

**HOUSE COMMITTEE ON LAND AND RESOURCE MANAGEMENT
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2004**

**A REPORT TO THE
HOUSE OF REPRESENTATIVES
79TH TEXAS LEGISLATURE**

**REPRESENTATIVE ANNA MOWERY
CHAIRMAN**

**COMMITTEE CLERK
TREY BURKE**



Committee On
Land and Resource Management

December 13, 2004

Representative Anna Mowery
Chairman


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

The Honorable Tom Craddick
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 Land and Resource Management of the Seventy-Eighth Legislature hereby submits its interim report including recommendations and drafted legislation for consideration by the Seventy-ninth Legislature.

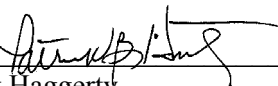
Respectfully submitted,




Anna Mowery, Chairman



Jesse Jones, Vice-Chairman



Pat Haggerty



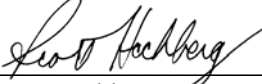
Charlie Howard



Ryan Guillen

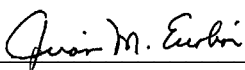


Joe Pickett



Scott Hochberg

Rick Noriega



Juan Escobar

Note

Representative Noriega was unable to sign this report because he did not participate in any of the hearings while on active duty with the US Army in Afghanistan since June 2004.

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INTRODUCTION

At the beginning of the 78th Legislature, the Honorable Tom Craddick, Speaker of the Texas House of Representatives, appointed nine members to the House Committee on Land and Resource Management. The Committee membership included the following: Chairman Anna Mowery, Vice-Chairman Jesse Jones, Charlie Howard, Pat Haggerty, Scott Hochberg, Rick Noriega, Joe Pickett, Ryan Guillen, and Juan Escobar.

Pursuant to House Rule 3, Section 21, the Committee has jurisdiction over all matters pertaining to:

- (1) The management of public lands;
- (2) The power of eminent domain;
- (3) Annexation, zoning, and other governmental regulation of land use;
- (4) Problems and issues particularly affecting rural areas of the state; and
- (5) The following state agencies: the School Land Board, the Board for Lease of University Lands, the Coastal Coordination Council, the Office of Rural Community Affairs, and the General Land Office.

HOUSE COMMITTEE ON LAND AND RESOURCE MANAGEMENT

INTERIM STUDY CHARGES

During the interim, Speaker Craddick charged the Committee with the following issues:

- CHARGE “Examine the effect that the changes made by SB 89, 76th Legislature, have had on the annexation process in the state and determine if any further changes to the law need to be made.”
- CHARGE “Evaluate need and possible strategies for a stable, long-term funding source for coastal hazard mitigation and the coastal erosion program at the General Land Office.”
- CHARGE “Evaluate necessity of and potential state, local and private funding mechanisms for a purchase of development rights program in the state.”
- CHARGE "Monitor agencies and programs under the committee's jurisdiction."

Each charge was studied by the Committee as a whole.

The Committee has concluded its hearings and research and issued the following report.

CHARGE 1

“Examine the effect that the changes made by SB 89, 76th Legislature, have had on the annexation process in the state and determine if any further changes to the law need to be made.”

EFFECT OF CHANGES MADE BY SENATE BILL 89 (76TH LEGISLATURE)

INTERIM CHARGE

“Examine the effect that the changes made by SB 89, 76th Legislature, have had on the annexation process in the state and determine if any further changes to the law need to be made.”

BACKGROUND

Municipal annexation is the process by which municipalities can extend their corporate boundaries. The authority of municipalities to extend their boundaries has changed several times during the past century. Prior to 1912, any municipal annexation required approval by the state legislature. With a 1912 amendment to the Texas Constitution, home rule cities were authorized to take any action not in violation of the constitution or the laws of the state. Such power included the authority to annex unincorporated areas. In 1963, the legislature passed the Municipal Annexation Act of 1963 (Act), which for the first time established procedures for annexations and is the basis of our current law.

In 1999 the Texas Legislature adopted S.B. 89 amending the Act, which is contained in Chapter 43 of the Texas Local Government Code. Under the Act municipalities may unilaterally annex areas outside of their corporate limits regardless of what the inhabitants in the unincorporated areas desire. The amendments made to the Act by S.B. 89 were an attempt to grant greater protection to those people in unincorporated areas that municipalities propose to annex. Among other protections for annexations not exempted from the Act, S.B. 89 provides for the following:

- 1) Municipalities must adopt an annexation plan as a prerequisite to annexing areas;
- 2) Municipalities are required to complete certain procedural steps in order to ensure that any newly annexed area is provided with adequate services (inventory of current services in area, create a service plan, conduct two public hearings);
- 3) Municipalities must wait three years to annex an area after it is put in the annexation plan; and,
- 4) The Act provides for disannexation procedures if services are not provided.

A different set of procedures apply to annexations that are not required to be included in an annexation plan. Annexations are exempt from inclusion in a plan (and the procedural requirements) under the following circumstances:

- 1) The area contains fewer than 100 separate tracts of land on which one or more residential dwellings are located on each tract;
- 2) The area will be annexed by petition of more than 50% of the real property owners in

the area proposed for annexation;

- 3) The area is or has been the subject of an industrial district contract or a strategic partnership agreement;
- 4) The area is located in a colonia;
- 5) The area is less than 1,000 feet wide and is annexed in connection with a boundary adjustment with an adjacent city;
- 6) The area is located completely within the boundaries of a closed military installation; or,
- 7) The City determines that the annexation is necessary to protect the area proposed for annexation or the City from imminent destruction of property or injury to persons, or nuisance.

Exempted annexations do not have to be put into a three-year annexation plan, do not require that an inventory be completed, and can be completed within 90 days of institution of proceedings (rather than 3 years).

Among other protections for annexations that are exempted from the Act, S.B. 89 provides for the following:

- 1) Municipalities must hold two public hearings; and,
- 2) Municipalities must provide services.

SUMMARY OF TESTIMONY FROM PUBLIC HEARING

The Full Committee heard testimony in Austin during a scheduled public hearing on August 26th, 2004. Those who testified were:

August 26th, 2004, in Austin Texas

For (no changes to S.B. 89):

Cosentino, Michael (City of Bryan, Texas)
Jeffers, James (City of Nacogdoches, Texas)
Le Blanc, Burley, Jelynne (City of San Antonio, Texas)
Pollard, Missy (City of Cedar Park, Texas)
Shepherd, Jim (Self and Collin County, Texas, Parker County, Texas, Shady Grove, Texas)
Vining, Joseph (City of Round Rock, Texas)

Against (desire changes to S.B. 89):

Hobbs, Darla (Self and Citizens Against Forced Annexation)

Hobbs, Robert (Self and Citizens Against Forced Annexation)
Measures, Jim Bob (Self and Citizens Against Forced Annexation)
Measures, Kate (Self)
Small, Ed (Self and Texas and Southwestern Cattle Raisers)

Registering, but not testifying for:

Igo, Shanna (Texas Municipal League)

CONTROVERSY

Municipal annexations have become controversial in many areas of the state over the past decade. Municipalities maintain that they must have this universal authority in order to control the orderly growth both within and outside their corporate boundaries. Opponents, on the other hand, believe that they should have a say in whether they live in a municipality or not.

