requests**

1. **Provide Additional Funds to Local Services Division at TDHCA to Coordinate and Provide Technical Support for RFPDs/ESDs:** The Committee recommends that additional funds be appropriated to the Local Services Division at TDHCA for 2 FTEs to assist with outreach to RFPDs and ESDs.



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2. **Provide Additional Funds to TEEX to Fund Satellite Training for Volunteer Firefighters:** The Committee recommends that additional funds be appropriated to TEEX to provide satellite dishes for volunteer departments. With an estimated 1,600 volunteer departments, the total cost of this program should be \$320,000.
  3. **Provide Additional Funding to the Texas Emergency Service Training Institute at Texas A&M to Support Mobile Training for Volunteer Firefighters:** The Committee recommends funding for eight (8) additional instructors and mobile training aids in order to train volunteer firefighters locally through the Texas Engineering Extension Service (TEEX).

### General Recommendations

1. **Encourage Departments to Use Design/Build Concept in Capital Projects:** The Committee encourages counties involved in the building of fire stations to utilize the Design-Build concept. This method ensures that the facilities will be erected within a few months, thereby eliminating the expensive “overruns” which often occur when the building of a facility takes years to accomplish.
2. **Encourage TDH to Develop a Rule to Allow Volunteers to Transport Victims if Ambulatory Care is Unavailable:** The Committee encourages the Texas Department of Health (TDH) to develop a rule which allows an EMS-certified volunteer firefighter, under the guidance of an MD, to transport a victim to a hospital in the event that ambulatory care is unavailable or the injury is life-threatening. The rule should include liability protections for the volunteer firefighters.
3. **Request An Accurately Count and Assessment of the Needs of Texas’ Volunteer Firefighters:** The Committee requests that the State Firemen’s and Fire Marshals’ Association (SFFMA), in conjunction with the Texas Commission on Fire Protection (TCFP) provide the Committee with a recommendation for a volunteer firefighter reporting system which includes enforcement provisions. The Committee also requests that the SFFMA and the TCFP assess the needs of the volunteer firefighters of Texas and report back to the Committee.

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**TDHCA DATA CHARGE**

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## BACKGROUND

In 1999, following the 76th Legislature, Regular Session, the Urban Affairs Committee was charged with reviewing the data used by the Texas Department of Housing and Community Affairs to make decisions affecting affordable housing and determine the adequacy of the data as it relates to the scope, timeliness, and accuracy of information.

The Texas Department of Housing and Community Affairs (TDHCA) mission is “To help Texans achieve an improved quality of life through the development of better communities”. This mission is sought to be accomplished through the administration of federal housing and community development programs, Low Income Housing Tax Credits, state bond programs and the State Housing Trust Fund.

As described in the planning documents below, the primary focus of TDHCA in the past has been on administering the funds that flow through the Department - those funds of which the Department has direct administrative control. The planning documents have evolved into being called “statewide” documents because the Department is the state agency that administers *some* of the federal housing and community development funds in the State.

TDHCA has six (6) planning documents. Listed below is a brief recap of each of these documents.

- **State Low Income Housing Plan and Annual Report (State Mandated)** - A *general* reference on statewide housing need, housing resources, and strategies for the funding allocations. It provides a *general* overview of statewide housing need, reviews the Department’s housing programs, current and future policies, and resource allocation plan to meet the State’ housing needs and reports on the Department’s performance in the previous fiscal year.
  
- **State of Texas Five Year Consolidated Plan (Federally Mandated)** - Developed with the “input of citizens and community groups, the Consolidated Plan serves four functions:
  1. Planning document for communities, built on public participation and input;
  2. Application for funds under HUD’s formula grant program, the Community Development block Grant (CDBG), the HOME program, Emergency Shelter Grants, and Housing for People with Aids (HOPWA);
  3. States local priorities and a three to five year implementation strategy; and
  4. In order to assure accountability of this plan, an annual action plan (discussed below) provides the basis for assessing performance of the Five Year Plan.

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The Five Year Consolidate Plan includes the following:

- Housing and homeless needs assessment - General overview;
  - Housing market analysis that describes concentrations of minorities and/or low-income families, shows the condition of housing units, inventories homeless facilities and describes barriers to affordable housing;
  - Strategic plan that includes priority needs and a strategy for addressing identified priorities, including economic development activities to create jobs and promote economic opportunity;
  - Action plan that is submitted annually and describes specific activities to be undertaken in the program year; and
  - Certification indicating that communities are following a citizen participation plan, affirmatively working towards fair housing, following an antidisplacements and relation plan, and other local requirements.
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- **State of Texas Consolidated Plan (Federally Mandated) - One Year Action Plan** reporting on the intended use of expected funds to be received by TDHCA from the U.S. Department of Housing and Urban Development (HUD) for each federal program year. This plan illustrates TDHCA's goals in addressing the priority needs and specific objectives identified in the Five Year Consolidated Plan.
  - **State of Texas Consolidated Plan Annual Performance Report (Federally Mandated) -** Contains a summary of resources and programmatic accomplishments for each of the four programs covered in the Five Year Consolidated Plan. It also contains narrative statements regarding various aspects of TDHCA's performance over the past program year, TDHCA's success in meeting each of the goals, and a qualitative analysis of TDHCA's action.
  - **Strategic Plan (State Mandated) -** Defines TDHCA's mission, philosophy, external/internal assessments, and goals and measures. It covers a five year fiscal period governing TDHCA's budget. The plan is tied to performance measures in the Legislative Appropriation Request.
  - **Program Guide -** A general guide to State and Federal Housing and Housing-Related programs in the State of Texas. Annual allocation amounts and funding cycles are not included for those agencies other than TDHCA.

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## FEDERAL AND STATE STATUTES

**Federal Statutes** - TDHCA is responsible in following all of the Department of Housing and Urban Development regulations regarding the federal funds they administer for the State of Texas.

**State Statutes** - Vernon's Texas Statutes and Government Code, Title 10, General Government, Subtitle G, Economic Development Programs Involving Both State and Local Governments, Chapter 2306, relates to the operations of the Texas Department of Housing and Community Affairs.

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## HEARING FINDINGS

Public Hearings were held on May 3, 2000 in Fort Worth, July 11, 2000 in Austin, August 30, 2000 in Austin, September 18, 2000 in Austin and October 9, 2000 in Austin on the data collected and used by the Texas Department of Housing and Community affairs and other interim charges. The hearing on June 13, 2000 were solely on the interim charge relating to Volunteer Firefighters.

Listed below are the major issues brought out in the aforementioned public hearings regarding TDHCA's data:

- Adopt the federal definitions of "housing need" and use the available US Census data to assess housing needs of different populations and regions in Texas.
- TDHCA should maintain an accurate, property structured master multifamily property database.
- TDHCA should develop a user friendly system to refer low-income families seeking housing to properties that have been funded by TDHCA.
- Require Participating Jurisdictions and Entitlement Communities to provide TDHCA with copies of their housing plans and annual performance reports as submitted to HUD.

Joint recommendations were made after a work session with TDHCA and the Texas Low Income Housing Information Service. (See Appendix B). The Joint recommendations were presented to the Committee at the Public Hearing on July 11, 2000.

