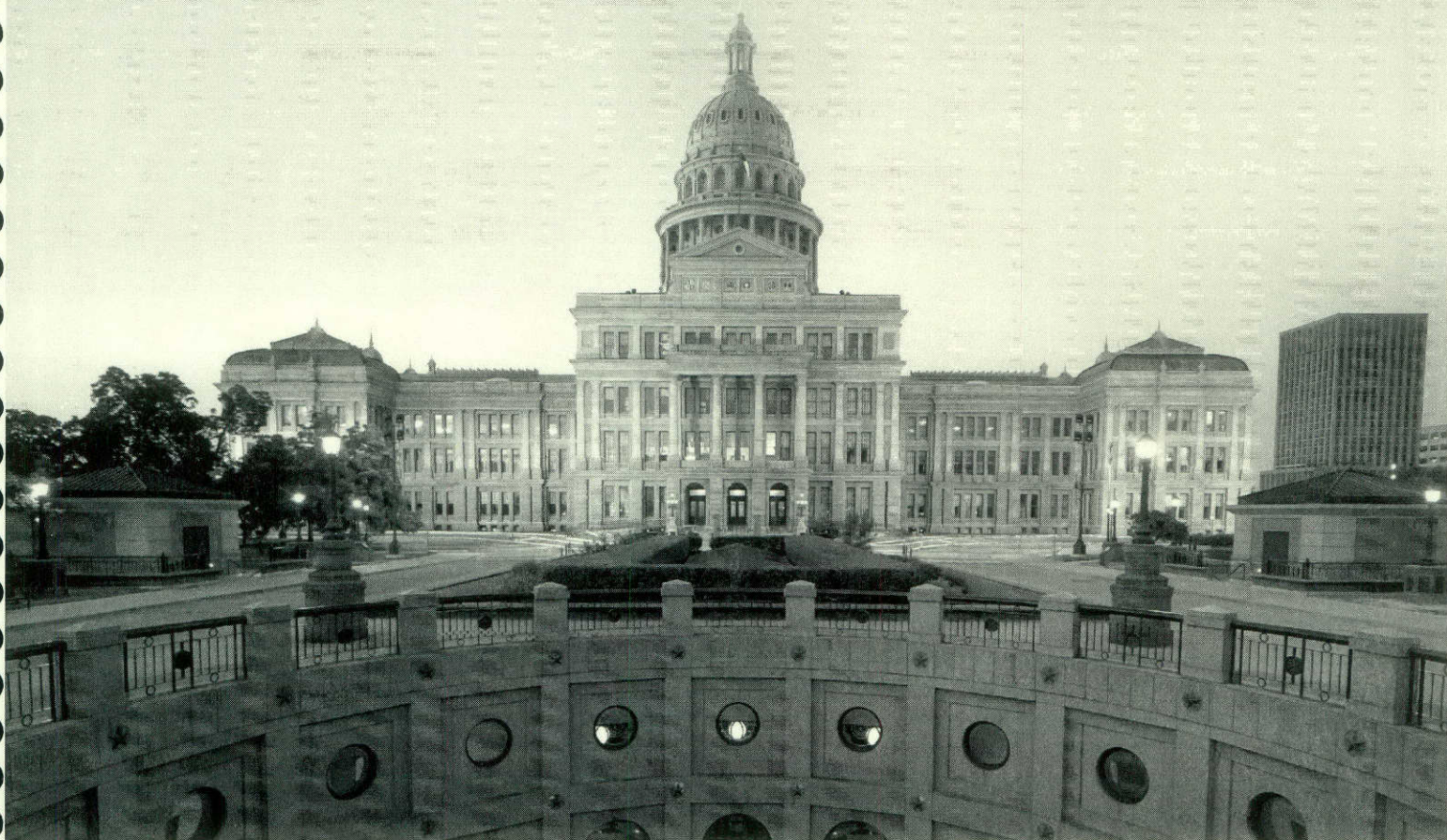


INTERIM REPORT

to the 85th Texas Legislature



HOUSE COMMITTEE ON
URBAN AFFAIRS



JANUARY 2017



**HOUSE COMMITTEE ON URBAN AFFAIRS
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2016**

**A REPORT TO THE
HOUSE OF REPRESENTATIVES
85TH TEXAS LEGISLATURE**

**CAROL ALVARADO
CHAIRMAN**

**COMMITTEE CLERK
ALEXANDER HAMMOND AND J.D. PEDRAZA**





Committee On
Urban Affairs

January 4, 2017

Carol Alvarado
Chairman

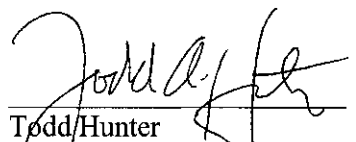
P.O. Box 2910
Austin, Texas 78768-2910

The Honorable Joe Straus
Speaker, Texas House of Representatives
Members of the Texas House of Representatives
Texas State Capitol, Rm. 2W.13
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Committee on Urban Affairs of the Eighty-fourth Legislature hereby submits its interim report including recommendations and drafted legislation for consideration by the Eighty-fifth Legislature.

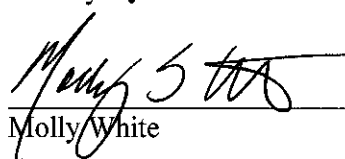
Respectfully submitted,



Todd Hunter



Rodney Anderson



Molly White

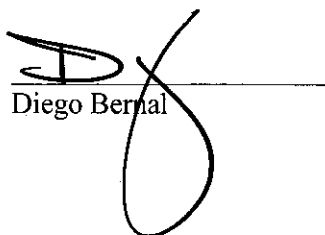


Carol Alvarado

Gary Elkins



Matt Schaefer



Diego Bernal



TEXAS HOUSE OF REPRESENTATIVES



MATT SCHAEFER
District 6

16 December 2016

Honorable Carol Alvarado
Chair, House Committee on Urban Affairs
P.O. Box 2910
Room E2.126
Austin, Texas 78768

Dear Chairwoman Alvarado,

After reviewing the 2016 Interim Report submitted by the House Committee on Urban Affairs, I submit the following comments and qualifications to the report:

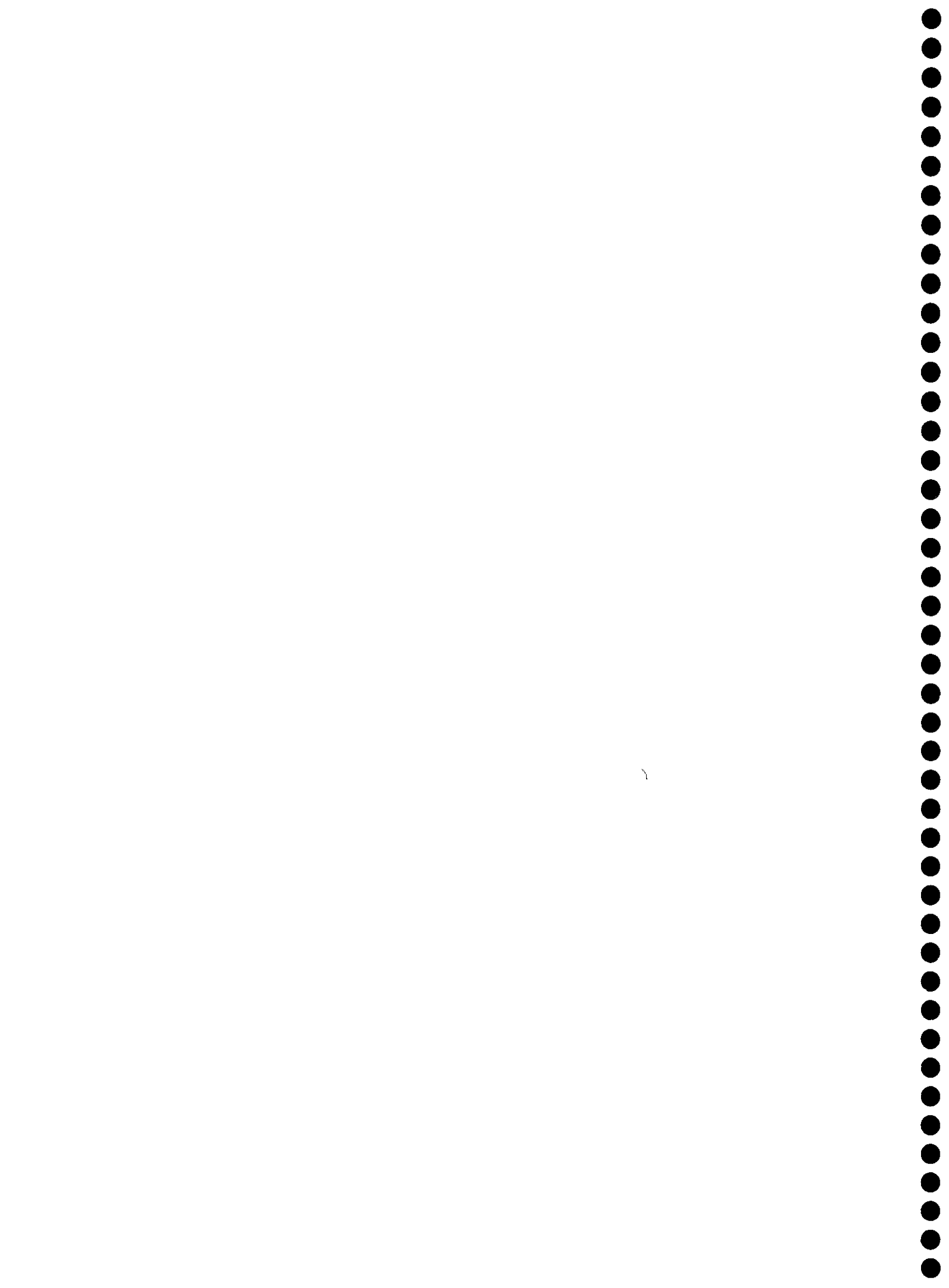
At this time I am not in favor of new funding streams or the creation of new programs. It is important to carefully scrutinize any new government programs, the expansion of current programs, or the adoption of burdensome regulations. Given the expected budget shortfalls, it is even more critical to thoroughly analyze and carefully weigh expanding state housing policy.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. Schaefer".

Honorable Matt Schaefer
State Representative, District Six





TEXAS HOUSE OF REPRESENTATIVES



MOLLY S. WHITE
STATE REPRESENTATIVE DISTRICT 55

To: Texas House Committee on Urban Affairs

Thursday, December 15, 2016

Attn: Chairman Carol Alvarado and Members
Cc: J.D. Pedraza and Alexander Hammond

P.O. Box 2910
Room E2.126
Austin, Texas 78768

jd.pedraza_hc@house.texas.gov
alexander.hammond@house.texas.gov

Dear Chairman and Fellow Members:

As we come to the close of the 84th Legislative Session and upon review of the Urban Affairs Committee Report, please note my following comments to include within the report:

At this time I, Representative Molly S. White, am not in favor of new funding streams or the creation of new programs. We must carefully scrutinize any new government programs, the expansion of current programs, or the adoption of burdensome regulations. Given the expected budget shortfalls, it is even more critical to thoroughly analyze and carefully weigh expanding state policy in this area.

It has proven an honor to serve the constituents of House District 55 and Texans across this great State. I have appreciated the opportunity to serve on the Urban Affairs Committee along with Chairman Alvarado and my fellow members. I hope all the best in the 85th Session.

Warm Regards,

A handwritten signature in black ink, appearing to read "Molly S. White".

Texas House Representative Molly S. White, HD 55



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URBAN AFFAIRS

INTRODUCTION

Speaker Joe Straus appointed 7 members to the House Committee on Urban Affairs: Carol Alvarado, Chair; Todd Hunter, Vice-Chair; Rodney Anderson, Diego Bernal, Gary Elkins, Matt Schaefer, and Molly S. White.

The House Rules adopted by the 84th Legislature as House Resolution 4 on January 15, 2015, give the House Committee on Urban Affairs its jurisdiction. Rule 3, Section 37 reads as follows:

Section 37 Urban Affairs — The committee shall have seven members, with jurisdiction over all matters pertaining to:

- (1) municipalities, including their creation, organization, powers, government, and finance, and the compensation and duties of their officers and employees;
- (2) home-rule municipalities, their relationship to the state, and their powers, authority, and limitations;
- (3) the creation or change of metropolitan areas and the form of government under which those areas operate;
- (4) problems and issues particularly affecting metropolitan areas of the state;
- (5) other units of local government not otherwise assigned by these rules to other standing committees;
- (6) establishing districts for the election of governing bodies of municipalities;
- (7) land use regulation by municipalities; and
- (8) the following state agencies: the Texas Department of Housing and Community Affairs and the Texas Commission on Fire Protection.



HOUSE COMMITTEE ON URBAN AFFAIRS INTERIM STUDY CHARGES

CHARGE 1

Study the effectiveness and efficiency of current programs in Texas as well as best practices to determine how to decrease the risk and mitigate the impact of wildfires, floods, and other natural hazards in the wildland-urban interface. Examine the duties, performance, and jurisdictions of water districts, municipalities, Emergency Services Districts, other similar districts, and state offices like the Fire Marshal and Extension Services. Evaluate current regulations and identify best practices. Recommend approaches for hazard mitigation and response to natural disasters.
(Joint charge with the House Committee on County Affairs)

CHARGE 2:

Identify and address potential gaps in cities' cybersecurity policy and ensure that personal information held by cities and other municipal entities is secure.

CHARGE 3:

Examine whether changes are needed to the Texas Department of Housing and Community Affairs's (TDHCA) low-income tax credit program to ensure compliance with the U.S. Supreme Court's decision in *Texas Department of Housing and Community Affairs et al. v. Inclusive Communities Project, Inc., et al.* on fair housing in Texas.

CHARGE 4:

Review existing housing programs and policies in Texas to determine how to best comply with the U.S. Department of Housing and Urban Development's new Affirmatively Furthering Fair Housing Rules.

CHARGE 5:

Monitor and evaluate the availability of low-income housing in the State of Texas. Identify best practices to ensure that the agencies and local providers receiving state or federal funds for low-income housing are maximizing the number of units of housing available

to Texans who need this program.