Proponents of Not Changing the Provisions of S.B. 89

Proponents of S.B. 89, and the current annexation scheme, admit that annexing people who do not wish to be annexed is a difficult choice for municipal leaders. Nevertheless, they argue that such authority is vital to the health of any municipality. Proponents make the following arguments in support of their desire for unilateral annexation authority:

- 1) Annexation authority is vital to the economic survival of most Texas municipalities. Without such authority there is a strong likelihood of urban decay.

In "The Impact of Overly Restrictive Annexation Policy on Economic Activity in Texas and Its Metropolitan Regions," (a report prepared by the Perryman Group in 2003 for the Texas Municipal League), the following conclusion is reached:

"The inability to expand in an unfettered manner creates a situation of marked failure in that the emerging growth areas are not required to pay the full social costs of the expansion. . . . The result is a perpetual deterioration on the sustainability of the core of the area, which in turn accelerates flight to outlying areas."

Proponents explain that many people living outside of the corporate limits of the municipality often work and shop in the city, thereby using its infrastructure and services without paying for them through ad valorem property taxation. They explain that this is an equity issue that only annexation can address.

Proponents also argue that those within the municipality who can afford to move into an unincorporated area will do so to avoid paying ad valorem property taxes and to escape from the problems created by a declining urban area.

- 2) Annexation authority is important to ensure orderly growth and development of the

municipality.

Currently, counties have limited authority to regulate land use. As a result, the proponents argue that many incompatible land uses and substandard development occur in the areas outside their corporate boundaries that result in health, safety, and environmental dangers. They argue that this can result in urban sprawl that can result in traffic and air quality problems, just to name two. They explain that this causes problems for entire regions of the state.

- 3) If an election were required prior to any annexation it would be too costly for the municipality. The municipality would have to spend a lot of money to educate the public about the benefits and necessity of annexation.
- 4) The provisions of S.B. 89 are too new to see how they will work in practice. Therefore, changing them would be inappropriate at this time.
- 5) Municipalities do not ask the state for very much money to provide services and infrastructure to large regions of the state but only ask not to have their ability to generate income through annexation eroded. If they were not able to expand their tax base they would have to look to the state government to finance their workings.

Opponents of Not Changing the Provisions of S.B. 89

Opponents make the following arguments in support of their desire for unilateral annexation authority:

- 1) People who live in the unincorporated areas adjacent to municipalities purposefully chose to live there instead of within the corporate boundaries of the municipality.

These people consider it almost a fundamental right to choose where they live and under what governmental authority they are controlled by.

Many of these people do not want to be burdened by the oftentimes extensive and detailed sets of regulations created by municipalities.

Many elderly and poorer people simply can not afford to pay the taxes that a municipality would impose on them.
- 2) Unilateral annexation grants all authority in the matter to the municipalities and leaves the people to be annexed at the mercy of a city council whom they have not elected.
- 3) People who live in unincorporated areas are generally satisfied with the services they are provided and fear that if they are annexed city services will be cut too thin and will result in a decline in services.
- 4) Opponents of the current annexation law argue that municipal residents suffer when

annexations take place. They explain that if no new services are added, then the existing services must take care of more people over a greater area.

- 5) Municipalities are not interested in protecting the health and safety of the area but are concerned with making a tax base grab.
- 6) If services are not provided following annexation, or if the annexation is done illegally, those people that were affected by the annexation have little practical recourse.

If a municipality fails to provide services to the affected area within the allotted time, the only recourse for the citizen is to sue in district court. The cost of bringing suit in district court is generally prohibitive in cases such as these.

If a municipality illegally annexes an area, there is no provision in current law for a citizen to bring suit. The suit must be brought by an elected official as a quo warranto petition to force the municipality to act in accordance with the law. Oftentimes these officials are unwilling to bring such an action.

RECOMMENDATIONS

- 1) The legislature must continue to look at the fundamental question of whether people should have a say in whether they are brought into a municipality without a meaningful voice in the matter.
- 2) The legislature should examine how best to ensure that citizens have meaningful recourse when annexations are performed illegally or when services are not provided in an appropriate time. Currently, it is cost prohibitive for citizens to take these matters to district court. The legislature could consider extending the jurisdiction of small claims courts to such matters.
- 3) The legislature should examine whether the exceptions to the general procedural requirements found in Section 43.052(h), Texas Local Government Code, are too broad. The purpose of S.B. 89 was to ensure that affected people have a voice in the process. Currently, if these residents are annexed under one of the exceptions their voice is muted.
- 4) The legislature should examine whether an enforcement measure should be put in place to require service providers in an area to be annexed to timely and universally prepare inventories for both the annexing municipality and the people who will be affected by it.

CHARGE 2

“Evaluate need and possible strategies for a stable, long-term funding source for coastal hazard mitigation and the coastal erosion program at the General Land Office.”

FUNDING FOR COASTAL MITIGATION AND COASTAL EROSION PROGRAMS

INTERIM CHARGE

“Evaluate need and possible strategies for a stable, long-term funding source for coastal hazard mitigation and the coastal erosion program at the General Land Office.”

BACKGROUND

The Texas coast suffers from one of the highest rates of coastal erosion in the country. The need for healthy, full beaches is necessary for maintaining wildlife, protecting homes along the shore, and the encouragement of tourism, which many coastal communities depend upon for their tax base.

In light of this problem, the Texas Legislature enacted the Coastal Erosion and Response Act (CEPRA) in 1999 in an effort to assist the General Land Office (GLO) in protection of the state's coastal areas. CEPRA calls for the funding of beach nourishment projects with a mix of state and local funds. The creation of this partnership also allows for federal funds to be attained from various agencies, including the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers. CEPRA funds consist of General Revenue appropriated by the legislature and interest accrued on the Oil-Spill Account.

For potential project partners proposing erosion response projects or studies for beach nourishment projects on a public beach or bay shore, a 25% minimum match is required. For marsh restoration projects, bay shoreline protection projects other than beach nourishment, or any other coastal erosion response study or project, a 40% minimum match is required. The exception to the project partner cost-sharing match requirement relates to proposed large-scale beach nourishment projects on a public beach each biennium. The Land Commissioner may select one such project that will not require a project partner match. The cost of such a project cannot exceed one-third of the total biennial appropriation to the CEPRA program.

The program is now in its third funding cycle. During the first two cycles, starting in 1999, \$15 million was appropriated out of General Revenue for each biennium. The \$30 million that was appropriated was able to fund 75 projects. Because of budgetary constraints during the previous biennium, only \$7.32 million was appropriated. As a result, only 20 of 77 projects could be funded.