Testimony was also taken by the Committee regarding the Sunset Recommendations as disclosed in the Research Findings of this Interim Charge. Testimony was taken on the need for a Regional Development Coordinator to assist in carrying out the Sunset Recommendations of regional plans and interacting more effectively with all the local "housing actors" and other federal/state agencies that administer affordable housing funds.

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## RESEARCH FINDINGS

TDHCA is currently under the Sunset review. In relation to the adequacy of TDHCA's data base, Sunset staff found:

- TDHCA does not have an accurate assessment of Texas' housing and community service needs and resources on which to base its funding decisions.
- TDHCA programs operate independently, precluding the strategic allocation and best use of housing funds.

The Sunset staff concluded that "the Department does not have an accurate assessment of the State's housing and community service needs and resources. This prevents it from structuring an equitable allocation system to fill funding gaps not met by other entities. The Department's housing funds do not consistently reach Texans with the greatest need, despite legislative mandates directing the Department to increase its assistance to needier Texans. The Department cannot strategically allocate housing funds to meet the most pressing needs as long as it operates its housing programs independently."

Sunset "identified several steps the agency could take to ensure its funds meet the most pressing needs. These recommendations included the Department to assess the statewide need for affordable housing and community support services by region, and would require the agency to set priorities that meet the great need. Creating a uniform application and funding cycle and allocating funds according to regional priorities would allow service providers to prepare proposals that use a variety of funding sources to best meet the needs of specific region than competing in independent, statewide allocations."

Sunset Recommendations in Issue 3, from the Sunset Commission Decision Material, includes:

*Change in Statute:*

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

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

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



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

*Management Action*

*3.5 Develop a system that encourages local housing providers to use innovate products and tools that best meet the housing needs in the region.<sup>22</sup>*

**Additional Research Findings**

Statewide studies have been conducted to show that Texas will double its population by the year 2030, with a large percentage of that increase being in the low to moderate income range.<sup>23</sup> The affordable housing need in Texas will be significantly impacted. With federal funding decreasing, the need for maximizing local, state, federal, public and private dollars is vital. Currently, we are only meeting approximately 3% of the total affordable housing need in Texas, even with combining all the federal funds coming into the State through entitlement cities, participating jurisdictions, USDA and TDHCA.

In order to meet his vast ever-increasing demand, TDHCA needs to broaden its scope and work intimately with the Entitlement Cities, Participating Jurisdictions, USDA, Community Development Corporations, Public Housing Authorities, Local Banks, etc., in order to leverage funds in a more comprehensive manner.

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## RECOMMENDATIONS TO THE 77TH LEGISLATURE

1. **In order to meet the vast ever-increasing affordable housing demand for the State of Texas, TDHCA needs to broaden its scope and work intimately with the Entitlement Cities, Participating Jurisdictions, USDA, Community Development Corporations, Public Housing Authorities, Local Banks, etc., in order to leverage funds in a more comprehensive manner.** The Committee recommends that a new position be created entitled *Regional Development Coordinator*. This new position was developed through a working group of TDHCA, USDA, Council of Governments, Texas Community Development Corporations, Texas Low Income Housing Information Service and Texas Rural Communities Foundation.

One Regional Development Coordinator would office in each of the 11 State Service Regions. The Coordinator will be responsible for working with local stakeholders (local governments, nonprofits, lending institutions, private sector, etc.) to develop strategies to address housing and community development needs in each region.

TDHCA has submitted seven (7) additional Full Time Employees (FTEs) in their exception item request. Alternative funding can also be sought through the Council of Governments, local funding sources, etc.

2. **Request TDHCA to report back to the Committee in April, 2001 on the implementation of the TDHCA/Texas Low Income Housing Information Service Joint Recommendations as reported to the Committee at the July 11, 2000 Public Hearing.** (Appendix B).

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**MANUFACTURED HOUSING CHARGE**

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## BACKGROUND

In 1999, following the 76th Legislature, Regular Session, the Urban Affairs Committee was charged with assessing the advantages and disadvantages of manufactured housing as one means to alleviate affordable housing deficits.

The manufactured housing industry has undergone major stages of development. In the first stage, they were referred to as “trailers” and were designed to be pulled by an automobile. In 1940 the U.S. Census Bureau placed trailers in the same class as railroad cars, tents, and shacks. During World War II, over 35,000 trailers were purchased by the Federal Government for military and defense housing. After the war, the housing shortage increased and trailer sales dramatically increased from \$10,000,000 nationwide sales in 1939 to \$248,000,000 nationwide in 1951.

In the mid-fifties, the second stage of development began with the rapid birth of designed trailer parks. “Trailers” became known as “mobile homes”. The height of the “mobile home” period was in 1973 when, in the U.S., 50 mobile homes were manufactured for every 100 site-built homes and, in Texas, 88 mobile homes were produced for every 100 site-built homes.

A third stage began with the 1973 recession and financial problems developed within the industry. Purchasers of mobile homes were often the first to be laid-off and many financial institutions had not been conservative in their lending policies. These financial problems resulted in defaults, repossessions and conservative lending policies. In the U.S., the number of mobile homes built in relation to every 100 site-built homes dropped from 50 in 1973 to 33 in 1977.

Since the recession of 1973, several factors have caused the industry to make steady gains in building and marketing a better product, thus instigating the 3rd stage of development. The implementation of HUD Federal Standards for construction and safety in June, 1976 ensured great quality control (sometimes referred to as the HUD Code). Bonding, now required by the Texas Mobile Home Standards Act, enables manufacturers and dealers to provide more responsible warranty service. The homes are no longer termed “mobile” but are referred to as “manufactured.”<sup>24</sup>

### **Definitions**<sup>25</sup>

According to the American Planning Association (APA) report, *Manufactured Housing*, Report Number 478, 1998, “Defining key terms and words in zoning ordinances serves to clarify and simplify the regulations. Local ordinance definitions of manufactured and other housing units built in a factory, however, continue to create confusion. Some state courts have overruled local regulations because of unclear definitions or because a critical distinction was not made between manufactured housing and

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other kinds of housing”. In a survey recently conducted by APA, it found that many communities continue to refer to manufactured homes, built since 1976 to the HUD Code, as mobile homes. A number of communities use the official designation, manufactured housing as a general term referring to all types of housing built in a factory.

**Mobile Home** - As defined in the National Mobile Home Construction and Safety Standard Act of 1974, “ a structure, transportable in one or more sections, which is eight body feet or more in width and is 32 feet in length, and which is built on a permanent chassis and designed to be used as a dwelling , with or without permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein.”

APA suggests that zoning ordinances should include a term that provides a *general classification* for homes built in a factory in addition to what types of factory-built housing.

**Factory-built housing** - A structure designed for long-term residential use. For the purpose of these regulations, factory-built housing consists of three types: modular, mobile homes and manufactured homes.

**Modular**- A structure for residential use and manufactured off-site in accord with the (local or state) BOCA Basic Building Code (i.e. panels that are brought in and assembled together on the residential site).

**Mobile Homes** - A residential dwelling that was fabricated in an off-site manufacturing facility, designed to be a permanent residence, built prior to enactment of the Federal Manufactured Home Construction and Safety Standards.