CHARGE 6:

Investigate the operation and regulation, including a review of standards, monitoring, and enforcement, of boarding homes in municipalities and unincorporated areas of counties. Identify communities that have adopted local standards, and review procedures for investigating and closing unlicensed facilities that are providing services which require state licensure. *(Joint charge with the House Committee on Human Services)*

CHARGE 7:

Conduct legislative oversight and monitoring of the agencies, including the Texas Department of Housing and Community Affairs, and programs under the committee's jurisdiction and the implementing of relevant legislation passed by the 84th Legislature. In conducting this oversight, the committee should:

- a. consider any reforms to state agencies to make them more responsive to Texas taxpayers and citizens;
- b. identify issues regarding the agency or its governance that may be appropriate to investigate, improve, remedy, or eliminate;
- c. determine whether an agency is operating in a transparent and efficient manner; and
- d. identify opportunities to streamline programs and services while maintaining the mission of the agency and its programs.

CHARGE 1

Study the effectiveness and efficiency of current programs in Texas as well as best practices to determine how to decrease the risk and mitigate the impact of wildfires, floods, and other natural hazards in the wildland-urban interface. Examine the duties, performance, and jurisdictions of water districts, municipalities, Emergency Services Districts, other similar districts, and state offices like the Fire Marshal and Extension Services. Evaluate current regulations and identify best practices. Recommend approaches for hazard mitigation and response to natural disasters. *(Joint charge with the House Committee on County Affairs)*



SUMMARY OF COMMITTEE ACTION CHARGE 1

CHARGE 1 Study the effectiveness and efficiency of current programs in Texas as well as best practices to determine how to decrease the risk and mitigate the impact of wildfires, floods, and other natural hazards in the wildland-urban interface. Examine the duties, performance, and jurisdictions of water districts, municipalities, Emergency Services Districts, other similar districts, and state offices like the Fire Marshal and Extension Services. Evaluate current regulations and identify best practices. Recommend approaches for hazard mitigation and response to natural disasters. (Joint charge with the House Committee on County Affairs)

Committee Hearing

The House Committee on Urban Affairs and the House Committee on County Affairs met jointly in a scheduled public hearing on Monday May 16, 2016 at 1:00pm in room JHR 120, Texas State Capitol.

The following is the list of invited testimony who either testified on behalf of themselves or the listed entity:

Doug Bass (Self; Dallas County)
Tom Boggus (Texas A&M Forest Service)
John Carlton (Texas State Association of Fire and Emergency Districts)
Chris Connealy (Texas Dept of Insurance - State Fire Marshal's Office)
Rick Flanagan (City of Houston)
Bill Fry (Self; Association of WaterBoard Directors - Texas)
John Henneberger (Self; Texas Low Income Housing Information Service)
Mike Howe (Texas Section AWWA)
Nim Kidd (Texas Department of Emergency Management, Department of Public Safety)
Michael Lyttle (Texas Department of Housing and Community Affairs)
Scott Morgan (Texas State Association of Fire and Emergency Districts)
Ned Munoz (Texas Association of Builders)
Tom Nuckols (Travis County)
Brenda Oconnor (Insurance Institute for Business & Home Safety)
Tom Oney (Lower Colorado River Authority)
Walter Peacock (Self)
Pete Phillips (Texas General Land Office)
Gordon Wells (The University of Texas at Austin)
Mike Wisko (Texas Fire Chiefs Association)
Heather Lagrone (Texas General Land Office)
Tyler Payne (Texas General Land Office)

Background

Due to its immense size and geographical diversity, Texas is especially vulnerable to disaster situations. The state leads the nation in natural disasters and has suffered damage from tornadoes, hurricanes, flooding, drought and extreme temperatures. Increasingly, the focal point of this vulnerability is in the Wildland-Urban Interface (WUI), the areas where urban growth abuts undeveloped wildlands. In addition to natural disasters, the state has had its share of public health outbreaks of both the Zika and Ebola viruses. Lastly, Texas has seen a number of manmade disasters such as the West fertilizer plant explosion. Response to these emergency situations requires coordination between a number of federal, state, and local agencies.

Findings

A Presidential Declaration is required in order to declare a federal disaster. The threshold for this type of declaration in Texas is, based upon its population, at least \$35.4M in uninsured property damage. Unless a disaster meets this loss threshold, an entity does not receive federal aid; oftentimes, this threshold is not met despite large property losses.

The Governor may, through executive order or proclamation, declare a state of disaster when an event has occurred or is imminent. In the event of a state declared disaster, resources are made available to assist in preparedness or for response services.

County judges and mayors may issue a local disaster declaration effective for up to seven days; a disaster declaration beyond that requires action by a commissioners court or city council. Local entities must use their own resources to respond to these disasters. Local entities may apply for state aid if they do not have necessary resources to adequately respond to a disaster.

The state funds disaster recovery through General Revenue Funds, supplemental appropriations, Federal Funds, and Other Funds. The Governor may also provide disaster grant funds to local and state agencies, once appropriated funds have been depleted.

Emergency Response State Agencies

Several state agencies are tasked with disaster preparation, response, and relief efforts. Agencies including the division of the Texas Department of Public Safety dedicated to disasters - the Division of Emergency Management (TDEM), Texas A&M Forest Service (Forest Service) and Texas A&M Engineering Extension Service (TEEX) receive direct appropriations in support of these efforts. Other agencies such as the Texas General Land Office, Texas State Fire Marshal's Office, and the Texas Department of Housing and Community Affairs provide resources and assistance in times of manmade and natural disasters.

TDEM is the primary agency within the state that assists with the mobilization and deployment of state resources. Through the State Operations Center, TDEM has State Coordinators assigned to each DPS region within the state that oversee a team of district coordinators. These district coordinators help local officials through emergency planning and training of local response teams.

The Texas Emergency Management Council is a larger collection of state agencies and aid relief organizations that advise and assist the Governor in disaster mitigation, emergency preparedness, disaster response and recovery. During a time of need, they coordinate and deploy state resources to local entities that have requested assistance.

Fire Response Services

As growth moves out to the rural areas across the state, responders are seeing more wildfires in

the Wildland-Urban Interface (WUI). Historically, city and volunteer forces provided fire protection services in these areas, but increasingly, Emergency Service Districts are filling the gaps. Local entities bear the cost burden of providing firefighting services, which includes salaries, training and equipment.

There are various resources in the state that offer support and funding to local first responders:

- The State Fire Marshal's Office is the chief investigative agency in charge of arson incidents in the state. Their staff is located throughout the state and conduct fire investigations, inspections, and licensing investigations. They are also responsible for educating the public regarding fire prevention and safety.
- The Texas Forest Service Grant Program provides ESDs grant funding to purchase equipment that they would not otherwise be able to afford through the Texas Intrastate Fire Mutual Aid System Grant Assistance Program.
- Texas Task Force 1 (TX-TF1) is an urban search and rescue equipment cache that provides resources across the state during an event or disaster. TX-TF1 is not responsible for the actual act of fighting fires.

City and County Response Services

Emergency services in the state of Texas are provided through a patchwork of volunteer and professional first responders. Emergency Service Districts are political subdivisions of the state that are funded by ad valorem taxes and in some cases sales tax. ESDs are governed by a board of five commissioners that, in most cases, are appointed by a commissioners court. There are 320 ESDs in the state providing fire protection, emergency medical response or both.

City and County responders must be prepared to respond to a wide variety of both natural and man-made disasters. For example, Travis County faces both wildfires and flooding within its geographical boundaries, which requires response teams trained to deal with either situation. City and County responders often work in partnership with area Councils of Governments and state agencies to devise regional preparedness planning and training in order to better respond to the unique challenges of their community.

Water Response Services

Associations and agencies have been key players in the efforts of statewide emergency preparedness, disaster response and mitigation, and mutual aid assistance for public and private water and wastewater utilities.

In 2005, following Hurricanes Katrina and Rita, the American Water Works Association developed a voluntary utility-to-utility mutual aid program to support and promote disaster preparedness for public and private water and wastewater utilities. The program, TxWARN, is partially funded by the Texas Commission on Environmental Quality, and is the first resource contacted when aid is needed. TxWARN helps to coordinate the mobilization of resources needed during an emergency. For example, during the Bastrop fires, TxWARN helped coordinate with the City of Austin to bring backup generators to Bastrop so that they could continue to provide water services to the area.

The Association of Water Board Directors is comprised of all the utility districts in the state. They meet twice a year to educate boards of directors of local water utility districts on best practices for daily operations and maintenance in addition to emergency management planning.

The Lower Colorado River Authority manages the water supply system in the Lower Colorado River basin. They help to mitigate the impact and hazards of flooding within the region through river management and providing local officials with real-time data collection alerting them to the conditions that may contribute to a natural disaster.

Mitigation and Recovery

More attention should be paid to reducing risks before disasters strike by creating more resiliencies within communities. Mitigation recovery planning currently exists within a silo and frequently is not incorporated into general comprehensive planning measures undertaken by a community. Hazard mitigation planning should be one aspect of overall comprehensive planning.

Major urban areas and the WUI surrounding those areas are especially vulnerable to natural disasters and losses due to the increasing pressures brought on by population growth and development. These areas are often low in resources and do not have the capacity for normal planning, mitigation and recovery.

The limited authority of counties in regulating new development is the largest barrier to helping communities increase their resiliency to emergencies. Counties currently have subdivision authority to require mitigation for new development within a platted subdivision, but it does not extend to growth outside of a subdivision. Currently new subdivisions can be required to improve wildfire preparedness by requiring dual access to facilitate homeowner evacuation and an adequate water supply to provide first responders with the necessary resource to fight fires. County authority is unclear whether they can require new homes be built with wildfire-resistant materials that are less flammable or set standards for landscape and vegetation management. Unfortunately, much of the growth in counties is happening in unincorporated areas where counties do not have authority to put in place reasonable wildfire mitigation ordinances. The ability to modify development before a disaster event will, if nothing else help reduce the severity when an event occurs.

Building and Insurance

It is important to balance reasonable building mandates that help reduce the loss of life with the goal of providing safe and affordable housing. While Texas does not have a statewide building code, cities are mandated to follow the International Residential Code (IRC); counties have permissive authority to mandate that homes be built to code. Were the state to adopt a uniform statewide building code, attention would need to be paid to streamlining and integrating it with existing statewide codes to prevent conflicting standards. Building standards and specialized certifications should be tailored to the conditions of the geographical location and its particular known hazards; a statewide code would need to allow for such flexibility.

In the event of a disaster, advance planning is imperative to ensure that the least amount of damage and loss is incurred by a community. In the case of disaster rebuilding, the first priority should be to get people back into their homes quickly and, secondly, to get the most number of people back into their homes and recovering financially in the quickest amount of time at the lowest cost. There are front-end measures that can help communities recover more quickly, maintain the local tax base, and reduce post-disaster recovery aid. While the state has very robust

programs for emergency recovery, there is very little that has been done to establish long-term rebuilding programs. Local jurisdictions should have the ability to pre-clear and get approval for rebuilding efforts before a disaster occurs. State agencies that partner in these efforts also need clear directives when supporting and aiding in such plans.

Recommendations

1. The Texas Legislature should develop a formal process for local entities to apply for state disaster recovery funds, including a revolving state disaster recovery fund.

The state funds disaster recovery through General Revenue Funds, supplemental appropriations, Federal Funds, and Other Funds. State and Local entities can also apply directly to FEMA, but unless they reach the \$35M federally-required, uninsured loss threshold, they cannot receive funding. Additionally, local entities must pay a non-federal match to draw down these funds. Reimbursements can take up to years to receive, which is especially difficult when local communities experience economic loss as a result of a disaster. While local entities have a mechanism to apply for the federal disaster recovery funds, there is no comparable state process.

2. The Texas Legislature should continue to support local responders as the most appropriate first line of defense when responding to an emergency.

Like most states, Texas relies on a ground level response that moves upward through state and federal relief as needed. Due to Texas' diverse geographical and climatic regions, first responders are best situated to respond to their region. As members of the communities in which they are serving, they are attuned to the needs of the situation. While coordination with state and federal agencies is crucial to successful emergency response, decisions and action should first be taken at a local level if possible, rather than by a central authority.

3. The Texas Legislature should ensure that current resources are adequately funded and maintained.

Providing fire and emergency services is a costly, yet necessary service. The gear for one responder can cost upwards of \$8,000. Trucks and equipment can range from \$500,000 – \$800,000. Resources must be available in advance of their need and require ongoing maintenance and repair. Additionally, they need to be strategically placed and positioned for easy deployment across the state. Ensuring that communities have the needed resource for both local use and statewide mutual use should be a priority.

-
4. The Texas Legislature should assist in building a comprehensive network of accurate and up-to-date GIS tracking and visualization databases for the state.

Most mitigation planning relies on incomplete or out-of-date data. In order for local communities to create comprehensive mitigation plans for emergency preparedness, it is important that the foundation of these plans be based on the most accurate information available. Funding should be made available to local communities that cannot afford to perform current and accurate GIS tracking on their own.

5. The Texas Legislature should clarify county authority to set minimum standards for wildfire mitigation in both platted subdivisions and other unincorporated areas.

Counties currently have subdivision authority to require limited mitigation regulations for new development that occurs within a platted subdivision. However, counties do not have this authority for development that falls outside of subdivisions, which is the source for much of the growth in counties. Due to the lack of authority, there is a lack of uniformity about the safety of structures going up across the state. Increased authority would allow for universal mitigation efforts for new development in the unincorporated areas of the county.

The following exhibits were provided to the committee:

1. TDHCA letter on state disaster recovery
2. Insurance Institute for Business & Home Safety written testimony
3. General Land Office Power Point





TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Greg Abbott
GOVERNOR

BOARD MEMBERS
J. Paul Oxer, *Chair*
Juan S. Muñoz, PhD, *Vice Chair*
Leslie Bingham-Estacero
T. Tolbert Chisum
Torri H. Gann
J.B. Goodwin

May 4, 2016

Writer's direct phone # 512.475.3296
Email: tim.irvine@tdhca.state.tx.us

The Honorable Carol Alvarado
Chair, House Committee on Urban Affairs
Texas Capitol
Austin, TX
Sent via electronic mail.