Cycle 1 and 2 Projects (various programs along the beach including beach renourishment, marsh land protection, shoreline protection through the use of artificial means, and vegetative planting, to name a few).

The following are just some of the projects completed during the first two cycles:

- 1) Cycle 1. Corpus Christi Beach was the location of a beach nourishment program

where sand-quality modifications were made.

- 2) Cycle 1. Bessie Heights, in Orange County is the location of the largest area of contiguous wetland loss in Texas. The project was a partnership between the GLO, Texas Parks and Wildlife Department, U.S. Fish and Wildlife Service, and local conservation groups to restore this marsh habitat by creating 220 acres of open-grid terraces to restore and protect marsh vegetation.
- 3) Cycle 2. A public beach on Aransas Bay in Rockport restored approximately 2,000 feet of bay beach for recreational use by park visitors. The project was carried over into Cycle 3, and was completed in February 2004.

SUMMARY OF TESTIMONY FROM PUBLIC HEARING

The Full Committee heard testimony in Austin during a scheduled public hearing on August 25th, 2004. Those who testified were:

August 25th, 2004, in Austin Texas

For:

Baker, Martin (Galveston County Erosion Task Force)
Johnson, John (Jefferson County)
Mohn, Jerry (West Galveston Island Property Owners Association)
Neal, Loyd (City of Corpus Christi)
Neblett, Georgia (City of Port Aransas)
Pearson, Todd (City of Rockport)
Pickett, Ellis (Surfrider Foundation Texas Chapter)
Pinkerton, Robert (Town of South Padre Island)

On:

Fisher, Eddie (Texas General Land Office)
Laine, Larry (Texas General Land Office)
Sebee, Ben (Texas Oil and Gas Association)

NEED FOR POTENTIAL STABLE, LONG-TERM FUNDING SOURCES

According to Larry Laine, in his testimony before the Committee as a representative of the GLO, Texas' 367 miles of Gulf coast and 3300 miles of bay shoreline are home to 5.7 million Texans and accounts for around 30 percent of Texas' gross economic output.

Importantly, this valuable section of our state suffers from erosion rates that range from 2 feet per year to 28 feet per year. The cost to private landowners, public infrastructure, tourism, local governments, and natural resources is substantial.

In March, 2003, the GLO published "Coastal Erosion Planning and Response Act (CEPRA)" as a report to the 78th Texas Legislature. The report concludes that coastal erosion has numerous negative affects on Texas such as damage to the economy and our natural resources. As a corollary, they explain the benefits of CEPRA projects.

Economic Benefits of CEPRA Projects

The GLO argues that CEPRA projects generate the following tangible economic benefits:

- 1) Reduced losses to public property from storm damage and erosion.
- 2) Preserved value of private properties in proximity to the project areas.
- 3) Generation of additional property tax revenue.
- 4) Generation of additional user fees from recreational use of the coastal asset.

Natural Resource Benefits of CEPRA Projects

The GLO argues that CEPRA projects generate the following tangible benefits to our natural resources:

- 1) Sediment stabilization (or shoreline stabilization).
- 2) Increase in aquatic diversity and abundance.
- 3) Increase in wildlife diversity and abundance.

OTHER STATES

Of the 23 states with coastal shoreline, five states -- California, Delaware, Florida, Mississippi, and New Jersey -- have a dedicated source of state revenue that entirely funds a coastal erosion program. Florida and New Jersey utilize revenue from a real estate transfer tax, and California's program receives funding from the state gasoline tax. The Mississippi Coastal Preserves Program is financed by revenue collected from tideland leaseholders, which are primarily casinos. Delaware's Beach Preservation Program receives one percent of the proceeds from the state lodging tax.

Texas and Rhode Island use revenue from state oil spill response funds to pay for part of a coastal erosion program; general revenue and federal funds are also used. Louisiana created the State Wetlands Trust Fund from oil and gas severance taxes to provide state matching funds for federal wetlands projects that often include erosion control. In Alabama, the state's share of federal beach nourishment projects is financed by a percentage of general obligation bond revenue for parks.

While 11 states, including Texas, provide legislative appropriations from a general revenue fund to fight coastal erosion, two of those states -- South Carolina and Virginia -- have suspended all

projects due to budget constraints. In Virginia, a proposal to create a lottery scratch-off game to fund coastal projects was proposed but not acted upon by the General Assembly. Maryland uses money from the General Fund to finance a revolving loan fund that provides zero- or low-interest loans for shore erosion control.

Generally, the West Coast states are not active participants in coastal erosion abatement; Alaska, Oregon, and Washington have very few projects. In contrast, the Gulf Coast states are very active, and each uses state revenue to support a coastal erosion program. On the Atlantic Coast, the southeastern states do not provide state funding, while three of the four mid-Atlantic states have a dedicated funding source for projects. The northeastern states and Hawaii depend largely on federal funding for beach erosion control.

West Coast

Alaska -- All coastal programs are financed with federal funds, and none are allocated directly to erosion control projects. Federal emergency funds are being used to help residents of a coastal village that is rapidly crumbling into the sea.

Contact: Ed Christian, 907/465-8424

California -- The statewide Public Beach Restoration Program, which no longer receives appropriations from the General Fund, is financed by the Harbors and Watercraft Revolving Fund derived from the state gasoline tax. The Beach Sand Mitigation Program in San Diego is financed by a mitigation fee paid when a beachfront property owner obtains a permit from the California Coastal Commission to build a seawall or other shoreline protective structure.

Contact: Lesley Ewing, 415/904-5291; Kim Sterrett, 916/263-8157; Sherilyn Sarb (San Diego), 619/767-2370

Oregon -- The state does not administer coastal erosion projects at this time. The General Fund is used to map coastal hazards, including shoreline erosion.

Contact: Paul Klarin, 503/373-0050 x 249

Washington -- Shoreline management studies and flood control projects, which include some coastal erosion projects, are financed by the General Fund.

Contact: George Kaminsky, 360/407-6797

Gulf Coast

Alabama -- The state share of federal beach nourishment projects is financed by six percent of general obligation bond revenue for parks, and the local share is financed by an increase in the lodging tax. A proposed "linear footage assessment" on beachfront property may also be used to finance the local share.

Contact: Phillip Hinesley, 251/929-0900

Florida -- The Beach Erosion Control Program is financed by a documentary stamp tax paid by a person who records a deed or other instrument transferring interest in real property in the state. The program provides up to 50 percent of project costs to local governments, community development districts, or special taxing districts.

Contact: Phil Flood, 850/487-1262

Louisiana -- The State Wetlands Trust Fund, a constitutionally created fund derived from two percent of oil and gas severance taxes, provides state matching funds for federal wetlands projects that often include erosion control. Up to 20 percent of any future sale of the state's tobacco settlement will be deposited into a newly created Louisiana Coastal Restoration Fund under a recently approved constitutional amendment.