**Manufactured Homes** - A dwelling unit fabricated in an off-site manufacturing facility for installation or assembly at the building site, bearing a label certifying that it is built in compliance with the Federal Manufactured Housing Construction and Safety Standards Act of 1974.

**Manufactured Home Development** - A general category of development that includes manufactured home subdivisions and manufactured home communities (or land-lease communities).

**Land Lease Community** - A residential development typified by single ownership of the land within the development, with the landowner retaining the rights of ownership. Home sites within the community are leased to individual homeowners, who retain customary leasehold rights.

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**Manufactured Home Subdivision** - A subdivision designed and/or intended for the sale of lots for siting manufactured homes.

**Manufactured Housing Community** - Any piece of real property under single ownership or control for which the primary purpose is the placement of two or more manufactured homes for permanent residential dwellings and for the production of income. A manufactured housing community does not include real property used for the display and sale of manufactured units, nor does it include real property used for seasonal recreational purposes, as opposed to year-round occupancy.

**Texas Department of Housing and Community Affairs (TDHCA)<sup>26</sup>**

**Manufactured Housing Purpose**

- Only regulatory function within TDHCA.
- Ensure that manufactured homes are well constructed and installed properly.
- Ensure that customers are provided fair and effective remedies to titling, installation and warranty issues.

**Manufactured Housing Responsibilities**

- Issue titles, licenses, warranty orders and state seals.
- Train and license business applicants.
- Monitor bond, surety, and insurance documents.
- Record and release tax and mortgage liens.

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## FEDERAL AND STATE STATUTES

### **Federal Statutes: The Housing and Urban Development (HUD) Code relating to manufactured housing**

#### **History**

Just as site built homes are constructed according to a specific building code to ensure property design and safety, today's manufactured homes are constructed in accordance with the HUD Code. The U.S. Congress laid the foundation for the HUD Code in the National Manufactured Housing Construction and Safety Standards Act of 1974, which was enacted because of three inter-related reasons:

1. The interstate shipment of homes from the plant to the retailer to the home site meant that the manufactured (prior to the advent of the HUD Code) ordinarily did not know in advance which code would apply.
2. States were not able to effectively and uniformly regulate manufactured home construction and safety issues.
3. Congress wished to preserve access to affordable housing for middle and lower income families.

In its legislation, Congress directed HUD to establish appropriate manufactured home construction and safety standards that "...meet the highest standards of protection, taking into account existing state and local laws relating to manufactured home safety and construction."

Every HUD Code manufactured home is built in a factory, under controlled conditions, and has a special label affixed on the exterior of the home indicating that the home has been designed, constructed, tested and inspected to comply with the stringent federal standards set forth in the code. A manufactured home may not be shipped from the factory unless it complies with the HUD code and is released for shipment by an independent third party inspector certified by HUD.<sup>27</sup>

#### **What does the HUD Code regulate?**

The HUD Code is unique since it is specifically designed for compatibility with the factory process. Performance standards for heating, plumbing, air conditioning, thermal electrical systems are set in the code. In addition, performance requirements are established for structural design, construction fire safety, energy efficiency, and transportation from the factory to the customer's home site. The familiar red seal (the certification label) attached to the exterior of a manufactured home indicates that it has undergone and passed the inspection.

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### **Is the HUD Code less stringent than state or local building codes?**

The HUD Code is more performance based, while model codes such as the CABO One and Two Family Dwelling code, used by many state and local jurisdictions to regulate site-built housing, tend to be more prescriptive. Independent analyses and comparisons of the HUD and CABO Codes generally come to the conclusion that they are comparable in nature.<sup>28</sup>

As an overview, site-built housing is clearly subject to the widest variety of state and local codes relating to unit construction. Some of these are based on the One and Two Family Dwelling Code currently published by the International Code Council, while others are based on model codes that cover all types of buildings in addition to houses. The three other model building codes in common use are the National Building Code published by the Building Officials and Code Administrators International (BOCA), the Standard Building Code Congress International (SBCCI) and the Uniform Building Code (UBC) published by the International Conference of Building Officials (ICBO). Amendments to these model codes at the state or local level are common. Producers of modular homes usually must comply with a statewide code that is typically based on a major model code, possibly with a variety of state (but not local) amendments.

Finally, the federal Manufactured Home Construction and Safety Standards, developed by HUD, are applicable to all manufactured houses regardless of where in the U.S. they are produced or placed. These federal requirements pre-empt all state and local codes that might otherwise apply to design and construction of manufactured homes. This means that state and local governments may not regulate the design and construction of manufactured housing.

The HUD Code only slightly addresses ancillary issues related to site installation, utility connections, add-ons or modifications to manufactured homes, warranties, transportation, or siting approval. State or local regulations and codes, often based on the model codes for site-built housing, can address these issues. The result is a high degree of variation around the country in regulation of these activities, ranging from little or no regulation or enforcement to comprehensive state-wide systems.

In 1977 a comparison study of the HUD and CABO Codes by the University of Illinois Architecture-Building Research Council stated:

There are many similarities in these codes, along with minor differences of slight consequence and some differences of notable consequence. On balance, the codes are comparable.

While some areas of the CABO code are deemed “more restrictive” than the HUD Code in the University of Illinois study, there are also areas where the HUD Code is deemed more restrictive than the CABO Codes, such as in ventilation, flame spread, structural loads, window construction, vapor



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retarders and service wiring.<sup>29</sup>

### **HUD Code Change Process**

HUD is legally responsible for maintaining and revising the HUD Code, but substantive changes have been quite infrequent since the regulations were first published in 1975. Two private sector committees have suggested revisions to the HUD Code at various times in recent years, but few changes have resulted.

If HUD decides to initiate a revision to the standards, a draft of the proposed new language and supporting rationale is prepared by the HUD Office of Manufactured Housing and reviewed by the Office of Management and Budget (OMB). After OMB clears issuance of the proposal, the proposed changes are published in the Federal Register with a request for public comment. This overall rule making process typically takes two to three years, and legal challenges may follow.

*As of September 2000, there is a bill in Congress that would change this rule making process.* Currently in conference committee, Senate Bill 1452 and House Bill 1776, known as The Manufactured Housing Improvement Act, would “modernize the requirements under the National Manufactured Housing construction and Safety Standards Act of 1974 and establish a balanced consensus process for the development, revision, and interpretation of Federal construction and safety standards for manufactured housing.” Briefly, the bill would:

- Ensure that the HUD Building code & Regulations are updated on a timely basis through recommendations from a private sector consensus committee. The HUD Secretary will be required to accept, reject or modify any suggested change within one (1) year.
- Provide HUD with additional staff and resources through label fees paid by the manufactured housing industry. fee expenditures are subject to annual congressional appropriations review.
- Reserve the right on installation standards, licensing, training and inspection to the states. Program requirements are purposely broad to provide flexibility to the states, many of which already have programs containing the four required elements. States without any programs must act within five (5) years or a HUD based installation program will take jurisdiction.
- Establish a dispute resolution program to resolve consumer complaints during the second through fifth year of home ownership. The dispute resolution process may be established by the state or they may chose to sanction a program that meets the requirements.
- Facilitate the continued growth of the manufactured home industry providing an avenue for innovative affordable non-subsidized housing.
- Clarify the scope of federal preemption HUD Code to the state and local governments.