RE: COMMITTEE HEARING ON MAY 16, 2016

Dear Chair Alvarado:

Thank you for the opportunity to provide written information to the House Committee on Urban Affairs on the Texas Department of Housing and Community Affairs' ("TDHCA") role in state disaster recovery. TDHCA is not a first responder agency but we do serve eligible Texans impacted by disasters through our work with local governments, community action agencies, and other nonprofit organizations. The attached document succinctly describes how TDHCA brings its resources to bear when disaster strikes.

Please let me know if you or any of the committee members have any questions. Thank you.

Respectfully,

Timothy K. Irvine
Executive Director

Attachment

cc: JD Pedraza, Committee Clerk
Allison Winney, Speaker's Office

221 East 11th Street P.O. Box 13941 Austin, Texas 78711-3941 (800) 525-0657 (512) 475-3800





DISASTER RELIEF RESOURCES

We apply Department expertise and resources to help local administrators assist eligible Texans impacted by disasters.

OUR DISASTER RELIEF ROLE

We are not a first responder.
We provide immediate and short term community service and housing support, and long term affordable housing relief.

IMMEDIATE AND SHORT TERM RELIEF

Pending funding availability, TDHCA may provide funding to existing TDHCA Community Services Block Grant ("CSBG") administrator(s) to enhance shelter services and provide temporary housing assistance.

LONG TERM RELIEF

Rent payment assistance
Home rehabilitation, reconstruction
Homebuyer assistance
Housing development, rehabilitation (single and multifamily)

TDHCA DISASTER RELIEF PROGRAMS

TDHCA disaster relief programs are available to eligible administrators who apply to receive funds to support activities and/or provide services directly to eligible individuals and households in need.

Eligible administrators vary by program, and typically include:

Units of local government;
Public housing authorities;
Nonprofits, for profits, community-based organizations;
Lenders; and/or
Private developers.

An overview of TDHCA's disaster relief programs is available online at www.tdhca.state.tx.us/disaster-resources/communities-nonprofits.htm

ELIGIBLE BENEFICIARIES

Eligible beneficiaries vary by program, and are subject to income eligibility, typically identified as Area Median Family Income ("AMFI").

TDHCA programs typically target lower to moderate income populations, generally serving households earning up to 80% AMFI.

Some programs may give assistance priority to special needs populations, such as:

Colonia residents;
Migrant farm workers;
Persons with alcohol and/or drug addictions;
Persons with disabilities;
Persons with HIV/AIDS;
Homeless populations;
Public housing residents;
Seniors;
Veterans;
Victims of domestic violence; and
Youth aging out of foster care.

TDHCA DISASTER RELIEF FUNDING

The Department does not receive funds designated for disaster relief, but as available, may provide deobligated¹ discretionary, or other funds for disaster relief support.

TDHCA's HOME Disaster Relief Program may have deobligated funds for disaster relief activities

Visit TDHCA's HOME Disaster Relief page for details at www.tdhca.state.tx.us/home-division/disaster-relief.htm

Funding levels vary by program and are subject to availability.

All activities supported through TDHCA funding must follow applicable program rules, including but not limited to eligible applicants, beneficiaries, activities, etc.

HELP FOR YOUR CONSTITUENTS

Immediate Assistance

American Red Cross: Get assistance at RedCross.org/find-help or call toll free 1-866-438-4636
2-1-1 Texas at www.211texas.org, dial 2-1-1 or call toll free 1-877-541-7905

Federal Emergency Management Agency ("FEMA") Assistance

Those impacted by a federally declared disaster may register for FEMA assistance at DisasterAssistance.gov or call toll free 1-800-621-3362. Those with speech or hearing impairment may call toll free TTY 1-800-462-7585.

Long Term Assistance

TDHCA's Help for Texans: Visit www.tdhca.state.tx.us/texans.htm or call toll free 1-800-525-0657

Additional Disaster Relief Resources for Impacted Individuals and Families is available at www.tdhca.state.tx.us/disaster-resources.htm

¹ Deobligated funds are residual, left over, or remaining funds that may have been previously committed (obligated) to specific applications where the applicant did not use the full amount of committed funds to complete the activity identified in the application.

DISASTER RELIEF PROGRAMS OVERVIEW

All TDHCA disaster relief programs are subject to funding availability.

IMMEDIATE SHORT TERM RELIEF PROGRAMS

Shelter Support

COMMUNITY SERVICES BLOCK GRANT ("CSBG") PROGRAM

Eligible Applicants: Entities designated by the Governor as Eligible Entities

Eligible Activities: Food; clothing; gift cards for food, gas, toiletries; medical items

Beneficiaries: Impacted households earning up to 125% Federal Poverty Level

Contact: 512-475-3950 800-525-0657 info@tdhca.state.tx.us

Temporary Housing

LOW INCOME HOME ENERGY ASSISTANCE PROGRAM ("LIHEAP")²

Eligible Applicants: Existing administrators of TDHCA's LIHEAP-funded Comprehensive Energy Assistance Program ("CEAP")

Eligible Activities: Temporary housing assistance, such as hotel vouchers

Beneficiaries: Impacted households earning up to 125% Federal Poverty Level whose supply of power to the dwelling is disrupted causing temporary evacuation

Contact: 512-475-3950 800-525-0657 info@tdhca.state.tx.us

LONG TERM RELIEF PROGRAMS

Rental Assistance

TENANT-BASED RENTAL ASSISTANCE ("TBRA")³

Eligible Applicants: Units of local government, nonprofit organizations, and Public Housing Authorities

Eligible Activities: Rental subsidies for up to 60 months while the household engages in a self-sufficiency program. May include security and utility deposit.

Beneficiaries: Renters earning up to 80% AMFI

Contact: 512-463-8921 800-525-0657 home@tdhca.state.tx.us

Home Rehabilitation, Reconstruction

HOMEOWNER REHABILITATION ASSISTANCE ("HRA") PROGRAM³

Eligible Applicants: Units of local government, nonprofit organizations, and Public Housing Authorities

Eligible Activities: Rehabilitation or reconstruction of substandard stick built homes or replacement of manufactured housing units owned and occupied by qualified homeowners; potential refinancing of existing mortgage in conjunction with home rehabilitation or reconstruction for qualified applicants

Beneficiaries: Households earning up to 80% AMFI

Contact: 512-463-8921 800-525-0657 home@tdhca.state.tx.us

AMY YOUNG BARRIER REMOVAL ("AYBR") PROGRAM⁴

Eligible Applicants: Units of local government, nonprofit organizations, and Public Housing Authorities

Eligible Activities: Grant funds for accessibility modifications in renter- and owner-occupied housing; also helps eliminate life-threatening hazards and correct unsafe conditions in owner-occupied homes.

Beneficiaries: Persons with disabilities earning up to 80% AMFI

Contact: 512-475-4828 800-525-0657 ht@tdhca.state.tx.us

Single Family Housing Development, Rehabilitation

CHDO SET-ASIDE: SINGLE FAMILY DEVELOPMENT PROGRAM⁵

Eligible Applicants: Community Housing Development Organizations

Eligible Activities: Development or rehabilitation of affordable single family housing for homeownership

Beneficiaries: Households earning up to 80% AMFI

Contact: 512-475-1391 800-525-0657 home@tdhca.state.tx.us

Homebuyer Assistance

HOMEBUYER ASSISTANCE PROGRAM ("HOME HBA")³

Eligible Applicants: Units of local government, nonprofit organizations, and Public Housing Authorities

Eligible Activities: Down payment and closing cost assistance for homebuyers of single family housing units; may include rehabilitation for accessibility modifications.

Beneficiaries: Households earning up to 80% AMFI

Contact: 512-463-8921 800-525-0657 home@tdhca.state.tx.us

TEXAS BOOTSTRAP LOAN PROGRAM⁴

Eligible Applicants: State-certified "Nonprofit Owner-Builder Housing Providers", such as Colonia Self-Help Centers and eligible nonprofit organizations, who run self-help construction programs

Eligible Activities: Development of single family housing through "sweat equity" in which owner-builders provide at least 85% of the labor required to construct or rehabilitate the home

Beneficiaries: Households earning up to 60% AMFI

Contact: 512-475-4828 800-525-0657 ht@tdhca.state.tx.us

Multifamily Housing Development, Rehabilitation

HOUSING TAX CREDIT ("HTC") PROGRAM

Eligible Applicants: Public and private for-profit and nonprofit developers

Eligible Activities: Tax credits used to offset the developer's federal tax liability in exchange for the development of affordable rental properties or the rehabilitation of existing properties to maintain affordable rents for an extended period of time

Beneficiaries: Tenants earning up to 60% AMFI

Contact: 512-936-7834 800-525-0657 info@tdhca.state.tx.us

MULTIFAMILY MORTGAGE REVENUE BOND ("MRB") PROGRAM

Eligible Applicants: Private for-profit and nonprofit developers

Eligible Activities: Low-interest loans to help finance the development of affordable rental properties or the rehabilitation of existing properties to maintain affordable rents for an extended period of time

Beneficiaries: Tenants earning up to 60% AMFI

Contact: 512-475-3344 800-525-0657 info@tdhca.state.tx.us

MULTIFAMILY DIRECT LOAN PROGRAM⁵

Eligible Applicants: Units of local governments, nonprofit and for-profit organizations, Public Housing Authorities, and Community Housing Development Organizations ("CHDO")

Eligible Activities: New construction, demolition and reconstruction, or acquisition and rehabilitation of affordable multifamily rental housing

Beneficiaries: Tenants earning up to 80% AMFI

Contact: 512-475-0538 800-525-0657 info@tdhca.state.tx.us

Land-Bank Property Redevelopment

NEIGHBORHOOD STABILIZATION PROGRAM ("NSP")

Eligible Applicants: Existing NSP subrecipients participating in land banking.

Eligible Activities: Redevelopment of NSP land-banked properties across the state to create housing affordable for eligible households.

Beneficiaries: Qualifying households earning up to 120% AMFI

Contact: 512-475-2118 800-525-0657 info@tdhca.state.tx.us

This overview of TDHCA's Disaster Relief Programs is available online at www.tdhca.state.tx.us/disaster-resources/communities-nonprofits.htm

² LIHEAP is the funding source for TDHCA's Comprehensive Energy Assistance Program (CEAP).

³ Offered through TDHCA's federally funded Texas HOME Program.

⁴ Offered through TDHCA's state funded Housing Trust Fund.

3

TESTIMONY OF
BRENDA O'CONNOR
SENIOR VICE PRESIDENT, COMMUNICATIONS
INSURANCE INSTITUTE FOR BUSINESS & HOME SAFETY

COMMITTEE ON COUNTY AFFAIRS
AND
COMMITTEE ON URBAN AFFAIRS

TEXAS HOUSE OF REPRESENTATIVES

May 16, 2016

Chairman Coleman, Chairwoman Alvarado, and members of the Committees, thank you very much for holding this hearing today to examine best practices to decrease the risk and mitigate the impact of natural catastrophes in Texas. My name is Brenda O'Connor and I am the senior vice president of communications for the Insurance Institute for Business & Home Safety.

As a non-profit building science research organization supported by the property insurance industry, IBHS focuses on identifying effective, workable ways to reduce damage from extreme weather events, like hurricanes, severe storms with hail, high winds and wind-driven rain, as well as other catastrophic events like wildfires. IBHS works to strengthen building codes and standards, improve building products, materials and installation, and develop better construction practices, as well as more effective repair and replacement techniques.

We do this at our unique, state-of-the-art Research Center in South Carolina, which provides unprecedented opportunities for objective laboratory testing of full-scale, one- and two-story residential and commercial buildings in conditions that mimic Mother Nature's extreme weather events. By investigating how buildings are damaged and in some cases come apart under these conditions, IBHS' engineers and researchers can better determine how to improve their performance, keep them together, or put them back together again—safer, stronger, and more durable than they were before.

Texas is vulnerable to a wide range of destructive natural disasters, including hurricanes, tornadoes, floods, wildfires, hailstorms, and severe winter weather. Hurricane Ike, which struck the Texas coast in 2008, killed more than 100 people and resulted in more than \$13 billion in insured losses, and nearly \$30 billion in total economic losses. Ike ranks as the fourth most costly hurricane in U.S. history. The Bastrop County Complex Fire in 2011, which occurred not far from where we are today, is one of the top 10 costliest wildfires in U.S. history. Sadly, two people were killed, nearly 1,700 homes were destroyed and an estimated \$325 million of insured property damage was caused.

These are just two examples of the devastating disasters that have ravaged Texas. Yet, there is no statewide building code to help mitigate the potential damage caused by these types of events, which science tells us will continue to happen.

Strengthening building codes would be a significant step toward reducing property damage and insurance claims that result from catastrophic events. A study done by IBHS, the University of Florida and FEMA following Hurricane Charley, which hit Florida in 2004, found that modern building codes reduced the cost of insurance losses by 42 percent and reduced the number of insurance claims by 60

percent. Stronger codes also can potentially save billions of dollars in government disaster response and recovery costs.

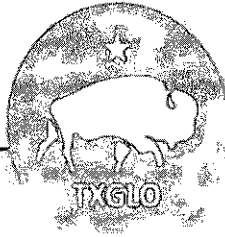
But strong, well-enforced statewide building codes are just one way to mitigate against disasters. There are also voluntary measures states and local jurisdictions can take to increase the resilience and disaster resistance of their communities. IBHS' FORTIFIED Home™ programs provide superior engineering and building standards for both building new homes and retrofitting existing homes.

There are currently two FORTIFIED Home programs available that address some of the major catastrophes that threaten Texas. One provides standards for homes in hurricane-prone areas and the other includes standards for homes in areas prone to high winds and hail. Both are based on solid engineering principles and were developed using more than 20 years of post-storm damage investigations.