Contact: Chris Knotts, 225/342-6871

Mississippi -- The Coastal Preserves Program is financed by revenue collected from tideland leaseholders, which are primarily casinos. The Tidelands Trust Fund is designated for projects to improve the Gulf Coast and can include coastal erosion projects.

Contact: Tina Shumate, 228/374-5000 x 5103

Texas -- The Coastal Erosion Planning and Response Act (CEPRA) Program is financed by money from the General Revenue Fund and interest on the Oil Spill Response Fund, which is derived from a fee paid by an owner of crude oil or gas at the time the oil or gas is transferred to or from a marine terminal. Federal funds and local and private sector matching funds are also used.

Contact: Bill Peacock, 475-0773

Southeast

Georgia -- Coastal incentive grants, which are financed entirely by federal funds, typically do not include beach erosion projects. Salt marsh restoration projects may include an erosion component.

Contact: Diane Nash, 912/264-7218

North Carolina -- The state provides cost-sharing funds for beach nourishment projects from the General Fund. All projects are federally funded.

Contact: Jeff Bruton, 919/715-0387

South Carolina -- No beach nourishment projects were funded in 2002-2003 due to a lack of state funds. Previously, funding came from the General Fund.

Contact: Bill Eiser, 843/744-5838 x 120

Mid-Atlantic

Delaware -- The Beach Preservation Program administered by the Delaware Department of Natural Resources and Environmental Control is financed by one percent of the proceeds from the state accommodation tax.

Contact: Anthony Pratt, 302/739-4411

Maryland -- The Shore Erosion Control Program uses a revolving loan fund financed by the General Fund to provide a zero- or low-interest loan to a local government that forms a special taxing district to repay the loan. The General Fund is also used to pay the state's share of federal erosion control projects.

Contact: Cornelia Wikar, 410/260-8737

New Jersey -- The Shore Protection Program is financed by a realty transfer fee on recorded deeds transferring title to real property, similar to the way Florida finances its coastal erosion program.
Contact: Chris Tucker, 732/255-0794

Virginia -- The Public Beach Program, which provided matching grants to local governments for erosion abatement, has not been funded since FY2001. The source of revenue was the General Fund. A lottery scratch-off game ("Where's the Beach?") to fund coastal projects was proposed but not acted upon by the General Assembly.
Contact: Lee Hill, 804/786-3998

Northeast

Connecticut -- General Fund revenue is used to provide matching funds for U.S. Corps of Engineers erosion control projects.
Contact: Rick Hutley, 860/424-3034

Maine -- All coastal erosion projects are federally funded with a local government match.
Contact: Steve Dickson, 207/287-7174

Massachusetts -- General Fund revenue is used for state-funded coastal erosion projects on state beaches and to provide the state's share of U.S. Corps of Engineers beach nourishment projects.
Contact: Rebecca Haney, 617/626-1200

New Hampshire -- Coastal restoration grants funded by the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, have been used for shoreline stabilization projects. No other source of funding is used.
Contact: Sally Sole, 603/559-0032

New York -- Specific shore damage protection projects receive an appropriation from the General Fund to cover 25 percent of the project cost. Federal and local governments pay the remainder of the cost.
Contact: Roman Rakoczy, 518/402-8139

Rhode Island -- Like Texas, Rhode Island uses federal funds, the state General Fund, and the Oil Spill Response Fund to fight coastal erosion. The Coastal and Estuary Habitat Restoration Program and Trust Fund allocates \$250,000 of the fees collected under the oil spill response and prevention statute to potential habitat restoration projects, which can include beach and dune restoration. The statute provides for a five cents per barrel fee on petroleum products received at marine terminals by vessels whose point of origin is outside Rhode Island.
Contact: Jeff Willis, 401/783-3370

Islands

Hawaii -- All coastal erosion projects are funded by NOAA. If a state match is required, the funds come from the General Fund or in-kind contributions are used.
Contact: Ann Ogata-Deal, 808/587-2804

RECOMMENDATIONS

- 1) The Committee believes that a stable dedicated funding source should be found to protect the Texas coastline from erosion.
- 2) The Committee believes that the funding should come from a variety of sources, primarily those that are responsible for the erosion or that benefit most from Texas beaches.

CHARGE 3

“Evaluate necessity of and potential state, local and private funding mechanisms for a purchase of development rights program in the state.”

PURCHASE OF DEVELOPMENT RIGHTS

INTERIM CHARGE

“Evaluate necessity of and potential state, local and private funding mechanisms for a purchase of development rights program in the state.”

BACKGROUND

Purchase of Development Right programs (PDR) exist in many states across the country with the goal of compensating property owners who agree to restrict the development of their property. Under such a program, the landowner sells only the right to develop the property and in no way relinquishes other rights in the land (such as the right to sell, lease, or bequeath the property).

Typically, landowners sell their development rights to a private conservation organization or government entity. These organizations do not acquire the right to build anything on the land, but only the right and responsibility to limit development of the property as described in provisions of the agreement. Public access is not permitted without landowner consent.

For the public, PDR programs enable land conservation at a much-reduced expense, as the cost of the PDR is less than the outright purchase of land, and costs associated with subsequent management of the land remain the responsibility of the landowner.

National Background

PDR programs began in the 1970s in the eastern United States when communities decided that it was important to protect their remaining farmland and open space from urban growth. These communities developed public finance measures to fund the purchase of development rights in order to preserve agricultural lands in perpetuity.

Texas Background

In 2000, Governor Bush appointed the Governor’s Task Force on Conservation to study the threats facing Texas’ natural resources, including preservation of rural land. In the Force’s report, ‘Taking Care of Texas,’ the group addressed the problem of land fragmentation and the decrease of rural land parcels. The findings were that preservation of open land is most important to a healthy Texas. The group recommended that the state, “establish a fund to provide grants to local governments and qualified nongovernmental organizations to buy development rights . . .” It was also suggested that the legislature create the Texas Land Stewardship Fund as the governing body. In addition to the Task Forces’ desire to create a PDR program, they also recommend reforming tax laws to support conservation and the expansion of Wildlife Management Cooperatives among other strategies.

The Texas Parks & Wildlife Department later adopted the Task Force's recommendation in its 2002

strategic plan. In 2002, the House Land & Resource Management Committee, through its Subcommittee on Urban Sprawl, recommended that Texas should develop the framework to make PDR an option to all interested parties in the future. In 2003, Texas A&M researchers produced a simulation model to determine the implications of establishing a PDR program in Texas.

During the 78th Legislature, Representative Charlie Geren introduced H.B. 895 with Senate companion S.B. 992 by Senator Kenneth Armbrister. This legislation proposed the creation of a state-administered PDR program in Texas. The proposed program would have created the Texas Legacy Council as the governing board. The Council would have been governed by eleven members, nine of whom were to be appointed by the Governor, and two ex officio members.

Funding for the program was proposed to come from a new General Revenue-Dedicated Account as well as from private funds. The bill limited the amount of a state grant to 50 percent of the costs, with no more than five percent spent on administration.