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## **State Statutes**

Listed in Appendix C-F are excerpts from the Texas Tax Code, Transportation Code, Finance Code and the Texas Manufactured Housing Standards Act of the various provisions that are applicable to manufactured housing. Some of the excerpts include:

- Property Tax Code Sec. 2.001 - A manufactured home is real property if it is permanently attached to real property, the manufacturer's certificate of title is surrendered for cancellation, and the certificate of attachment is filed in the county where the home is located.
- Texas Manufactured Housing Standards Act, Texas Civil Statutes Article 5221f, 4A - Upon application, the installation of HUD-code manufactured homes shall be permitted as residential dwellings in those areas determined appropriate by the city, including subdivisions, planned unit developments, single lots and rental communities and parks."

State law charges the Texas Department of Housing and Community Affairs with the regulation of the manufactured housing industry in Texas. It is the Department's responsibility to enforce the Texas Manufactured Standards Housing Act . Activities related to these responsibilities include:

- Issuing titles to homeowners;
- Issuing licenses to manufactured home installers, retailers, manufacturers, brokers, and sales persons and conducting related training;
- Handling consumer complaints; and
- Conducting investigations and inspections.

The scope of the Department's authority extends beyond ensuring the habitability of a manufactured home to regulation of some sales practices. For instance, the Department has regulatory authority over manufactured home retailers who extend credit or arrange for the extension of credit.

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## **HEARING FINDINGS**

Public Hearings were held on May 3, 2000 in Fort Worth, July 11, 2000 in Austin, August 30, 2000 in Austin, September 18, 2000 in Austin and October 9, 2000 in Austin on manufactured housing and other interim charges. The hearing on June 13, 2000 was solely on the interim charge relating to Volunteer Firefighters.

Listed below are issues brought out in the aforementioned public hearings:

- **Durability of Manufactured Housing**
  
- **Manufactured Housing Effect on Local Tax Base**
  
- **Financing for Manufactured Housing**
  
- **Appraising Manufactured Homes in Texas**
  
- **Manufactured Housing Rental Communities - Tenant/Landlord Relationship**
  
- **Impact on Local Community Services**

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## RESEARCH FINDINGS

### Who Lives in Manufactured Housing?

According to the 1997 American Housing Survey regarding manufactured homes<sup>30</sup>:

- The median number of rooms is 4.5
- The median number of bedrooms is .2.3
- The median square footage is 944
- The median lot size is .29 acres
- 80% are owner occupied
- 1979 is the median year of construction
- 67% are in groups of 1 to 6 homes
- 5% are in groups of 7 to 20 homes
- 28% are in groups of 21 or more
- 61% are in open space, park, woods, farm or ranch
- Median monthly housing cost is \$350 (including rental & owner units)
- 81% of owners pay less than \$49 for monthly real estate taxes
- Median value of residence is \$20,346
- 65% rate their opinion of their neighborhood 8 or higher (1-10 scale)
- 83% report streets within 300 feet need no or minor repair
- 26% have a garage or carport included with the home
- Median income for manufactured home owners in Texas is \$23,413, while in the nation for all households it was \$34,481. A larger percentage of manufactured households have income below \$40,000
- Employment status: 57% full time; 7% part time; 29% retired; 6% not employed
- Age: There is only 1 to 3 percentage points difference in all age ranges between the owners of manufactured housing and the owners of all homes. A larger percentage of manufactured homeowners are under 35 and between 55 and 74 than owners of other homes.

Although minority manufactured home ownership has increased significantly over the years, Caucasian ownership is still the largest segment representing 85% of manufactured home ownership, with African-American ownership at 7% and Hispanic at 6%.<sup>31</sup>

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The Research Division of the Texas Legislative Council developed the maps on the following pages from the 1980 and 1990 U.S. Census in order to show the placement and growth pattern of manufactured homes in Texas.<sup>32</sup>

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**Map here**

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**Map Here**

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**Map Here**



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## **Economics of Manufactured Housing**

According to a study conducted in April, 1999 by the Texas A & M Real Estate Center, price is the primary attraction of manufactured housing. In many cases, the manufactured home also may be less expensive than an older home of the same size, depending on location. The reasons for the difference includes:

- Manufactured homes are constructed in factories where mass production techniques and lack of weather and material supply problems reduce the cost of production.
- They are produced under a uniform nation-wide building code rather than a variety of local codes, some of which may require more costly materials and construction methods.
- The manufactured home market, because it is not specific to a given location and neighborhood, may be more competitive than that for new or used site-built homes.
- Manufactured homes are purchased differently than site-built homes. Most people purchase their unit off a retailer's lot and then transport it to the site to be installed. The site may be purchased or leased. If the owner of the unit also owns the site and the unit is permanently attached, the home may be legally converted into real estate. Until then, the unit is personal property.<sup>33</sup>

## **Impact of Manufactured Housing on Local Community Services**

Is it true that tax revenue from manufactured housing is less comparable than site-built homes and therefore will not be enough to offset the cost of additional local government services (e.g. schools, roads, sewers, etc.)? In the case of land-lease communities, the homeowners pay taxes on the house and the community owner pays property taxes on the land. Some community owners also pay taxes to the local government on the rental income derived from the community. Since most streets and utilities in land-lease communities are installed and maintained by the developer, local governments are spared the cost of installation and maintenance of this infrastructure.

The most recent study by the Foremost Insurance Company found that 64% of manufactured households do not have children under the age of 20. According to the U.S. Census, the average size of all households is 2.63 persons while the average size of manufactured home households is 2.51 persons.<sup>34</sup>

## **Appraisal of Manufactured Homes**

The State Comptroller's Office currently conducts a study once a year for each of the school districts in Texas. Within the study, the Comptroller's Office takes a sample of single family residential, multifamily

residential, commercial, etc. (Manufactured housing is grouped within the single family residential sample and is not “studied” separately from site built homes.) The Comptroller’s Office certifies a taxable value for every school district to the Texas Education Agency.

**Appreciation vs. Depreciation of Manufactured Homes**

Results from a survey taken of nearly 300 manufactured homes sold through real estate agents in the Dallas and Austin Multiple Listing Services are listed below. (For real estate licensees to legally sell manufactured homes, they must be permanently attached and converted to real property.)

As seen, resales of the smaller units (typical of single-wide manufactured homes) performed poorly compared to site-built homes. However, larger units did well, especially in the Austin market. Although these sales data are not adjusted to control for quality differences, “they provide limited evidence that manufactured homes of sufficient quality can be a sound investment and substitute for site-built homes.”