FORTIFIED uses a unique systems-based method for creating stronger, safer homes and it is available at every price point. For example, there are many Habitat for Humanity homes in coastal areas built using FORTIFIED's hurricane standards. The program employs an incremental approach with three levels of designation available—Bronze, Silver and Gold. Builders work with homeowners to choose the desired level of protection that best suits their budgets and resilience goals.

Strong building codes and FORTIFIED standards complement each other to help create resilient communities. We must break the cycle of destruction created by repairing and rebuilding in the same brittle ways in the same places after catastrophic events. When buildings are stronger and communities are more resilient, everyone wins. Home and business owners are able to recover faster, local jobs and tax bases are preserved, and taxpayers benefit because post-disaster government aid will be reduced.

IBHS stands ready to assist you in your efforts to implement effective disaster mitigation strategies that will benefit all Texas citizens. Thank you very much.



Texas General Land Office

84th Legislative Session



Joint Interim Committee
House Urban Affairs and County Affairs
May 16, 2016

A handwritten signature in black ink, appearing to read 'G. P. Bush', is centered on the page.

Commissioner George P. Bush

Total Disaster Recovery Funding

\$3,703,048,391

This funding represents long-term disaster recovery grants received from the U.S. Department of Housing and Urban Development (HUD) between 2006 to the present, and excludes other disaster funds received from FEMA or other federal sources. Eligible activities include housing and infrastructure repair, public services, and business recovery.

Hurricane Rita - \$503,194,849

- \$74,523,000 (Public Law 109-148)
- \$428,671,849 (Public Law 109-234)
- Primarily administered by Texas Department of Housing & Community Affairs and the Texas Department of Rural Affairs;
- GLO handled the last few million expenditures when the program transferred to the agency

Hurricanes Ike & Dolly - \$3,113,472,856

- HUD released the allocations in rounds (Public Law 110-329)
- First round - \$1,314,990,193
- Second round - \$1,798,482,663

2011 Wildfires - \$36,380,686

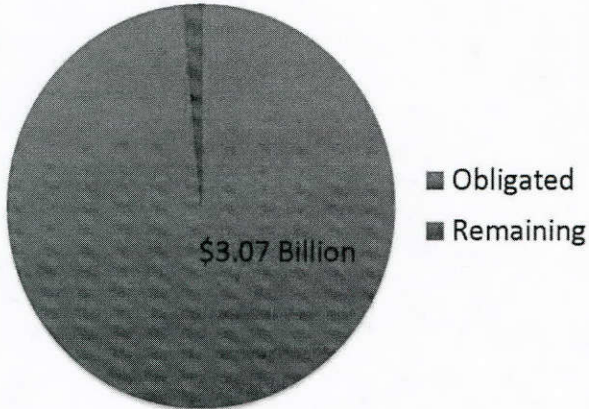
- \$31,319,686 (Public Law 112-55)
- \$5,061,000 (Public Law 113-2)
- Primarily funding damages in Bastrop County and limited allocations to other wildfire impacted counties

2015 Flooding -- Approx. \$50,000,000

- Funding will be for over 110 affected counties, but allocation directives have not been issued by HUD.

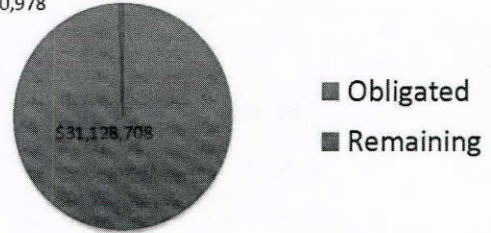
Hurricanes Ike/Dolly

\$46.1 Million



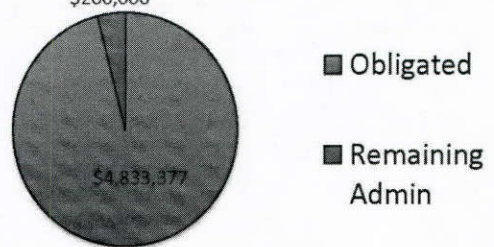
Wildfire I

\$190,978



Wildfire II

\$200,000



Texas Coastal Resiliency Study-\$2,100,096

- The Texas Coastal Resiliency Study identifies the critical infrastructure assets within the 22 county coastal study area that are most vulnerable to future storm impacts similar to those experienced during Hurricanes Dolly and Ike.
- To conduct this Study, the vendor, Chicago Bridge and Iron, identified existing projects and recommended new projects to mitigate potential damage to vulnerable infrastructure.
- Projects were then compiled into this document that can be used to aide communities in fast-tracking the application process in the event of a future storm.

Community Development and Revitalization Deliverables

- 6,714 Single Family Homes
- 30 Single and Multi-family Rental Projects
- \$85 Million Wastewater Treatment Plan
- 1019 Generators
- Across 62 counties, there are over 3,900 infrastructure sites completed with about 1,200 to go.

The title banner features a background image of a coastal landscape with a dark, silhouetted foreground and a lighter, hazy sky. The text "Texas Coastal Resiliency Study (Cont.)" is overlaid in a white, sans-serif font.

Texas Coastal Resiliency Study (Cont.)

- **Phase 1** consisted primarily of collecting data and reports, conducting initial analysis, developing a database, tools and a spatial analysis platform and devising the methodology to carry out the resiliency and infrastructure assessments.
 - **Phase 2** applied the information and spatial data compiled in Phase 1 to conduct assessments of critical infrastructure within the study area with the goal of developing a list of recommended projects.
 - **Phase 3** of the study consisted of the development of a report where the CB&I team created the final project portfolios and a risk classified list of 2,200 unfunded projects.
-

Proposed Infrastructure Improvement Examples

Brazoria County

High priority infrastructure categories: flooding

- Recommended solutions: coastal protection structures such as berms, beach nourishment, dune restoration

North Brazoria

- High priority infrastructure categories: transportation, communications, flooding and critical facilities
Recommended solutions: bridge repair, early warning systems, flood gauges, and several generator projects for lift stations

South Brazoria

- High priority infrastructure categories: critical facilities and coastal protection structures
Recommended solutions: emergency operations vehicles, beach and dune restoration, shoreline stabilization

Fort Bend County

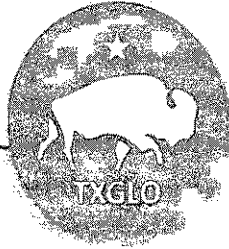
High priority infrastructure categories: transportation and flooding

Recommended solutions: drainage improvement system (pumps and drainage), and extending highway system for evacuation

Galveston County

High priority infrastructure categories: critical facilities, transportation, and communications

Recommended solutions: elevate roadway, new ferry landing, early warning systems, and radio communication system



Texas General Land Office

George P. Bush, Commissioner

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Pete Phillips, Director for Community Development & Revitalization

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YouTube

@txglo



CHARGE 2

Identify and address potential gaps in cities' cybersecurity policy and ensure that personal information held by cities and other municipal entities is secure.



SUMMARY OF COMMITTEE ACTION CHARGE 2

CHARGE 2: Identify and address potential gaps in cities' cybersecurity policy and ensure that personal information held by cities and other municipal entities is secure.

Committee Hearing

The House Committee on Urban Affairs met in a scheduled public hearing on Wednesday, January 20, 2016 at 1:00 p.m. in room E2.010, Texas State Capitol.

The following is the list of invited testimony who either testified on behalf of themselves or the listed entity:

Edward Block (Department of Information Resources)
Mary Dickerson (Texas Cybersecurity, Education and Economic Development Council)
Stephen Elkins (City of Austin)
Edward Henigin (Data Foundry, Inc)
Chad Holmes (Self; FireEye)
David LaPlante (City of Houston)
Mike Raft (AT&T)
Kevin Williams (City of Austin)

Committee Hearing

The House Committee on Urban Affairs met in a scheduled public hearing on Tuesday, February 23, 2016 at 10:00 a.m. at UTSA Main Campus, San Antonio.

The following is the list of invited testimony who either testified on behalf of themselves or the listed entity:

Chandra Mauli Agrawal (University of Texas at San Antonio)
John Dickson (Principal Denim Group)
Chris Fogle (Delta Risk LLC, A Chertoff GRP Co.)
Larry Hurtado (Digital Defense, Inc.)
Shanna Igo (Texas Municipal League)
Robert Jones (City of Corpus Christi)
Hugh Miller (City of San Antonio)
Scott Myers (root9b)
Sarich, Greg (CPS Energy)
Tull, Anthony (City of Granbury)
White, Gregory (University of Texas at San Antonio/ The Center for Infrastructure Assurance and Security)
Block, Edward (Department of Information Resources)

Committee Hearing

The House Committee on Urban Affairs met in a scheduled public hearing on Tuesday, April 05, 2016 at 1:00 p.m. in room E1.014, Texas State Capitol.

The following is the list of invited testimony who either testified on behalf of themselves or the listed entity:

Joel Austin (Oncor Electric Delivery)
Art Conklin (Self)
Ann Delenela (ERCOT)
Bill Fry (Self; Association of Water Board Directors-Texas)
Michael Goin (Austin Energy/City of Austin)
Margarita Hubbard (San Antonio Water System)
Brian Lloyd (Public Utility Commission of Texas)
Teri Pennington (City of Austin, Austin Water)
Michael Phillips (CenterPoint Energy)
JJ Rocha (Texas Municipal League)
William Whitney (Self; Garland Power & Light)
Edward Block (Texas Department of Information Resources)
Michael Kampstra (San Antonio Water System)

Municipalities Cybersecurity Working Group

The House Committee on Urban Affairs Chair Carol Alvarado commissioned the Texas Municipal League with the assistance of Dr. Gregory White, PhD Professor of Computer Science and Director of the Center for Infrastructure Assurance and Security, University of Texas at San Antonio and Dr. Arthur Conklin, PhD Associate Professor at the Center for Information Security Research and Education University of Houston, College of Technology, to facilitate a series of workgroups to further identify current and future cybersecurity gaps in Texas municipalities and make specific policy recommendations where appropriate. The work group met monthly in various locations and was comprised of industry stakeholders and experts representing a broad spectrum of Texas municipalities in both size and region.

Utilities Cybersecurity Working Group

The House Committee on Urban Affairs Chair Carol Alvarado commissioned Dr. Arthur Conklin, to facilitate a series of workgroups to further identify current and future cybersecurity gaps in the utility industry and make specific policy recommendations where appropriate. The work group met monthly in various locations and was comprised of industry stakeholders and experts representing a broad spectrum of utility services in both size and region.

Background

The charge of this committee was to determine the policy gaps and related cyber security issues that might have an effect on municipalities and other municipal entities including the utilities serving electric and water to Texas communities. The concern of the Committee is to understand the current state of cybersecurity for Texas communities, given that the current threat environment is characterized by when and where an attack will occur, not if. Cybersecurity is a discipline characterized by a dynamic environment of change. IT systems change and the threat environment evolves, resulting in a challenge for operators to ensure their systems are operating at an acceptable level of risk.

As a result of the three interim committee hearings on the charge, these themes resurfaced in regards to the state of cybersecurity in Texas municipalities:

There is a lack of awareness and education regarding cybersecurity

There are approximately 1100 cities in Texas but only about 200 cities actually have a person or department that handles cybersecurity. Some cities are so small that they depend on volunteers to handle IT matters. Most individuals do not have a grasp on what the basic requirements are for a city in terms of cybersecurity. It is imperative that elected officials, local government agencies, and our citizen's understand what cybersecurity is and best practice methods that will help keep their information safe.

There are resources available but many cities do not know where to get reliable information

Many cities submitted examples of businesses or other groups that have created a checklist on how cities can address cybersecurity. For example, the City of Houston has a guide that was created by the Greater Houston Partnership's Cybersecurity Taskforce that provides a guide to help cities and businesses become more knowledgeable about cybersecurity and viable steps they can take to address this issue. However, there is not a single place a city can go to get reliable information that best fits the needs of their city. One way to fix that problem is to have a clearinghouse where a city can go to a website and find all of the resources they need.

Many cities do not have a plan or the right personnel in place to handle a cyber-attack

Cities need to establish a cybersecurity plan. There needs to be a checklist of what a city needs to do to be secure and a plan for how they can execute it. Also, as mentioned above, less than 20% of cities actually have IT personnel on staff, others rely on volunteers or someone else on the payroll. With cybersecurity continuing to be a growing issue, Texas will need to collaborate with K-12 and higher education institutions to make sure there is a strong pipeline of new workers ready to work in this field.

Many cities lack the funding necessary to adequately protect their cities

There is a lack of awareness on this issue so many city budgets do not reflect the important need for cybersecurity. This all costs money. From personnel to equipment, cities need funding to support their infrastructure.

Lack of incentives to encourage cities to focus more on cybersecurity

One suggestion was for the state to create a cybersecurity recognition program that would

acknowledge those cities that have met certain standards within their cybersecurity policies. There was a suggestion made that the Comptroller could include cybersecurity planning within their transparency ratings system.

Apart from the three interim committee hearings on the charge, the committee also asked members of Texas electric and water utilities to work together in a working group to examine the state of cybersecurity preparedness and determine the needed actions going forward as an industry group. The group began its work over the summer of 2016 via a series of meetings hosted by Rep. Alvarado's office. Dr. Arthur Conklin, from the University of Houston, was appointed the leader of the working group. Dr. Conklin is an expert in cyber security as it relates to critical infrastructure systems including utility systems.

At the beginning of the working group sessions, several issues quickly surfaced. First, there are significant differences between electric and water utilities with respect to cyber security issues. Second, there are also some similarities in principle, which result in opportunities to share ideas, although implementation of actions typically are different due to system differences. This enabled the working group to have meaningful discussions of issues as a group, while solutions specific to each sector were worked separately. The members of the working group represented large and small utilities, electric and water, public, and municipal owned. For security reasons, no specific notes associated with any utility, or action were recorded. One result worth noting was that across five meetings, a wide range of participants from multiple firms, openly shared ideas and concerns under Chatum House rules (non-attribution of content). Everyone took the issues seriously and all contributed to the discussions and solutions shared during these meetings. The openness of all of the participants made group progress on the issues possible leading to a solid understanding of the issues and the state of cybersecurity across a wide range of Texas utilities.