Implementing the program would be in consultation with the Texas Department of Agriculture. The Texas Legacy Council would be prohibited from acquiring land through eminent domain.

In 1998, Austin voters approved \$65 million in utility revenue-supported bonds to protect 15,000 acres in the Barton Creek recharge zone through both fee acquisitions and purchased conservation easements. In 2000, voters authorized an additional \$13.4 million in general revenue bonds. To date, Austin has purchased 16,750 acres, with roughly 60% held as conservation easements and 40% held in fee simple title. As part of the initiative, Austin received the only two federal Farm and Ranch Protection Program (FRPP) grants awarded in Texas to acquire conservation easements.

In 2003, the City of San Antonio received legislative approval to put before voters a proposal to use 1/8 cent sales tax proceeds to acquire lands or purchase development rights on lands over the Edwards Aquifer. San Antonio City Council recently took action to place the \$90 million Aquifer Protection Initiative on the May, 2005 ballot. A July 2004 poll conducted by Nature Conservancy of Texas and Bexar Land Trust indicated that 60% of 400 San Antonio likely voters surveyed support the proposal.

Using general revenue, the San Antonio Water System has purchased six conservation easements on ranches in Comal, Uvalde and Medina Counties. Two of the projects were in partnership with the Nature Conservancy of Texas. The Nature Conservancy also partnered with the Texas General Land Office and the Coastal Bend Land Trust in 2004 to purchase a conservation easement on approximately 580 acres of the Johnson Ranch in Aransas County, Texas. Under the terms of the easement, the family may continue to ranch, hunt, fish, recreate, and operate a small bed and breakfast operation that caters to nature enthusiasts, particularly those interested in observing the whooping cranes.

Texas Parks & Wildlife has purchased development rights on properties adjacent to state parks in an effort to minimize development around those parks. (TPWD also houses the Land Trust Council, which provides information and technical support on conservation easements and other related issues to land trusts, landowners and other organizations.)

SUMMARY OF TESTIMONY FROM PUBLIC HEARING

The Full Committee heard testimony in Austin during a scheduled public hearing on April 21st, 2004. Those who testified were:

April 21st, 2004, in Austin Texas

For:

Ayers, Robert (Self)
Fitzsimons, Blair (American Farmland Trust)
Piacentiri, Mary Ann (Self and Texas Land Trust Council, Katy Prairie Conservancy)
Shackelford, Julie (The Conservation Fund)

On:

Fitzsimons, Joseph (Texas Parks and Wildlife Commission)

Registering, but not testifying for:

Bristol, George (Texas Coalition for Conservancy)

NECESSITY FOR A PURCHASE OF DEVELOPMENT RIGHTS PROGRAM

In Texas, approximately ninety-seven percent of all land is held by private owners. The average land value in Texas is five times higher if it is used for non-agriculture rather than agriculture. According to the U.S. Department of Agriculture, between 1982 and 1997, Texas lost 2.2 million acres of productive farmland to urban uses. Farmers and ranchers in Texas today are faced with escalating land costs and encroaching development. When the landowner dies, the heirs are faced with estate taxes. It is becoming increasingly difficult for these landowners, especially in areas where the suburbs are approaching, to continue to use their land for agriculture production. Many are finding that their land is worth much more to developers to build residential areas.

There are numerous negative consequences to an area when large parcels of land are fragmented as a result of these pressures on farmers and ranchers. With the loss of open space, wildlife habitats are destroyed and water quality suffers as a result of erosion and run-off. For the counties, residential developments create added financial burdens that do not exist when the land is in agricultural use. According to a study performed by the American Farmland Trust, a farm or ranch typically pays approximately three times more revenue to counties than they require in public services. An average subdivision dweller does not pay enough in taxes to cover the costs of the public services, such as sewer and water infrastructure, that they require.

The American Farmland Trust argues that there are four compelling reasons why the state should pass legislation to help fund PDR programs in the state.

- 1) There is a clear public benefit to the private stewardship of critical agricultural and natural resources.

- 2) Only municipalities such as Austin and San Antonio have the revenue generating potential to fund purchase of development rights.
- 3) Coordination at the state level will enable more efficient leveraging of matching funds from federal programs.
- 4) A state oversight board will bring more consistency and transparency to the process involved.

POTENTIAL STATE, LOCAL, AND PRIVATE FUNDING MECHANISMS

Background

Funding for PDR programs can come from every level of government as well as from the private sector. Nationally, the majority of the burden is placed upon state governments. It is estimated that 60 percent of all money spent on PDR programs comes from that source. In many states, local governments pick up the remaining cost of such programs. While the federal government does provide some financial support, federal dollars account for less than 3 percent of acquisition spending across the nation. In addition to these sources, many private organizations work to secure money in certain regions.

Federal

Farm and Ranch Lands Protection Program (originally established in 1996 as the Farmland Protection Program) -- U.S. Department of Agriculture, Natural Resources Conservation Service. Provides matching funds to state, local, and tribal entities to purchase development rights to keep productive farm and ranch land in agricultural uses. The program provides up to 50 percent of the fair market easement value.

See also: www.nrcs.usda.gov/programs/frpp/

Land and Water Conservation Fund -- U.S. Department of Agriculture, Forest Service; U.S. Department of the Interior, National Park Service, Fish and Wildlife Service, Bureau of Land Management. Provides funding to federal, state, and local governments to acquire land, water, and conservation easements. Easements are purchased to restrict commercial development while keeping the land in private ownership.

See also: www.nrcs.nps.gov/lwcf

Forest Legacy Program -- U.S. Department of Agriculture, Forest Service. Provides funding to U.S. states and territories to purchase private forest land or interests in the land, usually through conservation easements that allow the forest land to remain in private ownership. Funding is matched by at least a 25 percent nonfederal cost share.

See also: www.fs.fed.us/na/durham/legacy

National Scenic Byways Program -- U.S. Department of Transportation, Federal Highway Administration. Provides grants through the National Scenic Byways Discretionary Grants Program

and as part of the Federal Highway Administration's Discretionary Grants Program to support and enhance unique American roads. Projects eligible for funding include National Scenic Byways, All-American Roads, and state-designated byways.

See also: www.byways.org/learn/

Wetlands Reserve Program -- U.S. Department of Agriculture, Natural Resources Conservation Service. Provides technical and financial assistance to landowners to restore and protect agricultural wetlands on farms and ranches across the country. The program offers permanent and 30-year conservation easements.

See also: www.nrcs.usda.gov/programs/wrp

Coastal and Estuarine Land Conservation Program -- U.S. Department of Commerce, National Oceanic and Atmospheric Administration. Provides matching grants to state and local governments for land acquisition in a state's coastal zone. Easements are held by the state or a local government.

See also: www.ocrm.nos.noaa.gov/landconservation.html

National Coastal Wetlands Conservation Grant Program -- U.S. Department of the Interior, Fish and Wildlife Service. Provides matching grants to coastal states to acquire, manage, restore, or enhance coastal wetlands. Funded projects include conservation easements.