**APPRECIATION OF HOMES IN AUSTIN**

<b>Size of Home</b>	<b>Average Price per Square Foot, 1997</b>	<b>Average Price per Square Foot, 1998</b>	<b>Percent Difference</b>
<b>&lt; 1,000 sq. ft.</b>			
Site-built home	\$79.66	\$87.33	9.6
Manufactured home	\$40.72	\$37.15	-8.8
<b>1,000 - 1,999 sq. ft</b>			
Site-built home	\$67.87	\$71.48	5.3
Manufactured home	\$40.14	\$48.91	21.8
<b>All Home Sizes</b>			
Site-built home	\$69.56	\$73.05	5.0
Manufactured home	\$41.52	\$46.08	11.0

Source: Real Estate Center at Texas A & M University

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**APPRECIATION OF HOMES IN DALLAS**

Size of Home	Average Price per Square Foot, 1997	Average Price per Square Foot, 1998	Percent Difference
<b>&lt; 1,000 sq. ft</b>			
site-built home	\$48.47	\$40.20	-17.1
manufactured home	\$43.44	\$30.35	-30.2
<b>1,000 - 1,999 sq. ft</b>			
site-built home	\$57.37	\$61.16	6.6
manufactured home	\$36.13	\$38.34	6.1
<b>All Home Sizes</b>			
site-built home	\$56.95	\$60.64	6.5
manufactured home	\$37.07	\$37.35	.8

Source: Real Estate Center at Texas A & M University<sup>35</sup>

The savings, still significant for medium-size homes, are more than 30% in both Austin and Dallas. Again, “sales figures do not necessarily reflect units of like quality or location, other than size.” Source: Real Estate Center at Texas A & M University, Manufacturer’s Home Buyer Guide, 1999.

*Note: The above data was obtained from the LMS service. Manufactured homes have only recently been listed in the LMS, thus limiting the amount of base line data that can be obtained to compare the appreciation of manufactured homes to site-built homes.*

*Additional studies include:*

- 1986 Joint Center for Housing Studies of the Massachusetts Institute of Technology and Harvard University - in its analysis of a New Hampshire town without zoning restrictions for manufactured housing, the authors could find no statistically significant evidence that manufactured housing had any impact on adjacent site-built homes.<sup>36</sup>
- 1993 University of Michigan’s College of Architecture and Planning examined the impact of three Michigan manufactured home communities on adjacent residential property values and stated that in “all cases we reviewed, the adjacent residential property values showed substantial rates of appreciation that were similar to the appreciation of comparable non-adjacent properties.”<sup>37</sup>
- 1997 East Carolina University Department of Planning conducted a study to analyze the impact of both scattered manufactured housing and manufactured home communities on neighboring site-built homes in four North Carolina counties (Carteret, Henderson, Pitt and Wake). The author’s concluded that the “presence of manufactured home communities or individual manufactured homes had no impact on the property values of adjacent sit-built residential properties.”<sup>38</sup>

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### **Do manufactured homes appreciate in value?**

As with all housing, manufactured housing is subject to the same market factors which affect appreciation:

- The housing market in which the home is located;
- The community in which the home is located;
- The initial price paid for the home;
- The inflation rate;
- The availability and cost of community sites, which reflects the supply & demand influences on the home's value; and
- The extent of an organized resale network, where an organized network will usually result in homes selling for a higher price than in markets without such an organized network.<sup>39</sup>

### **Durability**

Manufactured units commonly are believed to be less durable and suffer greater depreciation than site-built homes. However, a series of studies conducted at the University of Michigan in 1994 indicates little difference in the durability and value retention of manufactured homes and site-built homes.<sup>40</sup>

Like any physical object, the performance of a manufactured unit depends on how well it was constructed and how well it is maintained. While all units must pass the HUD inspection standards, some are made with more durable materials and construction techniques. More expensive units will last longer and cause fewer problems than less expensive models.<sup>41</sup>

### **Financing Manufactured Housing**

Reflecting product improvement and growing consumer demand, today's buyer of both new and existing manufactured homes may choose from a wide array of financing options. Financial institutions offer an entire menu of lending programs. Home buyers may select loans with terms ranging up to 30 years. The house can be financed as personal property on leased land, in a manufactured home community or on a private site. Buyers who desire to acquire land in conjunction with the home can finance their purchase with a traditional real estate mortgage or with special land-home financing especially designed for manufactured homes.

In some cases, buyers financing their homes with land may find a mortgage lender that offers traditional mortgage financing. Fannie Mae and Freddie Mac, the primary secondary market sources for

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mortgage loans in the U.S., encourage this trend through their guidelines for accepting real estate mortgage loans secured by manufactured homes.

There is an active secondary market for personal property manufactured home loans and non-conforming real-estate loans as well. Sold as asset-backed securities, these loan pools are underwritten and marketed by Wall Street investment bankers like Merrily Lynch, CS First Boston, and Lehman Brothers. The Government National Mortgage Association, or Ginnie Mae, makes a secondary market in personal property manufactured home loans that are insured by the FHA or guaranteed by the VA.

### **Typical terms on conventional manufactured home loans**

New Homes: 5%-10% down payment; terms up to 30 years; loan balances up to \$150,000

Pre-Owned Homes: 5%-10% down payment; terms up to 5 years; loan balances up to \$60,000

Terms and conditions on FHA and VA loans are similar to those on conventional loans. Both FHA and VA require a 5% down payment and will allow loan terms as long as 20 (FHA) to 23 (VA) years. FHA limits maximum loan amounts to \$48,600 (home only) or \$64,800 (home and land). The FHA home and land loan limit is higher for high-cost areas. Local HUD offices have information on high-cost area loan limits.

A study conducted by Mahoney, Hugh and Peter Zorn entitled *1996 Mortgage Market Trends*, stated that in a majority (54 percent) of lower-income families making mortgage loan applications in Vermont in 1998 utilizing lenders specializing in manufactured housing. While these lenders are most willing to provide financing for relatively affordable manufactured and mobile homes, their loan terms often include significantly higher interest rates. Studies of national mortgage activity show that up to a third of borrowers taking out high cost subprime and manufactured loans could have qualified for lower cost mortgages. For a typical \$70,000 mortgage, the difference in cost between an 8 percent interest rate and an 11.5 percent interest rates is \$2,097 in the first year alone.<sup>42</sup>

Bankers often term the highest credit rating as Grade A Paper with the lowest and riskier clients having as low as Grade F Paper. During 1996-1998, a majority of the manufactured housing loans being approved were Grade B and below. According to the Texas lending institutions for manufactured housing, the default rate is high now due to the lending of Grade B and below during 1996-1998. Manufactured home sales may begin to go down in Texas due to repossessions coming back to the market.<sup>43</sup>

According to the Texas Department of Housing and Community Affairs (TDHCA), affordable housing site built homes are almost exclusively Grade A paper. According to TDHCA, Grade A paper could

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be easily made for manufactured housing consumers as well. The staff also stated that the default rate is the same for affordable housing site built as it is for higher priced homes.<sup>44</sup>

As of August, 2000, the Texas leading lending institutions for manufactured housing have their interest rates set at 14.7% for personal property. If the home is real property, the financing rate would be at 12.5%. This is compared to the existing site-built home interest rate at 8.5%.<sup>45</sup>

### **Veterans Land Board (VLB) Financing Manufactured Housing**

The VLB allows financing for manufactured housing under its conditions that the home be permanently affixed to a site-built permanent foundation; and be classified as real estate, and the mortgage must include both the factory-built home and its site and have a term of no more than a 30 year loan, nor more than the remaining life expectancy of the home; and the home must be eligible for high-ratio insured financing and be eligible for mortgage insurance. The homes also must be new and must not have been installed or occupied previously at any other sit or location. The VLB has further stipulations such as the kind of foundation support system, finished grade elevation, roof pitch, insulation of no less than R-11 in exterior walls and R-22 in ceilings and the home must have a minimum of 1,000 square feet.