The end result of these planning and sharing sessions yields the following conclusions. The state of Texas utilities' cyber security preparedness varies from entity to entity. Large firms with greater levels of resources tend to have more robust cybersecurity than smaller firms. While on the face of the issue, this seems to be concerning, it became readily understood that the scale of resources tended to mirror the scale of the assets. While there is no specific or ideal level or state of cybersecurity preparedness that would eliminate the risk from cybersecurity threats, the utilities as a group appear to be taking prudent actions to protect their systems. This being said, the working group found several areas where, as a group, they could work together and improve their preparedness. Details associated with these findings will be covered later in this report. The working group determined that the current state of cybersecurity in Texas utilities is reasonable and improving. The recommendation of the working group is that while the industry continues its efforts in securing their infrastructures, the Committee can periodically revisit the issue to maintain a level of assurance in this dynamically changing environment. Much like the State approaches hurricane preparedness, in a series of layered approaches, with each iteration improving upon previous levels. This is the same type of approach used in the cybersecurity industry, and periodic reviews can provide assurance as to the balance between risk and preparedness. Minor legislative actions are suggested, including a recommendation that Urban Affairs (and other committees) are charged to continue the study of cybersecurity preparedness issues in future interims; enable funding for small organizations that cannot afford to utilize free

and low cost training and preparation; and enhance cybersecurity expertise in state agencies.

Technical Report

Cybersecurity is not a new field. In fact, it is one that has matured into a fairly well understood aspect of a total risk management program. Examining information security as a risk management exercise results in several important guidance directives. As with all risk elements in a firm, security characteristics are intertwined with the existing corporate practices and procedures. This means that solutions associated with information security risk are at least partially unique to each firm, and generic “one-size-fits-all” strategies result in less than optimal results. This intertwining of cybersecurity with all other corporate operations provides for an important foundational element of successful information security programs; it is important to leverage and coordinate with existing successful programs, both internal and external to the enterprise.

Designing a solution to a firm’s or industry’s information security needs is a difficult and complex endeavor. The National Institute of Standards and Technology (NIST) created the Cybersecurity Framework (CSF) to assist organizations in this challenge. The NIST CSF is voluntary and designed around existing standards, guidelines and practices. It was developed to allow an enterprise to better understand, manage and reduce cybersecurity risk. It does this by fostering communications between internal and external stakeholders. The details of utilizing the CSF are specific to each entity employing it as a foundational framework, and the implementation scales with the size and complexity of the firm. Describing the implementation of this framework is beyond the scope of this report, but it is important to note that experts have provided guidance that is highly relevant to understanding success. The following words of guidance are important success factors in any security program and are relevant across many aspects of security:

1. Do not attempt to adopt the framework by yourself.
2. Do not think of the use of the framework as a completed process.
3. Never adopt controls for the sake of a control.
4. Realize that there are multiple ways to implement the framework.

When it comes to utilities, there is the ever present consideration of regulation. Although electric and water utilities have numerous regulatory frameworks, cybersecurity is not one of them. The electric industry has North American Electric Reliability Commission’s (NERC) Critical Infrastructure Protection (CIP) standards, although these standards only apply to the bulk electric system, a small portion of the electrical infrastructure in Texas. NERC CIP is a heavyweight protocol that imposes significant burdens and costs that would be inappropriate for the majority of utility systems. In today’s cyber-environment that is characterized by an ever evolving threat environment, structured regulatory approaches fail to provide long-term answers to the ever-changing security problem.

An important aspect to this working group's effort is the recognition that the collection of utilities in the electric and water spaces of Texas are widely diverse in size, scope, ownership, regulations and with respect to the systems they operate. Electric firms are interconnected through the wires and their product, electricity can come from thousands of miles away. Water firms are not interconnected and in many cases have their own local supplies. In spite of these differences, they have some common elements, namely the components of cyber-systems that enable their operation. The protection of these assets from cyber-attack is a common element that crosses all firms. Unfortunately, the cybersecurity solutions are not as universal. The working group looked at a wide range of issues associated with cyber security readiness, and coalesced around three main topics:

1. How do we "prove" we are ready for a cyber-attack?
2. How can we share information better?
3. What help is needed from the Texas Legislature?

These three topics are common to both water and electric utilities, but responses vary based on a variety of factors including industry and scale.

References:

NIST CSF, <http://www.nist.gov/cyberframework/>

How To Use (And Not Use) The NIST CSF, Evan Francen, CEO FRSecure, <http://www.frsecure.com/how-to-use-and-not-use-the-nist-csf/> , March 8, 2016

Assurance of Readiness

As previously mentioned, the uniqueness of each firm extends into the uniqueness of its cybersecurity solutions. It is the opinion of the working group chair, Dr. Conklin, that the participating utilities are taking the matter seriously and are attempting to the best of their abilities to resource the risks and provide appropriate levels of protections for their systems. There are two issues associated with this answer.

- 1) How does this spread to utilities not in the meeting and how can there be assurance across greater portions of the state?
- 2) How will this approach hold up as the cybersecurity threat environment is always changing, and never for the better?

The answer to both of these questions lies in the topics covered in the following sections: information sharing and legislative actions. Information sharing can enable this spread and with the proper nurturing of the utility environment, can keep the cybersecurity assurance up to date both against the dynamic changing environment and across the geographic and scale issues across the state.

Information Sharing

Information sharing has become a buzzword in information security. It has multiple meanings

and several of these meanings have significance in the utility cybersecurity space. The first common usage revolves around the sharing of threat and threat intelligence information between firms. This need has created the need for organizations to perform this sharing function, so Industry Sharing Analysis Centers (ISACs) were created by the federal government. Two main ISACs work in the utility space, the Water ISAC and the E-ISAC whose mission is to share electricity sector security information among its members.

Another organization involved in information sharing is the FBI partnership with the private sector called INFRAGARD. This partnership is an association of persons who represent businesses, academic institutions, state and local law enforcement agencies and other participants dedicated to sharing information and intelligence to hostile acts against the U.S. and its industries.

Additional industry and sector organizations as well as cross-sector coordinating groups have been formed to facilitate sharing of critical security information in an operational realm. Each of these groups represent different sets of local and regional organizations and exist for the purposes of a collective defense through information sharing of critical information. Government bodies have created fusion centers to combine information from various groups and sectors, providing analysis, fusion and intelligence from pieces of information gathered across industries, sectors, and geography.

These information sharing mechanisms work well for the larger utility firms as significant resources are required in the form of collective participation and specific analysis of the results. However, there is uncertainty regarding how a small electric cooperative in west Texas – hundreds of miles from major cities and the seats of these groups - can benefit. This is where industry trade associations can assist in the sharing of information to utilities. A critical aspect of cybersecurity can be scale. A large utility with tens of thousands of machines can have significant cybersecurity exposures and will have significant resources devoted to managing the risk. A small utility with four computers will have neither the risk, the resources, nor pose the same scale of risk to customers because of the smaller nature of its operational footprint. Industry trade associations can assist in filtering the correct information to these firms, so that they too can have scale appropriate cybersecurity.

This brings up the second form of information sharing, the sharing of best practices and cyber-mutual aid. Although each firm has its own unique situations, which prevent universal prescriptive solutions, there are common elements in the cybersecurity arena. Best practices come from a variety of sources, industry, government and academic sources. The spreading of these best practices, including the necessary assistance in adapting them for scale and specific circumstances is yet another form of information sharing. This can be accomplished through a form of cyber mutual aid, where cybersecurity assets and resources are shared to assist in the spreading of this information. This type of operational sharing has already begun, and any legislative effort to engage in information sharing should be aware of this and take care not to create barriers to this collective method of defending the infrastructure across the state.

Recommendations

1. Consider an appropriations request for relevant state agencies to fund a grant program to support cybersecurity training and information sharing costs for small municipalities and utilities.
2. Consider the creation of cybersecurity training and information sharing programs within relevant state agencies.
3. Texas needs to increase the level of cybersecurity expertise in many government agencies. Regulatory agencies, such as PUC and TCEQ, need to be given more cybersecurity resources and priorities to assist utilities in positive ways. Assistance in the form of staff subject matter experts that can assist in the mutual aid efforts would be beneficial. Audit services that provide functional assistance without fear of regulatory action would especially help small to medium sized firms, but to provide this assistance, someone has to cover the cost of the resources.
4. Follow the recommendation of the Texas Cybersecurity, Education and Economic Development Council (TCEEDC), by creating a statewide cybersecurity coordinator in the Governor's office and improving the cybersecurity resources and structure of the Department of Information Resources (DIR).
5. Periodic re-examinations of the state of cyber-security for municipalities and utilities is warranted and needed. The environment is constantly changing, the threats evolving and while we may be ready today, being ready tomorrow will require more actions and building upon the foundations of today. Future checkups might be targeted to specific aspects, to provide boosts to under-represented entities. They might also be targeted towards certain threats that are not even known today.

The following exhibits were provided to the committee:

1. Summary Brief: Cybersecurity in Texas and the Texas Cybersecurity, Education and Economic Development Council
2. What the Public can learn from the private sector: Data Foundry's Perspective
3. Cybersecurity Policies and Practices for Private Data Collected by State & Local Govts.
4. Texas Municipal League Cybersecurity Survey
5. American Public Power Association Issue Brief
6. TML Cybersecurity and Cities Survey

Summary Brief: Cybersecurity in Texas and the

Texas Cybersecurity, Education and Economic Development Council

Texas Cybersecurity, Education and Economic Development Council (TCEEDC)

TCEEDC Summary/Timeline:

- Council originally created and authorized in 2011 by the 82nd Texas Legislature SB 988
- Council Composition:
 - 9 Members appointed by Executive Director of Tx Department of Information Resources (DIR)
 - Legislation required representatives from:
 - DIR
 - Office of the Governor
 - Higher-Education with cybersecurity related programs
 - Public Junior College with a cybersecurity related program
 - State Military forces liaison experienced in cybersecurity
 - Chambers of commerce, organizations or businesses with cybersecurity background
- TCEEDC chartered to conduct study and provide recommendations to:
 - Improve the infrastructure of the state's cyber security operations with existing resources and through partnerships between government, business, and institutions of higher education
 - Examine specific actions to accelerate the growth of cyber security as an industry in the state.
 - Report delivered December 1, 2012: *Building a More Secure and Prosperous Texas*
- The 83rd Regular Legislative Session passed multiple bills strengthening Texas' Cybersecurity posture:
 - SB 1597 – Required proactive protection of the state against cybercrime/similar security threats.
 - SB 1101 – Extended the TCEEDC for additional 2 years to be effective through 8/31/2015.
 - SB 1102 – Required DIR to designate a state Cybersecurity Coordinator and permitted DIR to implement other recommendations from the Council report.
 - SB 1134 – Required DIR to establish a state framework for cybersecurity.

TCEEDC Report - 3 Areas of Focus

- State Cybersecurity Infrastructure
 - Identify improvements needed to state infrastructure
 - Assess ability to coordinate cyber-security efforts among non-governmental entities within state
- Cybersecurity Industry Within Texas

-
- How the security of cyber assets in the state’s industries could be improved
 - How more industry could be attracted to the state to increase economic development
 - State's Cybersecurity Educational Needs
 - Identify formal degree and certification programs
 - Address general cybersecurity awareness for Texas citizens

TCEEDC Findings

- No state-wide coordination of cybersecurity strategy beyond state agencies
 - Policy, Response, Industry Economic Development, Citizen Awareness Programs
- Lack of coordinated cybersecurity effort allows cyber-crime to outpace the development of a cybersecurity infrastructure to effectively counter those activities
- Several examples of innovation and cyber excellence throughout Texas, but mostly localized rather than programs to expand to regional or statewide models
- Lack of qualified cybersecurity workforce is significantly impactful to both economic growth and the protection of the state’s cyber infrastructure

TCEEDC Recommendations (Summary Overview)

- Create a Cybersecurity framework for the state including:
 - State-level coordinator for cybersecurity efforts
 - Formal partnership between public and private sector leaders and cybersecurity practitioners
 - State program to foster improvement of cyber resiliency in both private and public infrastructure by establishing a baseline for cyber operations

Cybersecurity education pipeline to introduce cybersecurity initiatives from K – PhD

Evolution of the TCEEDC and the Texas Cybersecurity Council

The Texas Cybersecurity Council

- Formed in 2013 as authorized by SB 1102.
- Council Chair is designated State Cybersecurity Coordinator (DIR)
- Members include TCEEDC's membership expanded from original 9 members:
 - TCEEDC members integrated within the Texas Cybersecurity Council
 - DIR
 - Office of the Governor
 - Higher-Education with cybersecurity related programs
 - Public Junior College with a cybersecurity related program
 - State Military forces liaison experienced in cybersecurity
 - Chambers of commerce, organizations or businesses with cybersecurity background
 - Expanded members include:
 - State agency stakeholders for key programs: Primary (K-12) education system, Higher education system, Adults - Veterans groups.
 - Other partner members from private industry including large and small organizations representing a variety of key Texas industries.
 - More diverse geographic representation – 4 Major Texas Cities - San Antonio, Dallas, Houston, Austin
 - Overall diversity in organizations, industries, and verticals
- Create alignment with the overall state cybersecurity efforts unified under the branding “Texas Cybersecurity Council”

TCEEDC Recommendations – Progress to Date

The following is the current status of the recommendations noted in the 2012 TCEEDC report:

1. **Establishing a Texas Coordinator of Cybersecurity within the Office of the Governor** to provide a strategic direction to bring government and business leaders together as partners in securing the state's infrastructures and developing a strategy and plan to promote the cybersecurity industry within the state.
 - a. Authorized by SB 1102
 - b. DIR designated the State CISO, Edward Block as the state Cybersecurity Coordinator.
 - c. Some progress towards building public/private partnerships between state agencies and industry.
 - d. Limited progress coordinating efforts to leverage best practices among organizations throughout the state.