See also: www.fws.gov/cep/cwgcover.html

Migratory Bird Conservation Fund -- U.S. Department of the Interior, Fish and Wildlife Service. Provides funds to acquire migratory bird habitat by fee purchase (acquiring title), easement, or lease.

See also: www.tpl.org (search "federal programs")

Legacy Resource Management Program -- U.S. Department of Defense. Provides cost-sharing funds to acquire land or may convey land to conservation organizations and state and local agencies to limit development or property use that is incompatible with a military installation mission and to preserve habitat off-base.

See also: www.dodlegacy.org

State

General Tax Revenue -- The New Jersey Legislature dedicated \$98 million annually in general tax revenue for state parks and open space acquisition from 1999 to 2009. The Garden State Preservation Trust Fund Account provides grants to pay to local governments up to 80 percent and to the state up to 100 percent of the cost of acquiring development easements.

See also: www.state.nj.us/dep/greenacres/preservation.htm

General Obligation Bonds -- The California Farmland Conservancy Program received \$25 million in 2000 and \$10 million in 2002 from two statewide bond measures approved by voters. The program provides grants to local governments and nonprofits to establish agriculture conservation easements.

See also: www.conservation.ca.gov/dlrp/qh_bond_funds.htm

General Revenue Bonds/Excise Tax -- In Florida, an excise tax on recording real estate transactions at the courthouse is used to repay general revenue bonds for acquiring land and natural resources

under Florida Forever, which succeeds an earlier program known as Preservation 2000.
See also: <http://edis.ifas.ufl.edu/FE331>

Lottery Proceeds -- The Great Outdoors Colorado Trust Fund, created through a constitutional amendment in 1992, provides funding to counties, municipalities, other political subdivisions of the state, or nonprofit land conservation organizations for land acquisition and related programs until 2009. The trust fund receives approximately \$35 million annually from state lottery proceeds.
See also: <http://www.goco.org/> and www.state.co.us/auditor/2002/2002fin/1394.pdf

Gaming Receipts -- The Iowa Resource Enhancement and Protection (REAP) Program is authorized to receive \$20 million annually until 2021 from Iowa gaming receipts and the sale of environmental license plates. Nearly 30 percent of REAP funds are allocated for state acquisition of open space. Property taxes on land purchased with REAP funds continue to be paid using additional REAP funds.
See also: www.iowadnr.com/reap/index.html

Oil and Gas Royalties -- In 1976 legislators created the Michigan Natural Resources Trust Fund, financed by royalties on the sale and lease of state-owned mineral rights, to help fund land acquisition and outdoor recreation.
See also: <http://www.michigan.gov/dnr> (search "Michigan Natural Resources Trust Fund")

Tobacco Settlement Funds -- Maryland counties with tobacco farms receive a portion of the state's tobacco settlement funds to preserve the farms for agricultural purposes.
See also: www.aftresearch.org/PDRdatabase/16.htm

Cigarette Tax -- Cigarette tax revenue totaling \$30 million per year for 30 years is used to acquire, protect, and restore habitats through the California Habitat Conservation Fund established by the legislature in 1990.
See also: www.parks.ca.gov/?page_id=21361

Gasoline Tax -- The California Environmental Enhancement and Mitigation Program offers a total of \$10 million annually for grants to government agencies and nonprofit organizations for projects, including acquisition of natural areas, to mitigate the environmental impact of new or modified state transportation facilities. State gasoline tax revenue funds the program.
See also: www.resources.ca.gov/eem

Sales Tax -- In November 1996, Arkansas voters approved a conservation sales tax to protect fish and wildlife, acquire parks, and preserve land. The amendment designated one-eighth of one percent of the state's general sales tax for conservation.
See also: www.deltarivers.com/New_site/conservation_tax.htm

Real Estate Transfer Tax -- Maryland levies a 4.75 percent tax on real estate property transfers to fund the state's Rural Legacy Program and related land preservation programs. The programs provide funds to local governments and land trusts to purchase conservation easements and fee-title land purchases.
See also: www.malpf.info/AR2002.PDF

Agricultural Transfer Tax -- Maryland also levies a 4.75 percent tax when farm land is sold and converted to another use. Revenue is divided between the state and counties for local farm land preservation, including for purchasing agricultural easements.

See also: www.malpf.info/AR2002.PDF

Tax Credit -- An income tax credit is given to Colorado landowners who donate a perpetual conservation easement. There are dollar limits on the total amount of the credit and the amount of credit available in a given year.

See also: www.revenue.state.co.us/fyi/html/income39.html

Environmental License Plates -- Revenue from several \$30 conservation license plates in Texas helps to pay for habitat preservation and land acquisition.

See also: www.tpwd.state.tx.us/plate/

Hunting License Fees -- In Idaho, hunting license fees totaling \$500,000 per year are used to purchase land and conservation easements to benefit wildlife habitat.

See also: www.fishandgame.idaho.gov/

Habitat Authorization Fee -- Utah adds a \$5 fee to the sale of hunting and fishing licenses, permits, stamps, and certificates to protect and acquire wildlife and fish habitat.

See also: www.wildlife.utah.gov

Wildlife Stamps -- Massachusetts is an example of a state that is authorized to use money from the sale of wildlife stamps to purchase land for wildlife habitat.

See also: www.defenders.org/bio-stma.html

Environmental Fines -- State water violation fines contribute to the \$3 million Kentucky Heritage Land Conservation Fund established to provide funding for fee-title land purchases for conservation purposes.

See also: www.heritageland.ky.gov/

Drinking Water State Revolving Fund -- The Texas Water Development Board administers this fund in Texas to provide low-interest loans to local governments, state agencies, and nonprofit or privately owned water systems to purchase land or conservation easements to protect public drinking water supplies.

See also: www.twdb.state.tx.us/assistance/financial/fin_infrastructure/dwsrf.asp

Clean Water State Revolving Fund -- The Texas Water Development Board administers this fund to provide low-interest loans to local governments for conservation easements to abate nonpoint source pollution.

See also: www.twdb.state.tx.us/assistance/financial/fin_infrastructure/cwsrffund.asp

Local

General Tax Revenue -- Calvert County, Maryland, uses general tax revenue as a part of the funding for a \$1.5 million annual program to purchase and retire agriculture development rights. The county considers the program a growth management technique.

See also: www.aftresearch.org/PDRdatabase/16.htm

General Obligation Bonds -- Bucks County, Pennsylvania, voters approved a \$59 million county bond issue in 1997 for parks and open-space acquisitions, including agriculture easements. Municipalities in Bucks County have approved \$98 million in bonds for all land preservation purposes.

See also: www.aftresearch.org/PDRdatabase/37.htm

U.S. Treasury Bonds -- Calvert County, Maryland, purchased U.S. Treasury bonds to finance payments over 10 to 20 years to a landowner who sells development rights. Interest on the bonds is used for installment payments, and the initial principal is used to pay a lump sum to the landowner when the bond matures.