According to the VLB, they have not tracked manufactured home financing as different from site built homes. However, the VLB believes they have only financed 5-6 manufactured homes to date and the loan default percentage is the same as for site built.

### **Federal Funds Available for Manufactured Homes Administered through TDHCA**

The financing, construction or rehabilitation of a manufactured home is allowable under programs administered by the Department related to single family housing: the First-Time Homebuyer Program, the Down-Payment Assistance Program, the Housing Trust Fund Program, the HOME Investment Partnership (HOME) Program and the Community Development Block Grant funded Housing Infrastructure Fund. The Housing Infrastructure Fund provides infrastructure support for the development of affordable housing; it was formerly called the Housing Demonstration Fund.

### **The Inspection System for Manufactured Homes**

The HUD enforcement system relies on a cooperative federal/state program to ensure compliance with the HUD Code.

*Design Approval Primary Inspection Agency (DAPIA)* - A state or private organization which evaluates and approves or disapproves manufactured home designs and quality control procedures. DAPIAs must be recognized and approved by HUD.

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*Production Inspection Primary Inspection Agency (IPIA)* - a state or private organization which evaluates the ability of manufactured home manufacturing plants to follow approved quality control procedures and provides ongoing surveillance of the manufacturing process. IPIAs must be approved by HUD. Organizations may act as either IPIAs, DAPIAs or both.

*State Administrative Agency (SAA)* - an agency of a State which has been approved or conditionally approved by HUD to carry out the State plan for enforcement of the manufactured housing standards in the HUD-Code. The Texas Department of Housing and Community Affairs (TDHCA) is the current SAA for Texas.

A “fully approved” SAA (in contrast to a “conditionally approved”) has the same enforcement authority as HUD. In order to become a fully approved SAA, the state authority must be empowered by state law to enter and inspect plants, impose penalties, require manufacturers to provide consumer notification of defects and make corrections, and review plans and provide information. TDHCA is the fully approved SAA for the State of Texas.

As of 1994, 21 states were fully approved, and 15 were conditionally approved to act as SAAs. Eleven states were acting as exclusive IPIAs and 3 other states were acting as non-exclusive IPIAs. The devolution of IPIA inspection responsibility to the states relieves HUD of some of the burden of oversight, but HUD still has overall monitoring responsibility.<sup>46</sup>

### **Local and State Growth Management Policies and How They Can Encourage Manufactured Housing**

Land use policies and ordinances encourage the siting and construction of affordable housing within their community through their comprehensive plans and zoning ordinances. Some examples of municipal zoning ordinances which could encourage manufactured housing while still maintaining local control include:

#### **Planned Unit Developments (PUD)**

- Usually involves land development of a larger undertaking such as a manufactured home community.
- Involves state-by-stage development over a period of time during which building arrangements, and uses may have to be replanned to meet the changes of requirements, financing, or even new concepts.
- Specific conditions under which the development will be allowed are often given to a PUD.

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- Some cases allow a mixture of uses - one or more residential types of residential plus sometimes commercial, community facilities and industry.
  - Offers a design freedom which is often not possible under a single lot - single building consideration. The locality still has control to put parameters on the design.
  - City may waive its conventional zoning in favor of a development plan patterned specifically to the characteristics of a large site- normally 100 acres or more.

### **Cluster Zoning**

Planning tool intended to reduce spread and gain greater amenity without appreciably changing overall density of the total area (Similar to PUD but not as extensive).<sup>47</sup>



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## RECOMMENDATIONS TO THE 77TH LEGISLATURE

1. **Appraisals** - Request the State Comptroller's Office to include in their annual study a separate sample of manufactured housing in school districts, in both urban and rural areas, to assure that adequate appraisal of manufactured housing is being conducted. Report results of study back to the Committee.
2. **The Texas Department of Housing and Community Affairs (TDHCA) currently regulates the manufactured housing retailers that extend credit or arrange for the extension of credit under Chapter 357, Texas Finance Code.**

Excerpts from the Texas Manufactured Housing Standards Act, Texas Civil Statutes, Article 5221f, Section 6e, details some of the areas TDHCA currently regulates:

- *It is unlawful for a retailer or broker to fail to comply with the requirements and provisions of the Texas Credit Code or the federal Truth-in-Lending Act or to advertise any interest rate or finance charge which is not expressed as an annual percentage rate.*
- *It is unlawful for a retailer to set forth in any retail installment sales contract or other credit document any down payment unless all of the down payment has actually been received by the retailer at the time of execution of the contract or document.*
- *It is unlawful for a retailer or a salesperson to aid or assist a consumer in preparing or providing false or misleading information on a document related to the purchase of financing of a manufactured homes or for a salesperson to submit information known to be a false or misleading to a credit underwriter or lending institution.*

**Encourage TDHCA to continue to work closely with the manufactured housing retailers as "creditors", as defined under Section 347.002 in the Texas Finance code, to encourage more in-depth self-regulation.**

3. **Request TDHCA to more actively provide education information regarding the use of federal funds that are applicable to the development of manufactured housing communities, along with the purchase and repair of manufactured homes. Some of the information to include:**

*In order to receive federal dollars for manufactured housing and to be eligible for a 30 year mortgage from the Federal National Mortgage Association, the following requirements need to be met:*

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- *A HUD-Code manufactured home has the meaning defined in Section 3, Article 5221f, Vernon's Texas Civil Statute.*
  - *The new HUD-Code manufactured home will be securely affixed to a permanent foundation, classified as real property under Section 2.001 Property Code.*
  - *The plans and specifications for the permanent foundation and other on-site construction are approved by the municipal building official or bear the seal of registered professional engineer.*
  - *Depending on the type of federal funds, there may be additional requirements.*

**Direct TDHCA to report back to the House Committee on Urban Affairs on their educational outreach programs and its results.**

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**OVERSIGHT CHARGE**

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## **OVERSIGHT ACTIVITIES**

In 1999, following the 76th Legislature, Regular Session, the Urban Affairs Committee was charged with conducting active oversight of the agencies under the committee's jurisdiction.

### **TEXAS STATE AFFORDABLE HOUSING CORPORATION (TSAHC)**

#### **Background**

The Texas State Affordable Housing Corporation (“TSAHC”) was initially established in 1994 to address (1) the loss of affordable multifamily properties being disposed of by the Resolution Trust Corporation, (2) the lack of affordable financing channels for single-family ownership and (3) the effects of unscrupulous colonia developers. With the change in Texas Governors and the resulting change in state agency executives, TSAHC’s direction was refocused on single family lending and TSAHC was developed into a non-profit mortgage bank and grant administrator for Texas Department of Housing and Community Affairs (“TDHCA”). The current President of TSAHC, seated in late January 2000, has refocused TSAHC’s direction toward (1) preserving affordable multifamily property, the current loss of which can primarily be attributed to expiring HUD subsidies, (2) the creation of new affordable multifamily property and (3) increasing the availability of single family housing finance through private lending institutions.