2. **Establishing the Business Executives for Texas Security (BETS) partnership** to bring public and private sector leaders and cybersecurity practitioners together to form a framework for knowledge sharing and collaboration, making non-proprietary and industry recognized best practices and solutions readily available for the collective improvement of cybersecurity across the state.
 - a. Some efforts made towards creating partnerships through the Texas Cybersecurity Council and through individual efforts
 - b. Engagement with the Texas CISO Council, a security intelligence and resource sharing initiative consisting of over 20 Texas security leaders from public/private organizations.

3. **Establishing a “Cyber Star” program** to foster improvement of cyber resiliency in both private and public infrastructures across the state and to increase public trust by establishing a baseline for responsible cyber operations.
 - a. Not started – longer term initiative requiring a foundation from other recommendation

4. **Adopting the Community Cyber Security Maturity Model as a statewide guide** for developing a viable and sustainable cybersecurity program and fostering a culture of cybersecurity throughout the state.
 - a. UTSA is recognized as a national leader in this area – yet their expertise does not seem to be significantly utilized by entities in Texas. This is a good example of a local resource that could be better leveraged to the betterment of the state.

5. **Increasing the number of cybersecurity practitioners in Texas** to provide the expertise needed to grow cybersecurity investment and to protect the cyber assets of the state
 - a. The Texas Cybersecurity Council education members are working to identify potential strategies
 - b. Efforts have been made to work with federal and state military representatives regarding transition plans for veterans.

6. **Providing a consistent voice for industry** regarding cybersecurity policies in order to facilitate communication between the state and industry.
 - a. Some efforts have been made toward creating partnerships through Texas Cybersecurity Council and individual efforts

7. **Continuing investment in higher education cybersecurity programs** in order to attract students to the cybersecurity field, spur research and development, and encourage institutions of higher education to become leaders in cybersecurity within their own communities.
 - a. No new specific strategies, initiatives or additional funding currently identified

8. **Promoting collaboration, innovation, and entrepreneurship in cybersecurity** to facilitate the commercialization of university research and development and encourage the development of new businesses with innovative products and services in cybersecurity.
 - a. No new specific initiatives currently identified at state level

9. **Developing a comprehensive cybersecurity education pipeline through the BETS partnership** to introduce cybersecurity initiatives from K-PhD.
 - a. The Texas Cybersecurity Council education members are working to identify potential strategies
 - b. Current initiatives to promote statewide participation in national events include:
 - i. Cisco Networking Challenge, a public-private venture
 - ii. Nationwide CyberAces and CyberPatriot programs.
 - iii. CyberPatriot education/promotion - DIR facilitated events throughout the state in fall 2013 to encourage participation by local school districts and has been working to promote cyber-focused summer camps at new venues.

DIR is facilitating the identification of key collaboration opportunities through various state agencies including the following: Texas Workforce Commission, Texas Education Agency, Texas Veterans Commission, and the Higher Education Coordinating Board.

10. Reviewing and sharpening the leadership role of the Texas Department of Information Resources (DIR) in establishing a sustainable Cybersecurity Awareness Program for all Texans.

- a. Texas CISO currently serving dual role as state Cybersecurity Coordinator and Chair, Texas Cybersecurity Council.
- b. No full-time/dedicated staff or additional funding allocated to state cybersecurity coordination or state awareness efforts
- c. Current awareness efforts include an electronic newsletter and partnership with DHS for National Cybersecurity Month events

84th Legislature – Interim Committee Charges related to Cybersecurity

Senate Committee on Business and Commerce

- Cyber-security/Storage: Examine cyber-security efforts undertaken by state entities and study the legal, policy and privacy implications of the trend toward storage of personal, private and business confidential information in network attached storage, cloud storage and other developing data storage options rather than on local devices. Make recommendations on how to best protect Texans' financial and personal information.

House Committee on Business and Industry

- Identify and address potential gaps in Texas businesses' cybersecurity policies and ensure that Texans' personal information held by these businesses is secure.

House Committee on County Affairs

- Identify and address potential gaps in counties' cybersecurity policies and ensure that personal information held by counties and other local governmental entities is secure.

House Committee on Economic and Small Business Development:

- Evaluate Texas's competitiveness with other states in recruiting and cultivating high-growth, high-tech industries, fostering economic development, and creating new jobs. Examine if current incentives and regulations assist or hinder the state's ability to compete with other states for economic growth and sustainability.

House Committee on Government Transparency and Operation

- Identify and address potential gaps in the state's cybersecurity policies and ensure personal information held by state agencies is secure. Address whether industry-accepted cybersecurity standards have been met by state agencies and state data centers and determine ways to promote a culture of cybersecurity awareness among users of state information resources.
- Study the use of commercial cloud computing by state agencies and institutions of higher education, including efficiencies surrounding a utility-based model, security impacts of transitioning to cloud computing, and cost-savings achieved by the utilization of commercial cloud computing services
- Study the impact of emerging technologies used by law enforcement and issues related to appropriate dissemination of the data provided by those technologies, including the impact of technologies on the operation of law enforcement agencies, the operation of the Public Information Act, and any appropriate safeguards for citizens and law enforcement officers who interact with those technologies or whose data is recorded. (Joint charge with the House Select Committee on Emerging Issues in Texas Law Enforcement)

House Committee on House Administration

- Identify and address potential gaps in the Legislature’s cybersecurity policies and ensure the governmental and personal information held by the legislative or legislative service agencies is secure. Address whether industry-accepted cybersecurity standards have been met by the legislative and legislative service agencies and determine ways to promote a culture of cybersecurity awareness among users of legislative resources.

House Committee on Investments and Financial Services

- Study the current state of cybersecurity of financial institutions in Texas. Review state and federal laws, and evaluate what additional steps need to be taken to make financial institutions in Texas more secure.

House Committee on Public Education

- Examine the accessibility to broadband services for schools, libraries, and institutions of higher education. Study the feasibility and affordability of providing scalable broadband to schools and other public institutions. Research federal and state funding opportunities to support increased access to broadband. Review innovative efforts by school districts to integrate technology in the classroom. Explore ways to enhance high-tech digital learning opportunities in the classroom to improve student achievement and fulfill future workforce demands.
- Examine partnerships between higher-education institutions, public school districts and workforce that promote postsecondary readiness. Provide coordination recommendations to ensure vocational, career and technical education programs are more accessible. Determine the most effective ways to invest in these partnerships and programs to direct at-risk students to stable career paths. Examine current rules and laws limiting employers from providing meaningful internships, apprenticeships, and other opportunities. Consider new methods to finance workforce training programs and associated assets in high schools and postsecondary schools, including ways to reduce or eliminate these costs and options to incentivize businesses to invest in training equipment for schools. (Joint charge with the House Committee on Economic and Small Business Development)

House Committee on Urban Affairs

- Identify and address potential gaps in cities’ cybersecurity policy and ensure that personal information held by cities and other municipal entities is secure

Cyber Security

What the Public can learn from the Private sector

Urban Affairs Committee

Data Foundry's Perspective

1/20/2016

Our perspective

- Edward Henigin, CTO, Data Foundry
- First employee at Internet Service Provider start-up, Texas.Net, in 1994
 - Exposed to hacking over the Internet since before Texas.Net, early '90s in college
- Texas.Net became Data Foundry, co-location data center (and ISP)
 - We provide physical security for IT assets for all co-location customers
 - We offer security management services for ISP and network customers

Everything is being attacked

- Always
- At all times
- Mostly by self-replicating viruses and tools running on auto-pilot
- Typical survival time of unpatched PC connected to the Internet: 1-6 hours (data from 2012)

Defend yourself

- Lots of great standards out there
- NIST framework is solid
- The market drives adoption of many standards, in order to protect businesses and consumers, the source of all business

Specific example default to encryption

- NIST principle: **Protect** – Insure the confidentiality, integrity, and availability of data at rest and in motion
- Google switched to all encrypted searches in 2013
- Apple's iMessage is encrypted end-to-end
- Lots of traffic is still not encrypted, though, like most traffic on public wifi networks

Lesson to Government on encryption

- No back doors
- Look, seriously, no back doors
- A "master key" for the government will be abused by hackers to get at everything

Specific example: minimize scope (1)

- NIST principle: **Identify** data – Avoid the risk by removing the asset or ceasing the behavior creating the risk.
- Don't retain data you don't need to
- Better yet, don't collect it in the first place.
- Credit card processing example: hand-off directly to credit card processor, only keep a "token"

Lesson to Government on minimizing scope (1)

- Dragnet security campaigns accumulate massive troves of sensitive data
- Would hackers love this data? You bet!
- Huge vulnerability for the public, without them even knowing they're exposed!

Specific example: minimize scope (2)

- NIST principle: **Identify** data – Transfer the risk to an insurer or third party service provider
- Outsource to the experts
- Don't try to be a security expert across every domain

Lesson to Government on minimizing scope (2)

- Support the trend of outsourcing
- Resist the urge to do everything yourself
- Leverage private industry to help public institutions protect citizen's information

Cybersecurity Policies and Practices for Private Data Collected by State and Local Governments



GOVERNMENT

The "Government" sphere includes multiple agencies that share information.

Government created information can include information about the agency itself or independently created information about businesses or persons that does not rely on externally-supplied information.

"Security" relates to how well Government protects sensitive information (in storage and in transit) from unwarranted disclosure.

"Surveillance" relates to Government efforts to obtain information about private parties for any reason, including civil/regulatory enforcement, criminal and terrorism concerns.

Security and surveillance are separate issues. Security is always necessary for sensitive information. Surveillance is sometimes appropriate or even necessary but due concern must be given to due process and privacy interests of the target and innocent third parties.

Government should have secure systems, encrypt sensitive information and limit internal and external dissemination to only those who have a need to know and a right to obtain.

BUSINESS

The "Business" sphere includes multiple enterprises that share information.

Business created information can include information about the business itself or independently created information about other businesses or persons that does not rely on externally-supplied information. The former could be a trade secret like a recipe for food product. The latter is also valuable trade-secret information used for competitive advantage or marketing. Both are sensitive.

"Security" relates to how well business protects sensitive information (in storage and in transit) from unwarranted disclosure.

"Surveillance" relates to private business efforts to obtain information about private parties for any reason, including for competitive advantage or marketing.

Security and surveillance are separate issues. Security is always necessary for sensitive information. Surveillance is sometimes appropriate or even necessary, but due concern must be given to privacy interests of the target and innocent third parties, particularly when the information is shared with Government or other businesses.

Business should have secure systems, encrypt sensitive information and limit internal and external dissemination to only those who have a need to know and a right to obtain.

CONSUMERS/ CITIZENS ("INDIVIDUALS")

Individuals have significant privacy interests with regard to:

Information about them generated by others.

Information they provide to others for specific purposes but potentially used for other purposes.

Information they do not wish to share but is nonetheless captured or potentially captured.

Each individual will have different preferences and expectations regarding what is or is not "sensitive."

Individuals should have the right to protect sensitive information, especially the "content" that they choose to not share. It is their property, and should not be subject to search or seizure without substantive and procedural due process, including compensation. Any other result is a taking by government and trespass/theft by private actors. Individuals should have the right to encrypt their own information.

Encryption is necessary for security by Government and business, and a proper way for individuals to protect their property.

Government should tend to its own security before it presumes to dictate security to others.

Government should learn from businesses, not preach to them or demand that business meet standards imposed by government.

Government should ask for help rather than deputize or mandate assistance, whenever possible.

Government should observe and require due process and use proper legal standards for mandated business disclosure of information about individuals.

Government should limit its gathering and retention of sensitive information to only that which is necessary.

Government should share sensitive information with other agencies only when appropriate.

Government should retain sensitive information only for so long as it is needed for the purpose for which it was gathered.

**Texas Municipal League
Cybersecurity Survey Results**

1. Is the city government protected and ready for a cyber incident?

#	Answer	Response	%
1	Yes	80	56%
2	No	64	44%
Total		144	100%

2. Does your city have a Cyber Incident Response Plan designed to address cyber incidents that may impact the community?

#	Answer	Response	%
1	Yes	21	17%
2	No	104	83%
Total		125	100%

3. Does your city implement a guide of best practices?

#	Answer	Response	%
1	Yes	63	50%
2	No	62	50%
Total		125	100%

4. Is there a firewall activated on all computers with a separate one for all networks?

#	Answer	Response	%
1	Yes	96	77%
2	No	29	23%
Total		125	100%

5. How often is it updated?

Text Response	Number
Hourly	1
Daily	9
Monthly	10
Weekly	7
Yearly	11
Automatic	17

6. Who is responsible for updating the firewall?

Text Response	Number
IT	45
Outside Contractor	13
City Secretary/City Administrator	3

7. Is personally identifiable information or sensitive information encrypted on all mobile devices and removable media?

#	Answer	Response	%
1	Yes	37	32%
2	No	80	68%
Total		117	100%

Comments

Exception being email, but utilizing light MDM (Microsoft Exchange forced passcodes).
 Certain departments
 Via mobile device management solution
 Drives are encrypted or personal data is not store on mobile devices.
 None on Mobile Devices
 No PII allowed on mobile devices or removable media via policy
 Personal devices not allowed
 Drives are encrypted.

8. Are backups regularly made for all critical systems and data?

#	Answer	Response	%
1	Yes	114	95%
2	No	6	5%
Total		120	100%

9. Are backup recovery procedures tested annually?

#	Answer	Response	%
1	Yes	71	66%
2	No	25	23%
3	If no, how often are backup recovery procedures tested?	12	11%
Total		108	100%

If answered no in above question, how often are backup recovery procedures tested?

Never
 Never been tested
 Not scheduled, small entity and no IT on site
 As needed
 Every week
 Never
 Monthly
 Once a year
 Six months

10. Are penetration tests and security assessments conducted at least annually on all critical networks and systems?

#	Answer	Response	%
1	Yes	37	32%
2	No	77	68%
Total		114	100%

11. Is anti-malware installed on devices and networks?

#	Answer	Response	%
1	Yes	107	92%
2	No	9	8%
Total		116	100%

Comments

Every two years
 I perform personal pentests utilizing off the shelf software, but will be utilizing a third party vendor starting this year.
 Penetration Test are conducted quarterly.
 Assessments ...Yes
 Two years
 No IT personnel on site
 Next FY
 As time permits. But not annually.
 We are in the process of how to conduct security assessments at a financially feasible cost.
 Penetration test are expensive and we are looking at other options.
 Stand alone programs
 Penetration tests are performed quarterly on key systems.
 Just completed our first one.
 There is not currently a set schedule for penetration tests, however it has been reviewed and addressed several times over the past 3-4 years.
 Penetration tests no. Security assessments yes.