See also: www.aftresearch.org/PDRdatabase/16.htm

Property Tax -- New Jersey passed legislation in 1997 authorizing cities and counties to impose a property tax to fund open-space acquisition. At least 52 cities and 13 counties have created property tax-backed open-space trust funds.

See also: www.tpl.org/tier3_cdl.cfm?content_item_id=1072&folder_id=825#NJ

Sales Tax District -- Sonoma County, California, voters approved the Sonoma County Agricultural and Open-Space District in 1980. District residents pay a quarter-cent sales tax for farm land and open-space preservation. The tax, which generates approximately \$17 million annually, is set to expire in 2010.

See also: www.aftresearch.org/PDRdatabase/6.htm

Real Estate Transfer Tax -- A two percent property transfer tax, approved by voters in 1998, funds the Southold Community Preservation Fund in New York, which supports the preservation of farm land and open spaces.

See also: www.aftresearch.org/PDRdatabase/31.htm

Agricultural Land Transfer Tax -- In 2000, Washington County, Maryland, adopted a two percent agricultural land transfer tax that produces \$125,000 per year for matching state funds for agricultural easements. The tax applies when agricultural land is converted to another use.

See also: www.aftresearch.org/PDRdatabase/23.htm

County Records Tax -- In July 2000, Frederick County, Maryland, increased the county recording tax to \$5 for each \$500 of debt secured for a deed or mortgage. Fifteen percent of the revenue is earmarked for agriculture easements, and 15 percent is for acquisition and development of recreational and open space land.

See also: www.co.frederick.md.us/bocc/recordationtax.pdf

Impact Fee -- The City of Ocoee, Florida, levies a recreational impact fee on new residential development projects that is used to acquire parks and open space. The fee is \$500 per dwelling unit.

See also: www.ci.ocoee.fl.us/communitydevelopment/planning/impact_fee_schedules_Sept_2003.htm

Landfill Tipping Fee -- In 2003, Lower Windsor Township, Pennsylvania, began using landfill tipping fees to raise \$400,000 annually for an agriculture easement program. The York County Agricultural Land Preservation Board oversees the program.

See also: www.aftresearch.org/PDRdatabase/41.htm

Development Mitigation Fee -- Riverside County, California, adopted open-space mitigation fees in 2001 to mitigate the impact of new development. Developers pay \$472 per residential dwelling unit, \$1,887 per acre for commercial development, and \$789 per acre for industrial use. Revenue is used to acquire open-space land.

See also: www.tlma.co.riverside.ca.us/lms/mitfee.html

Benefit Assessment District -- Santa Monica Mountains, California, residents approved a \$40 annual assessment per household over 30 years to finance open-space acquisition in two preservation districts created for that purpose.

See also: www.mountainstrust.org/newsletters/newsletter_5_1.html

Utility Bill Donation -- Colorado residents served by the San Miguel Power Association can sign up to have their utility bill rounded up to the nearest dollar--between one cent and 99 cents--to pay for a local Purchase of Development Rights program.

See also: www.openspacerec.com/pennies.htm

Private Nonprofit

Land Trusts -- Land trusts are independent, nonprofit organizations that work with landowners and often work cooperatively with government agencies to purchase land for permanent protection, accept land donations, or acquire conservation easements. There are 39 land trusts in Texas.

See also: www.tpwd.state.tx.us/tlrc

American Farmland Trust -- The trust works with landowners and communities to protect agricultural lands from development through publicly funded agricultural conservation easement programs.

See also: www.farmland.org

The Conservation Fund -- The fund helps government agencies and nonprofit organizations acquire property from willing sellers to protect open space, wildlife habitat, public recreation areas, river corridors, and historic places.

See also: www.conservationfund.org

The Trust for Public Land -- The trust pioneers new ways to finance parks and open space and helps generate federal, state, and local conservation funding.

See also: www.tpl.org

American Land Conservancy -- The group acquires private land using real estate techniques such as conservation easements.

See also: www.alcnet.org

The Nature Conservancy -- The organization's motto is "saving the last great places on earth." It

recently signed an agreement to protect 10,000 acres in the Great Smoky Mountains.
See also: www.nature.org

National Fish and Wildlife Foundation -- Established by Congress in 1984, the foundation provides matching grants to protect fish and wildlife habitat through acquisitions, conservation easements, and cooperative agreements.
See also: www.nfwf.org

RECOMMENDATIONS

- 1) There is a clear public benefit to the private stewardship of critical agricultural and natural resources. A voluntary statewide PDR program would help protect key critical natural resources such as water that will enable future growth.
- 2) A statewide PDR program would enable more efficient leveraging of matching funds from federal and other sources.
- 3) The Committee recommends that the state encourage all efforts by local governments, the federal government, and non-profit conservation organizations to preserve open spaces in Texas through PDR programs.
- 4) The Committee recommends that any fees collected locally should be spent to purchase development rights in the same region.

CHARGE 4

“Monitor agencies and programs under the committee's jurisdiction.”

MONITOR AGENCIES AND PROGRAMS

INTERIM CHARGE

“Monitor agencies and programs under the committee's jurisdiction.”

GENERAL LAND OFFICE

BACKGROUND

The General Land Office (GLO) was created in 1836 shortly after Texas won its independence from Mexico. The GLO's core mission is the management of state lands and mineral-right properties totaling 20.3 million acres. This includes the beaches, bays, estuaries and other "submerged" lands out to 10.3 miles in the Gulf of Mexico, institutional acreage, grazing lands in West Texas, timberlands in East Texas, and commercial sites in urban areas throughout the state. The GLO now leases drilling rights for oil and gas production on state lands, producing revenue and royalties that are deposited into the state's Permanent School Fund.

In addition to its oil and gas activities, the GLO responsibilities now cover many other areas. The Asset Management program helps promote efficient use of State real property. The Recycling, Adopt-A-Beach, Coastal, and Oil Spill Prevention and Response programs work to protect our natural resources. The Land Office triggers economic development through its natural gas marketing initiatives and loan programs offered to veterans through the Texas Veterans Land Board (VLB).

PROGRAMS AND ISSUES OF CURRENT INTEREST

Coastal Erosion Planning and Response Act (CEPRA)

The Texas Legislature enacted the Coastal Erosion and Response Act (CEPRA) in 1999 in an effort to assist the General Land Office (GLO) in protection of the state's coastal areas. CEPRA calls for the funding of beach nourishment projects with a mix of state and local funds. The creation of this partnership also allows for federal funds to be attained from various agencies, including the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers. CEPRA funds consist of General Revenue appropriated by the legislature and interest accrued on the Oil-Spill Account.

A complete background of CEPRA, along with other state programs, potential funding sources, and Committee recommendations can be found in this report under Charge 2.