#### **Effects of Sunset Review/TSAHC’s New Business Plan**

In the midst of the conclusion drawn by the Texas Sunset Review staff that TSAHC should no longer be associated with the state because the activities performed during the period under review could have been performed by any willing entity without ties to the State of Texas, TSAHC developed and implemented a new plan of action that exercised the authority and power given to TSAHC by the 75<sup>th</sup> Texas Legislature. Chief among these powers, and the key to the thrust of the new plan, is the power to issue bonds for affordable housing statewide. The Texas Sunset Review Board, which met in June, reviewed TSAHC’s new plan and recommended that TSAHC be given a two-year probation in order to fully implement the plan and determine its effectiveness.

TSAHC is the only other entity besides TDHCA with the power to issue such bonds statewide. TSAHC’s new plan laid out a strategy to add to the existing resources and capacity of the State without diminishing Texas’ limited supply of tax exempt bond authority dedicated to housing.

TSAHC’s multifamily bond program is structured similarly to that of TDHCA and local housing finance corporations, however, TSAHC has elected to accept lower transaction fees in exchange for more substantial resident and community services to be provided by the property owner. Through these services, TSAHC hopes to educate the tenants and provide an avenue where they can transition from rental housing to home ownership. TSAHC only issues tax exempt bonds for 501(c)(3) non-profit owners. TSAHC’s capacity to issue tax exempt debt for non-profits is not governed by the State’s private activity bond cap, therefore the potential for acquiring existing multifamily properties or building new multifamily properties

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is limited only by the supply side of the economic model.

In consideration of local housing finance corporation's located throughout the State, TSAHC will only consider issuing bonds for a non-profit acquiring or building multifamily properties in multiple areas of the State that would otherwise require the approval and issuance by multiple local housing finance corporations. One exception to the rule is that TSAHC will consider issuing bonds for a single jurisdictional property if the local housing finance corporation concedes that they either have no interest or no capacity to issue the bonds and is not unreasonably opposed to the transaction. To date, TSAHC has induced four (4) transactions totaling approximately \$280 million representing, 5,951 units of housing. TSAHC anticipates its first multifamily bond closing by the end of January 2001.

TSAHC's single family bond program is focused entirely on low and very low income Home buyers. As defined by the Texas Administrative Code, low income and very low income Home buyers are defined as those households who earn no more than 80% and 60%, respectively, of the median family income. TSAHC's single family bond program, scheduled to close at the end of October, will provide about \$30 million in single family housing finance dollars over the next two years to Home buyers in 51 counties targeted for their economic similarities along the Texas/Mexico Border. TSAHC has required that no less than 55% of the funds be made available exclusively to very low income Home buyers. Based on the State's median income level, this would be a home buyer with a combined household income of \$28,560.00 or less.

The single family bond program is a taxable program rather than tax exempt due to the limited private activity bond authority dedicated to housing in Texas. As a taxable program, TSAHC adds to the available resources devoted to housing in Texas. Participating Home buyers will be required to accept an interest rate that is about 80 basis points or 8 tenths of one percent above the market rate of interest. In exchange, all Home buyers will receive 4% of down payment and closing cost assistance that can be used for any cost of closing including down payment and prepaid escrow reserves. TSAHC has dedicated an additional 3% to assist very low income Home buyers using recycled HOME dollars and its own excess revenues. While only 55% of the Home buyers are required to be very low income households, TSAHC hopes that 100% of the Home buyers will fall into that category and is willing to provide the additional financial assistance to all qualified Home buyers in order to meet what TSAHC believes is its state mandate.

Under the single family program, the down payment and closing cost assistance will be secured by a 10 year, non-amortizing, zero interest loan. If the home buyer remains the owner of the home for the full ten years, the subordinate lien will be forgiven in its entirety. Currently the program's approval is pending with the Texas Bond Review Board, but local support for the program has been strong with written letters of support coming from Senators Lucio, Zaffirini and Truan as well as Representatives Gallego, Pickett and Cuellar.

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TSAHC also performs limited direct lending for multifamily and single family buyers and has set a goal of 130 single family loans for financial year 2001 ending August 31, 2001.

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

### **The Texas Bootstrap Loan Program**

The 76th Texas Legislature created the Texas Bootstrap Loan Program to expand housing opportunities to low-income households through self-help, earmarking \$5.6 million in TDHCA appropriations over the biennium for this effort.

- In FY 2000, the Department awarded \$2.8 million to five of six applicants, who the Department certified as “nonprofit owner-builders.”
- The Department will make \$2.8 million available through the program for FY 2001. Department staff will make funding recommendations to its Board in December 2000.
- The USDA Rural Development has committed to match up to \$2.8 million for FY 2000-2001 to provide needed leveraging for the program.
- Not later than November 15th, 2000, the Department will deliver a report to certain members of the Legislature on the repayment history of owner-builders receiving home loans under this program.

### **Sunset Recommendations**

The Department has moved towards implementing various recommendations put forward by the Sunset Advisory Commission in May 2000. Sunset recommendations included the need for the Department to have greater public input in the Department policy and rule development process. Listed below are the Departments actions as of September, 2000:

- **SB 1112 Regional Allocation Formula:** On August 29, 2000 Department invited advocacy groups and other stakeholders to a question/answer session regarding the proposed regional allocation formulae to be applied to Department housing funds in accordance with SB 1112. The formulae were also open for review/comment at the August 30th Urban Affairs Committee hearing on August 30th and the Texas Association of Community Development Corporations' annual conference on September 18th. (See SB 1112 timeline for more details)
- **Low Income Housing Tax Credit (LIHTC) Program:** On September 18 and 19, 2000, the Department invited interested parties to discussion group sessions regarding the 2001 Qualified Allocation Plan. The input received will help the Department develop a draft Qualified Allocation Plan for 2001, which will be then put out for broader public comments and public hearings.
- **Exceptional Items Requests:** On September 5, 2000, the Department met with stakeholders to explain exceptional funding items the Department would include as part of its Legislative Appropriations Request, including two directly related to Sunset Advisory Commission recommendations.

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- **Section 8 Fair Housing Policy:** The Department formed a task force which included Department staff, advocacy groups, and housing tax credit developers to craft a policy that would ensure fair access by holders of Section 8 rental vouchers to rental developments financed through the LIHTC Program. The Department has taken public comment on this policy and is currently developing associated rules.
  - **Rider 3:** On October 4, 2000, the Department invited interested parties to a working session to discuss strategies to help the Department meet goals set in Rider 3 of the Department's appropriations. Rider 3 requires that the Department adopt a goal of directing \$30 million per year out of its housing finance funds to assist households at or below thirty percent of area median family income.

The Department is moving forward with a variety of other policy changes:

- At its October meeting, the TDHCA Board will consider a Department-wide policy regarding the use of deobligated funds in the Department's various programs.
- The Department is currently conducting a comprehensive community needs assessment survey for the State's Five-Year Consolidated Plan in order to obtain detailed need-based data at the local level. The Department will use the results of this survey as a foundation for a regional needs-assessment process as recommended by the Sunset Advisory Commission.
- As recommended by Sunset, the Department will be holding joint public hearings for its Qualified Allocation Plan (affecting LIHTC Program), the HUD-required Consolidated Plan (affecting CDBG, ESG, HOME, and HOPWA), the State Low Income Housing Plan and Annual Report, the Regional Allocation Formula, and the Community Services Block Grant Program.