12. Is the anti-malware regularly updated?

#	Answer	Response	%
1	Yes	100	95%
2	No	5	5%
Total		105	100%

13. Who updates the software?

Text Responses	Number
Automatic	22
IT Department	31
City Administrator/City Secretary	3
Outside Vendor	16

14. Is there an established set of security metrics that are monitored?

#	Answer	Response	%
1	Yes	44	39%
2	No	68	61%
Total		112	100%

15. Is egress filtering conducted?

#	Answer	Response	%
1	Yes	41	44%
2	No	53	56%
Total		94	100%

16. Does the city conduct regular security exercise and/or reviews?

#	Answer	Response	%
1	Yes	22	21%
2	No	82	79%
Total		104	100%

Yes - Comments	No - Comments
monthly	Developing process for regular reviews.
Reviews	Not regular but as needed
Security logs are reviewed weekly	only as needed
Yearly	next FY
weekly	Programs are stand alone
IT meetings	we do reviews
Annual	Developing a regular process
Quarterly	

17. Is there an overall security policy outlined for the city?

#	Answer	Response	%
1	Yes	38	37%
2	No	65	63%
Total		103	100%

18. Are cyber issues included in the city's Disaster Recovery Plans?

#	Answer	Response	%
1	Yes	22	22%
2	No	76	78%
Total		98	100%

Yes - Comments	No - Comments
In progress	These are treated as a disaster
Backup system/Data Recovery	IT person could restore info
	Separate Plan
	Only Natural Disasters Involved
	In development

19. Are wireless routers using encryption?

#	Answer	Response	%
1	Yes	72	76%
2	No	23	24%
Total		95	100%

20. Does the city have a Computer Incident Response Team (CIRT) or Computer Emergency Response Team (CERT)?

#	Answer	Response	%
1	Yes, we have a Computer Incident Response Team.	5	5%
2	Yes, we have a Computer Emergency Response Team.	4	4%
3	We have both.	3	3%
4	We do not have a response team.	73	71%
5	Other	18	17%
Total		103	100%

Other – Comments

Not officially based off of size, but the City Manager, myself, and the Chief of Police are included in all major changes, plans and concerns

We contract with a third party.

Not separate team but resource as part of OEM Response

We rely on outside vendor when there is an emergency situation.

we have our it person

Third Party IT Support

Outside vendor responds to incidents and emergencies

Our IT Contractor

Our full staff

Outsourced IT support

Outsourced

IT staff does both

We contract with a third party

IT staff handles this

IT staff, network engineers, and partner departments respond

21. Does the city conduct security exercise to evaluate the community's ability to respond to cyber incidents?

#	Answer	Response	%
1	Yes	2	2%
2	No	102	98%
Total		104	100%

Yes – Comments	No – Comments
yearly	We participate in regional exercises Very Rural Community

22. Is there an advisory group formed to advice city leaders on cyber security issues?

#	Answer	Response	%
1	Yes	9	9%
2	No	93	91%
Total		102	100%

Yes	No
The CTO provides info We get advice through participation in professional groups such as MS-ISAC, InfraGard, ISSA, and OWASP Greater Houston Partnership CyberSecurity Task Force TML & Local Officials Snider IT / Tyler Technology	Very Rural Community

23. Is there an active cyber security information sharing program within the community?

#	Answer	Response	%
1	Yes	11	11%
2	No	90	89%
Total		101	100%

Yes	No
We get advice through participation in professional groups such as MS-ISAC, InfraGard, ISSA, and OWASP MS-ISAC MS-ISAC Work with surrounding agencies and we help each other out when its needed Through various programs at the Library	future plans Very Rural Community

24. Are there local security professional networking events or meetings held in the city or the surrounding area?

#	Answer	Response	%
1	Yes	29	29%
2	No	72	71%
Total		101	100%

25. Do community emergency services regularly evaluate their ability to function in the absence of cyber assets?

#	Answer	Response	%
1	Yes	21	20%
2	Maybe	33	32%
3	No	50	48%
Total		104	100%

Yes – Comments	Maybe – Comments	No – Comments
When servers and switch gear are shut down monthly for patches dispatch, PD and FD are tested for their ability to radio dispatch and process emergencies. Have not tested in a scenario where we lose radio, but we could fall back to dispatching over cell service. Contingency plans are in place and tested.	Policies are in place and they use manual procedures if we have networking issues.	Very Rural Community
Not regularly but have talked the scenario	Not sure	
Contingency plans are in place for all departments		

Cybersecurity and the Electric Sector

Summary

The electric utility industry (including public power utilities) takes very seriously its responsibility to maintain a strong electric grid. That is why the industry worked together to reach consensus on a mandatory reliability regime spelled out in the Energy Policy Act of 2005 (EPA05). Partnering with Congress, the Federal Energy Regulatory Commission (FERC), and North American Electric Reliability Corporation (NERC), industry experts are engaged in an ongoing effort to establish and enforce comprehensive standards to strengthen the grid, including those to enhance cybersecurity. The American Public Power Association (APPA) applauds the recent passage of the Cybersecurity Act of 2015, which makes possible cyber threat information sharing and liability protection that public power has long believed are the best way to enhance cybersecurity across critical infrastructure sectors.

As the grid evolves, unfortunately, so do threats to its integrity. The threat of cyber-attacks is relatively new compared to long-known physical threats, but an attack with operational consequences could occur and cause disruptions in the flow of power if malicious actors are able to hack into data overlays used in some electric generation and transmission infrastructure. Furthermore, such an attack could also cause public power utilities to incur liability for damages. While APPA believes that the industry itself, with NERC, has made great strides in addressing cybersecurity threats, vulnerabilities, and potential emergencies, we recognize that emergency situations warranting federal involvement may arise. Thus, APPA has long supported language to give the Secretary of Energy broader authority to address grid security emergencies while facilitating the protection and voluntary sharing of critical electric infrastructure information (CEII) in order to fully address imminent cyber attacks with possible operational

consequences. Protecting sensitive information about critical assets is a key element in keeping this sensitive information secure. Utilities and federal agencies must be able to compile and share sensitive information about the electric grid in order to improve grid security, but inappropriate disclosure of such sensitive information raises security concerns. This could have a negative effect on joint public-private security efforts, especially those that rely on voluntary information sharing. Thus, APPA applauds passage of Fixing America's Surface Transportation Act (FAST Act), PL. 114-94, which includes provisions to protect such information. APPA also applauds the enactment of Cybersecurity Act of 2015, which facilitates information sharing on cybersecurity threats and provides limited liability protections for sharing activities.

Background and Congressional Action

The electric utility sector is the only critical infrastructure sector besides nuclear power plants (a part of the overall sector) that has any mandatory and enforceable federal regulatory regime in place for cybersecurity. Under the mandatory regime established in Section 215 of the Federal Power Act (FPA), which requires reliability standards for the electric utility industry, public power utilities have been working with FERC, NERC, and others in the electric utility sector to improve the reliability and security of the bulk electric system. This partnership between the federal government and the electric sector has proven to be one marked by constant improvements in communication, technology, and preparedness as the standards have evolved since full implementation of EPA05 began in 2007.

To date, the electric utility sector's FPA Section 215 processes and its actions beyond the Section 215 regime have prevented a successful cyber-attack causing operational consequences on the bulk electric system. That

said, APPA has long recognized that increased information sharing and appropriately tailored liability protection would further enhance the industry's ability to guard against cyber attacks. As such, APPA strongly supported passage of the Cybersecurity Act of 2015, which was incorporated as Division N of H.R. 2029, the Consolidated Appropriations Act, 2016. Signed into law by President Obama on December 18, 2015, it is the result of negotiations to reconcile cybersecurity bills passed by the House and Senate Intelligence Committees and House Homeland Security Committee earlier in the year (S.754 and H.R. 1560). The Act sets up policies and procedures for sharing cybersecurity threat information between the federal government and private entities (which include public power) and between private entities and provides limited liability protection for these activities if conducted in accordance with the Act.

In addition to the Cybersecurity Act of 2015, Section 61003 of P.L. 114-94, gives the Secretary of Energy broader authority to address grid security emergencies under the FPA and clarifies the ability of FERC and other federal agencies to protect sensitive CEII from public disclosure under the Freedom of Information Act (FOIA) and other sunshine laws. This language is identical to Section 1104 of H.R. 8, the North American Energy Security and Infrastructure Act of 2015, and similar to the language in Section 2001 of S. 2012, the Energy Policy Modernization Act of 2015.

The CEII language in the FAST Act and House and Senate energy bills is based on stand-alone legislation, H.R. 2402, introduced by Rep. Zoe Lofgren (D-CA) and Rep. Trey Gowdy (R-SC). Under the FAST Act, FERC designated CEII would be exempted from disclosure for a period of up to five years with a process to lift the designation or challenge it in court. The bill also requires FERC to facilitate voluntary information sharing between federal, state, local, and tribal authorities, the Electric Reliability Organization, regional entities, and owners, operators, and users of the bulk-power system in the U.S. In addition establishes sanctions for the unauthorized disclosure of shared information.

Outside of the legislative process, APPA and its members, as well as other utilities, continue to participate in the NERC CIP standards drafting process on cyber- and

physical-security. (See APPA's "Physical Security and the Electric Sector" fact sheet for more information on the physical-security standard.) As attacks on critical electric infrastructure are ever-changing, so must be the nature of our defenses, whether they are designed to protect cyber or physical assets. As such, CIP Version 3 cybersecurity standards are in effect and enforceable. Version 5 has been approved by FERC, and will be enforceable on April 1, 2016. FERC has also approved a physical security standard to protect the Nation's most critical substations that becomes enforceable on October 1, 2015. Finally, APPA worked with others in the electric sector to participate in and comment on the activities outlined in President Obama's Executive Order on cybersecurity released in February 2013. The Executive Order required the creation of a cybersecurity framework, which was released in February 2014. APPA has encouraged its members to adopt this framework and evaluate their cybersecurity plans.

APPA is also involved with internal and external working groups that enhance the security of the electric grid. APPA created the Cybersecurity and Physical Preparedness Committee (CAPP), a collection of APPA members who serve on working groups and share information related to security issues. Furthermore, APPA and its members play a leadership role in the Electricity Sub-sector Coordinating Council (ESCC), the government/industry partnership focused on security and information sharing that is mentioned earlier in this document. Through the ESCC, APPA works with the other critical infrastructure sectors, such as the downstream natural gas and dam sectors.

APPA Position

APPA applauds the recent passage and signing into law of the Cybersecurity Protection Act of 2015 and the FAST Act, and looks forward to ensuring that both laws are appropriately implemented. We also appreciate our enhanced partnership with the federal government and will continue to ensure that the lines of communication are open between public power utilities and the federal government so that we can collectively prepare and respond to cyber attacks.

The Cybersecurity Act of 2015

On December 18, 2015, President Obama signed H.R. 2029, the Consolidated Appropriations Act, 2016, into law. Incorporated as Division N of H.R. 2029 (pages 1728-1868) was the Cybersecurity Act of 2015. This legislation is a result of negotiations between the House and Senate Intelligence Committees and House Homeland Security Committee to reconcile the differences between the cybersecurity information sharing bills that each committee passed in the spring of 2015 (S. 754, H.R. 1560, and H.R. 1731, respectively). The bill, now law, sets up policies and procedures for sharing cybersecurity threat information between the federal government and private entities (which includes not-for-profit, public power utilities) and between private entities and provides limited liability protection for these activities if conducted in accordance with the title. The American Public Power Association (APPA) strongly supported the Cybersecurity Act, and looks forward to working with our electric sector colleagues and the federal government on implementing the law.

Title I Key Provisions

- **Definition** - Public power utilities fall under the definition of a "private entity" under the new statute. (pages 1735-1736) [Private entities are included in the definition of "non-federal entities"]
- **Exemption from Disclosure** - Exempts public power utilities from having to disclose cyber threat indicators (CTIs) and defensive measures (DMs) under "any provision of State, tribal, or local freedom of information law, open government law, open meetings law, open records law, sunshine law, or similar law requiring disclosure of information or records." (pages 1747-1748)
- **Leaves in place current sector specific agency (SSA) and information sharing and analysis center (ISAC) structures.** (pages 1739 and 1779)
- **Assessment of Personally Identifiable Information** - Requires non-federal entities sharing CTIs to assess whether they contain any information not directly related to a cybersecurity threat that the non-federal entity knows at the time of sharing to be personal information of a specific individual or information that identifies a specific individual and remove such information. (pages 1745-1746)
- **Removal of Personally Identifiable Information** - Requires non-federal entities to implement and utilize a technical capability configured to remove any information not directly related to a cybersecurity threat that the non-federal entity knows at the time of sharing to be personal information of a specific individual or information that identifies a specific individual. (pages 1745-1746)
- **DHS Portal** - Directs DHS to develop a portal to automatically share information on CTIs and DMs in real-time or near real-time. (page 1737)
- **Prohibition of Regulatory Authority** - Prohibits any federal, state, tribal, or local government from using CTIs and DMs shared by non-federal entities to regulate the lawful activities of any non-federal entities or any activities taken by a non-federal entity pursuant to mandatory standards. (page 1768)
- **Liability Protection** - Protects non-federal entities from liability when monitoring their information systems or sharing or receiving CTIs and DMs if conducted in accordance with the title. (page 1770)
- **No Requirement to Participate** - Specifies that nothing in this title shall be construed to create a duty to share a CTI or DM, a duty to warn or act based on

the receipt of a CTI or DM, or to undermine or limit the availability of otherwise applicable common law or statutory defenses. (page 1771)

- **No Liability for Non-Participation** – Specifies that nothing in this title shall be construed to subject any entity to liability for choosing not to engage in the voluntary activities authorized under the title. (page 1780)
- **Preemption** – Preempts any statute or other provision of law of a state or political subdivision of a state that restricts or otherwise expressly regulates an activity authorized under Title I. (page 1781)
- **Regulatory Authority** – Nothing in this title shall be construed to: (1) authorize the promulgation of any regulation not specifically authorized to be issued under this title; (2) to establish or limit any regulatory authority not specifically established or limited under this title; or (3) to authorize regulatory actions that would duplicate or conflict with regulatory requirements, mandatory standards, or related processes under another provision of federal law. (pages 1781-1782) [protects NERC standards]
- **10-Year Sunset** – Sunsets the provisions of the title on September 30, 2025. (page 1785)

Title II Key Provisions

- Enhances the functions of the Department of Homeland Security's National Cybersecurity and Communications Integration Center (Center), established in section 227 of the Homeland Security Act of 2002 (redesignated by this Act).
- Designates the Center as a federal civilian interface for multi-directional and cross-sector information sharing related to cybersecurity risks, incidents, analysis, and warnings for federal and non-federal entities, including the implementation of Title I of this Act.
- Requires the Center to engage with international partners; conduct information sharing with federal and non-federal entities; participate in national exercises; and assess and evaluate consequence,

vulnerability, and threat information regarding cyber incidents to public safety communications. Additionally, this section requires the Center to collaborate with state and local governments on cybersecurity risks and incidents.