King Survey Controversy

Three private citizens have claimed that the "King Survey" of 1838, covering one league of land in Upshur County is "improperly located", meaning that the boundaries are false. They allege that a portion of the land was incorrectly patented, and some of the land still belongs to the state, even though many people currently own large sections of it.

The claimants allege that while many people think they own land in the "King Survey", it really still belongs to the state because it was never properly patented or titled. Under state law, if an individual finds such an error, he is granted a finder's fee, earning between 1/16 and 1/32 of the mineral royalties of the land. The land in question has an abundance of oil reserves. The claimants would thus be allowed to collect royalties and the people who currently own the land would have to repurchase their land from the state and lose mineral rights.

In January 2004, Land Commissioner Jerry Patterson ruled, based on many factors, that there is no vacancy, and current land interests should stand as-is. The individuals have appealed the decision and Judge Paul Banner of the 115th District Court is currently hearing the case.

House Bill 1457 -- 2 Year Moratorium on Enforcement of Open Beaches Act

The 78th Texas Legislature passed HB 1457 that authorizes the land commission to establish a two-year moratorium on removing structures from the beach that have become seaward of the line of vegetation after a storm.

The two-year period allows time for the natural line of vegetation, the boundary that separates public beach from private property, to potentially grow back in such a way that the structure is no longer on the public beach.

On June 8, 2004, the Land Commissioner announced that he had issued moratorium orders for 116 houses located on the public beach. The orders provide a two-year prohibition on removing these houses that might be barriers to public beach access and possible beachfront hazards (in violation of the Open Beaches Act).

RECOMMENDATIONS

- 1) The Committee believes that a stable dedicated funding source should be found to protect the Texas coastline from erosion. The Committee believes that the funding should come from a variety of sources, primarily those that are responsible for the erosion or that benefit most from Texas beaches.
- 2) The Committee believes that the Land Commissioner should be given the opportunity to manage the implementation of HB 1457.

OFFICE OF RURAL AND COMMUNITY AFFAIRS

BACKGROUND

Following the 76th regular session, the House Select Committee on Rural Development searched for ways that governmental entities at all levels could improve the quality of life for rural Texans.

The select committee found that there was no focal point at state or federal levels for rural policy formulation or implementation, which tends to result in fragmented policies spread among a number of governmental agencies.

The Office of Rural Community Affairs (ORCA) was created by the passage of HB 7 during the 77th regular session in 2001. ORCA was created as a stand-alone state agency to assure a continuing focus on rural issues, monitor governmental actions affecting rural Texas, research problems and recommended solutions, and to coordinate rural programs among state agencies.

ORCA is overseen by a nine member board. The Speaker of the House, the Lieutenant Governor, and the Governor each appoint three members.

HB 7 directs ORCA to accomplish several things. Among these are:

- 1) Developing and implementing policies that provide the public with a reasonable opportunity to appear before the executive committee and to speak on any issue under the jurisdiction of the office;
- 2) Develop a rural policy for the state in consultation with local leaders representing all facets of rural community life, academic and industry experts, and state elected and appointed officials with interests in rural communities;
- 3) Work with other state agencies and officials to improve the results and the cost effectiveness of state programs affecting rural communities through coordination of efforts;
- 4) Develop programs to improve the leadership capacity of rural community leaders;
- 5) Monitor developments that have a substantial effect on rural Texas communities, especially actions of state government, and compile an annual report describing and evaluating the condition of rural communities;
- 6) Administer the federal community development block grant non-entitlement program;
- 7) Administer programs supporting rural health care;
- 8) Perform research to determine the most beneficial and cost-effective ways to

improve the welfare of rural communities;

- 9) Ensure that the office qualifies as the state's office of rural health for the purpose of receiving grants from the Office of Rural Health Policy of the United States Department of Health and Human Services;
- 10) Manage the state's Medicare rural hospital flexibility program.

PROGRAMS

Community Development Programs

ORCA's Community Development programs are funded by federal dollars that come to Texas as Community Block Grants, which are distributed to states by the U.S. Department of Housing and Urban Development (HUD).

The total federal program is divided into two major categories.

- 1) Entitlement (cities over 50,000 and qualifying counties over 200,000 in population)
- 2) Non-entitlement (cities under 50,000 in population and counties not eligible for entitlement status).

In Texas, there are 57 entitlement cities, 8 entitlement counties, and approximately 1,280 non-entitlement cities and counties. Entitlements receive an annual allocation of funds for eligible activities, whereas non-entitlement localities generally compete for statewide funding on an annual basis.

Rural Health

Ensuring access and availability of health care services for 2.9 million rural citizens is a continuing challenge for Texas state government and rural areas. For many years, rural counties have relied mainly upon state and federally funded hospitals to provide health care services. When more than 50 Texas hospitals closed in the mid 1980s, due to reduced federal funding and other market forces, many residents and travelers in rural areas were left without a source for vital health and medical services.

In response to this critical issue, the Legislature created a Governor's task force, in 1988, to examine the problems of access to health care in rural areas. The task force found that hospital closures produced a shortage in the number of physicians, nurses, and allied health professionals serving rural communities. In addition to the manpower shortages, the State had few rural clinics, and inadequate emergency medical services and obstetric services to serve the rural population. The task force also identified the need for a state-level entity to:

- 1) Coordinate the efforts of local communities trying to solve these problems;

- 2) Ensure continuous attention and visibility to rural health needs; and,
- 3) Address the total rural health care delivery system.

In 1989, the 71st Legislature passed the Omnibus Health Care Rescue Act (HB 18) to address the problems cited by the task force. The major provisions of the bill expanded health care services to rural Texans by facilitating the growth of rural clinics and establishing emergency medical care networks and the Center for Rural Health Initiatives (the Center). The Center was established to serve as the primary state resource in planning, coordinating, and advocating statewide efforts to ensure continued access to rural health care services. Today, the Center, functioning as ORCA's Rural Health Unit, is charged with:

- 1) Integrating health care services and programs;
- 2) Researching and implementing innovative models to maximize area resources;
- 3) Providing leadership to consult with rural communities regarding current needs, analysis and access to government-funded initiatives; and
- 4) Leading interagency efforts on rural health care initiatives, which include state agencies, universities, medical schools, and private entities.

Filename: Land & Resource Management intermim report.doc
Directory: X:\REPRO\DESKTOP\FILES\COMMITTEE\LAND&RES\Misc
Template: W:\MSTemplates\LEGISLATIVE\House Interim Report.dot
Title: HOUSE COMMITTEE ON LAND AND RESOURCE MANAGEMENT
Subject:
Author: h3865a3
Keywords:
Comments:
Creation Date: 12/13/2004 11:11:00 AM
Change Number: 2
Last Saved On: 12/13/2004 11:11:00 AM
Last Saved By: Patricia A Barratt
Total Editing Time: 1 Minute
Last Printed On: 12/13/2004 11:11:00 AM
As of Last Complete Printing
Number of Pages: 45
Number of Words: 10,628 (approx.)
Number of Characters: 60,583 (approx.)