### **SB 1112: Regional Allocation Formula**

#### **Background**

In 1999, the Texas Legislature passed SB 1112, which mandated TDHCA to allocate housing funds awarded after September 1, 2000 in the HOME, Housing Trust Fund, and Low Income Housing Tax Credit Program to each Uniform State Planning Region using a formula (developed by TDHCA) based on need for housing assistance.

Below is a timeline of the formula process:

- **June 18, 1999 — Governor signs SB 1112:** mandates that TDHCA is to allocate housing funds in the HOME, Housing Trust Fund, and Low Income Housing Tax Credit Program to each Uniform State Planning Region using formula based on need for housing assistance — effective September 1, 2000.
- **Jan. 24, 2000 — 2000 State of Texas Low Income Housing Plan and Annual Report Draft for Public Comment — Thirty (30) day public comment period begins.** Pages 164-

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172 illustrate housing need in each Uniform State Service Region as defined by the U.S. Census. Conducted eight (8) public hearings statewide. Sought public input on core components of affordable housing need.

- **February 29, 2000 — Office of Strategic Planning/Housing Resource Center staff meet with Dr. Steve Murdock, Texas A&M State Data Center.** Discussed Senate Bill 1112 and the core components of affordable housing need. Considered ways to provide updated housing need data using Data Center's 1999 population estimates.
- **March 17, 2000 — State of Texas Low Income Housing Plan and Annual Report submitted to the Governor, Lt. Governor, Speaker's Office, and members of the Legislature.** Plan adds worst case housing need to list of core components of affordable housing need for SB 1112 purposes.
- **May 23, 2000 — Agency staff met with Dr Murdock, Texas A&M State Data Center** to continue discussion on supply and demand issues surrounding affordable housing.
- **June, 2000 — Meeting with Texas Association of Regional Councils (TARC) and Texas Legislative Council** to discuss their involvement with the 2001 State of Texas Three Year Consolidated Plan — Community Needs Survey. This survey will be looked at as a possible additional data source for the regional formula.
- **July, 2000 — Meeting with Texas Housing Association, Texas Association of Community Development Corporations, Rural Rental Housing Association, Texas Association of Community Action Agencies, and others** to request their participation in the Community Needs Survey — This survey will be looked at as a possible additional data source for the regional formula.
- **August, 2000 — Finalized draft of Regional Need Based Allocation Formula (SB 1112)** — using the core components of affordable housing need, associate weight to each component and then developed a draft formula. Announce public hearing for proposed draft regional need based allocation formula.
- **August 29, 2000 — Meeting with interested parties regarding the proposed Allocation Formula** — Associations, advocates, and other interested parties were invited for a question and answer session regarding the proposed formula.
- **August 30, 2000 — Presentation of Finalized Formula at a House Committee on Urban Affairs Meeting** — the finalized version was submitted to the TDHCA oversight committee.
- **September 15, 2000 — TDHCA Board Public Hearing on the Finalized Formula** — The public was given the opportunity to make comment on the allocation formula.
- **October 24, 2000 — Texas Affiliation of Affordable Housing Providers Conference** — breakout session to discuss and explain the finalized formula.



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- **September/October 2000 — Continued public notification of the Finalized Formula —** The formula will be posted on the TDHCA web site, notification will be sent to interested parties, and notification will be posted in the Texas Register.
  - **November/December 2000 — Public Hearings to receive additional input.** Hearings on the Regional Allocation Formula will be part of a consolidated public hearings process including the Consolidated Plan, State of Texas Low Income Housing Plan, the Qualified Action Plan, and the Community Services Block Grant Plan. (Please note that the consolidation of these hearings is in response to the Sunset Advisory Commission's recommendation to consolidate all of TDHCA's various public hearings.)
  - **June 2001 through September 2003 — 2000 U.S. Census data is expected to be available.** After which additional housing analysis needs to be performed (e.g. need, population, low income population, different housing need, poverty statistics, etc.).
  - **Using 2000 Census Data expand upon future goals.** Analyze outcomes from SB 1112; calculate housing resources to housing need ratio; continue to measure and refine planning and supply analysis processes.

### **Formula**

The following criteria were submitted to the public in the 2000 State of Texas Low Income Housing Plan and Annual Report Draft for Public Comment as possible factors for the allocation formula:

- Population (current)
- Population growth (from 1990 to present)
- Number of extremely low income households
- Number of very low income households
- Number of low income households with excess housing cost burden (paying > 30 percent of gross income for housing costs)
- Number of low income households with severe housing cost burden (paying > 50 percent of gross income for housing costs)
- Number of low income households with 1+ housing problem (cost burden, over crowding, or substandard housing)
- Households with worst case housing need (unassisted renters with incomes below 50 percent of the are median income, who pay more than half of their income for rent or live in severely substandard housing)

Based upon public input, meetings with demographers, and various interim committee hearings in the spring of 1999, the following items were taken into account in the development of the regional allocation formula:

- The 1990 Census information is generally considered to be one of the most reliable sources of

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comprehensive and detailed housing data.

- As information from the 2000 Census and other sources becomes available the formula will need to be revised.
- As additional components of housing assistance need may become relevant to this formula, the formula will continue to be open for public comment through the State of Texas Low Income Housing Plan and Annual Report, as well as the Department's various public hearings.
- A report on the Department's allocation by region will be published annually in the State of Texas Low Income Housing Plan and Annual Report.
- At the direction of the Texas Legislature, population alone was not used as criteria for this formula.
- In response to the direction of the Texas Legislature, with respect to not funding Participating Jurisdictions with HOME funds, two formulas were developed: one for the statewide programs (LIHTC and HTF) and another for the rural program (HOME — with PJ figures pulled out).

In an effort to serve those populations most in need of TDHCA's services, the following criteria has been determined to be the best measure of housing need for use in the regional allocation formula (Note: Worst Case Housing Need is the standard used by HUD as a benchmark to determine housing need -- factors 1 and 2 added together):

1. Unassisted renters with incomes below 50 percent of the area median income, who pay more than half of their income for housing costs.
2. Households (renter and owner) with incomes below 50 percent of the area median income that live in severely substandard housing.
3. Percent of the State's population in poverty.

The Department believes that these factors correlate directly to the Department's goals and objectives and subsequent activities that have been developed to address these goals and objectives. Specifically the following is addressed:

- **Severe housing cost burden on very low income renters:** rental assistance, affordable multifamily development, and in some cases homeownership initiatives with down payment assistance.
- **Substandard and dilapidated housing stock occupied by very low income renters and owners:** owner occupied rehabilitation and preservation issues with regards to multifamily properties.
- **Poverty:** focusing on those most in need of TDHCA services, as well as an attempt to account for any undercounted of populations by the 1990 Census.

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**APPENDIX A**

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**APPENDIX B**

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**APPENDIX C**

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**APPENDIX D**

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**APPENDIX E**

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**APPENDIX F**

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## ENDNOTES

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