- Requires the Department of Homeland Security, in coordination with industry and other stakeholders, to develop an automated capability for the timely sharing of cyber threat indicators and defensive measures.
- Permits the Center to enter into voluntary information sharing relationships with any consenting non-federal entity for the sharing of cyber threat indicators, defensive measures, and information for cybersecurity purposes.
- Section 208 requires DHS to provide information to Congress on the "feasibility of producing a risk-informed plan to address the risk of multiple simultaneous cyber incidents affecting critical infrastructure, including cyber incidents that may have a cascading effect on other critical infrastructure." This is widely interpreted as a compromise "replacement" for the onerous Sec. 407 of the Cybersecurity Information Sharing Act, which was not included in this new law.

APPA Contact

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APPA is the national service organization for the more than 2,000 not-for-profit, community-owned electric utilities in the U.S. Collectively, these utilities serve more than 48 million Americans in 49 states (all but Hawaii). APPA was created in 1940 as a nonprofit, non-partisan organization to advance the public policy interests of its members and their customers.

Cybersecurity and the Electric Sector

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House Committee on Urban Affairs

Cybersecurity and Cities

TML surveyed their members about their city's preparedness on cybersecurity. Of the 144 cities that responded to the survey, only 56% feel they are protected and ready for a cyber incident. Moreover, the survey revealed some troubling statistics:

- 83% do not have a Cyber Incident Response Plan designed to address cyber incidents that may impact the community.
- 68% do not encrypt personally identifiable information or sensitive information on all mobile devices and removable media.
- 61% do not have an established set of security metrics that are monitored.
- 79% do not conduct regular security exercises and/or reviews.
- 63% do not have an overall security policy outlined for the city.
- 78% do not include cyber issues in the city's Disaster Recovery Plans.
- 91% lack an advisory group to advise city leaders on cyber security issues
- 89% do not have an active cyber security information sharing program within their community.

TML also met for an initial workgroup to review the cybersecurity charge. Below are some of the issues that were discussed.

There is a lack of awareness and education regarding cybersecurity

There are approximately 1100 cities in Texas but only about 200 cities actually have a person or department that handles cybersecurity. Some cities are so small that they depend on volunteers to handle IT matters. Most individuals do not have a grasp on what are the basic requirements for a city in terms of cybersecurity. Even TML first admitted to us that this issue was not on their radar. First and foremost we need to make sure that elected officials, local government agencies, and our citizen's understand what cybersecurity is and best practice methods that will help keep their information safe. One of the attendees at the meeting mentioned how their city hosts a cybersecurity summit for regional IT professionals.

There are a lot of resources available but many cities do not know where to get reliable information.

At the meeting many cities provided examples of businesses or other groups that have created a checklist of on how cities can address cybersecurity. For example, the city of Houston has a guide that was created by the Greater Houston Partnership's Cybersecurity Taskforce that provides a guide to help cities and businesses become more knowledgeable about cybersecurity and viable steps they can take to address this issue. However, there is not a single place a city can go to get reliable information that best fits the needs of their city. One way to fix that problem is to have a clearinghouse where a city can go to a website and find all of the resources they need. At the meeting the attendees suggested that it could be on TML's website. Although TML is great it does not command the same authority as if that information is on a state of Texas government website. So it would be preferable to have a clearinghouse on a state agency's website.

Many cities do not have a plan or the right personnel in place to handle a cyber-attack

House Committee on Urban Affairs

Cities need to establish a cybersecurity plan. There needs to be a checklist of what a city needs to do to be secure and a plan for how they can execute it. Also, as mentioned above, less than 20% of cities actually have IT personnel on staff, others rely on volunteers or someone else on the payroll. With cybersecurity continuing to be a growing issue we will need to collaborate with K-12 and higher education institutions to make sure there is a strong pipeline of new workers ready to work in this field.

Many cities lack the funding necessary to adequately protect their cities

There is a lack of awareness on this issue so many city budgets do not reflect the important need for cybersecurity. This all cost money. From personnel to equipment, cities need funding to support their infrastructure.

Lack of incentives to encourage cities to focus more on cybersecurity

One suggestion was for the state to create a cybersecurity recognition program that would acknowledge those cities that have met certain standards within their cybersecurity policies. There was a suggestion made that the Comptroller could include cybersecurity planning within their transparency ratings system.



CHARGE 3

Examine whether changes are needed to the Texas Department of Housing and Community Affairs's (TDHCA) low-income tax credit program to ensure compliance with the U.S. Supreme Court's decision in *Texas Department of Housing and Community Affairs et al. v Inclusive Communities Project, Inc., et al.* on fair housing in Texas.



SUMMARY OF COMMITTEE ACTION CHARGE 3

CHARGE 3: Examine whether changes are needed to the Texas Department of Housing and Community Affairs's (TDHCA) low-income tax credit program to ensure compliance with the U.S. Supreme Court's decision in Texas Department of Housing and Community Affairs et al. v. Inclusive Communities Project, Inc., et al. on fair housing in Texas.

Committee Hearing

The House Committee on Urban Affairs met in a scheduled public hearing on Monday May 23, 2016 at 10:00am at Houston City Council Chambers, Houston.

The following is the list of invited testimony who either testified on behalf of themselves or the listed entity:

Bobby Bowling (Texas Affiliation of Affordable Housing Providers)
Charlie Duncan (Texas Low Income Housing Information Service)
James Eccles (Texas Dept. of Housing and Community Affairs)
Tracey Fine (National Church Residences and Leading Age TX)
Brian Gage (Houston Housing Authority)
Joy Horak-Brown (New Hope Housing)
Tim Irvine (Texas Department of Housing and Community Affairs)
Antoinette Jackson (Housing Developers/Jones Walker)
Mary Lawler (Texas Association of CDCs and Avenue CDC)
David Long (TX State Affordable Housing Corp.)
Richard Milk (San Antonio Housing Authority)
David Mintz (Texas Apartment Association)
Chrishelle Palay (Texas Low Income Housing Information Service)
Neal Rackleff (City of Houston)
Lisa Stephens (Self; TXCAD)
Mike Sugrue (Self; Texas Association of Builders)
Jim Washburn (Rural Rental Housing Association)
Ron Williams (Texas Association of Local Housing Finance Agencies)

Background

The Inclusive Communities Project, Inc. (ICP) filed suit under the Fair Housing Act against the Texas Department of Housing and Community Affairs (TDHCA or "Department") and its board members.

The conduct at issue concerns the federal low-income housing tax credit program, in which developers of low-income housing apply for tax credits to build their low-income developments. ICP claims that the Department's administration of the program has resulted in too many low-income housing units in minority communities in the Dallas metropolitan area and not enough in Caucasian communities. This harms ICP because its goal is to place its clients (section 8 voucher holders) in Caucasian communities. ICP alleged that the Department's conduct violated

the Fair Housing Act because (1) the Department made its tax-credit decisions on the basis of race (disparate treatment), and (2) the Department had race-neutral policies that resulted in the placement of housing in minority, rather than Caucasian, communities (disparate impact).

Trial – Following a 4-day trial, a federal district court in Dallas held that the Department did not intentionally discriminate on the basis of race, so it dismissed ICP’s disparate-treatment claim.

But the court held the Department liable for disparate-impact discrimination, finding that the Department failed to prove that it could not have adopted different race-neutral policies that would have resulted in more low-income housing in Caucasian areas. The court ordered the Department to adopt a remedial plan designed to place low-income housing in Caucasian areas.

Fifth Circuit Appeal – On appeal, the Fifth Circuit held that the district court used the wrong legal test for deciding the disparate-impact claim. The court held that it was not the Department’s burden to prove there was nothing it could have done differently; rather, it was ICP’s burden to prove that there were alternative policies the Department should have adopted. It ordered the case back to district court for determination under the correct test.

Supreme Court – The Department then asked the Supreme Court to take its case and decide whether disparate-impact claims can be brought under the Fair Housing Act or whether the Fair Housing Act requires proof of discriminatory intent. In a 5-4 decision, the Supreme Court held that disparate-impact claims may be brought under the Fair Housing Act. The Court, however, included language to attempt to limit such claims to “artificial, arbitrary, and unnecessary barriers” to housing, rather than challenges to reasonable government policies. The Court also emphasized the importance of the prima facie case—the plaintiff’s initial burden to prove that there is a policy with a causal connection to the alleged disparity—to screen out improper claims and discourage parties from adopting quotas to avoid liability.

District Court – The case was remanded back to the district court. Given the new guidance from the Supreme Court, the parties have briefed the initial prima facie issue of whether ICP has identified a policy that is causing a disparity in the placement of low-income housing.

On remand, the district court reconsidered whether ICP indeed made a prima facie showing of disparate impact in light of the guidance from the Supreme Court decision. The district court held that ICP’s claims of disparate impact failed under the current standards for a number of reasons.

First, the court ruled, ICP failed to identify a specific, facially neutral policy that caused the disparate racial impact, as required by the first prong of the burden-shifting analysis. ICP challenged TDHCA’s exercise of discretion in its LIHTC awards, but the court held that it could not rely on a generalized policy of discretion (even when considered cumulatively) to prove disparate impact. Absent a specific TDHCA policy, the court could not determine whether the practice actually created a barrier to fair housing or devise an adequate race-neutral remedy to alleviate the alleged disparities.

Next, the district court held that ICP’s claim failed because it was, in essence, a complaint for disparate treatment, despite the disparate impact language. Relying on prior case law, the court found that because ICP challenged the results of TDHCA’s subjective discretion rather than the existence of the discretion itself, the claim should be dismissed.

Lastly, the district court found that ICP’s claim failed to show a robust causal connection

between TDHCA's use of discretion in awarding LIHTCs and statistical disparities between LIHTC awards in different areas. ICP could not prove that TDHCA's use of discretion, and not other factors such as federal legislative action, actually caused the statistical disparities throughout the years evaluated. Judge Fitzwater has denied ICP's motion for a new trial and on November 4, 2016 the window for ICP to file an appeal closed.

Revitalization of Urban Areas vs High Opportunity Areas

TDHCA has always maintained that they have been in compliance with the decision because, when Judge Fitzwater initially ruled in favor of ICP in 2012, TDHCA put into effect a remedial plan to address the underlying concerns of the case, implementing policies meant to better distribute LIHTC properties in areas of low poverty by inserting a preference for high opportunity areas.

However, four years later the state has seen a tremendous drop in LIHTC awards in urban areas with the largest populations and the most pronounced need for revitalization through affordable housing. This is an unintended consequence of the remedial plan which can be fixed with changes to the state's Qualified Allocation Plan (QAP).

Recommendations

1. TDHCA should implement a policy preference for dispersion of developments that equally balances a preference for development in areas of opportunity (using such factors as low poverty, higher incomes, and higher-rated schools) and for development in urban areas undergoing concerted plans of revitalization.
2. Remove the Undesirable Neighborhood Characteristics section of the QAP in its entirety. This section is an anti-urban provision and, in the wake of the ICP case dismissal, should no longer be included as a scoring item for LIHTC applications. Furthermore, because data sources like Neighborhood Scout and school performance are inherently faulty and produce inconsistent results, such measures are of questionable value in determining the worth of certain neighborhoods. This change can be made administratively by TDHCA.

The following exhibits were provided to the committee:

1. TDHCA Written testimony
2. Antoinette M. Jackson written testimony



Timothy K. Irvine
Executive Director, TDHCA

Written Testimony on
Committee Interim Charges

HOUSE COMMITTEE ON URBAN AFFAIRS

May 23, 2016

In recent years there have been several major developments that have materially contributed to the development of the State of Texas Qualified Allocation Plan ("QAP"), the rules governing the allocation of low income housing tax credits. These include the enactment of the Housing and Economic Recovery Act of 2008 ("HERA"), the ongoing litigation styled *Inclusive Communities Project, Inc. vs. Texas Department of Housing and Community Affairs et al.*, and significant developments in the approach of the U. S. Department of Housing and Urban Development ("HUD") to the affirmative furtherance of fair housing ("AFFH"). This document provides a brief overview of each of these matters and describes in broad terms the evolution that has occurred in the QAP. Discussed in greater detail below:

- There is imbedded in federal statute a Congressional intent to address the affordable housing needs of certain areas of poverty, designated by HUD as qualified census tracts ("QCTs"). Prior to HERA a party receiving low income housing tax credits could obtain a 30% boost in their eligible basis (which translates to more money for the development effort) in QCTs. For 9% tax credits (but not for 4% tax credits) HERA gave the states the ability to provide this boost in other areas, including high opportunity areas.
- The Inclusive Communities Project case is perhaps the most important fair housing case to date. It has been to the Supreme Court of the United States ("SCOTUS") and is now at the federal trial court on remand. In this case SCOTUS has provided guidance on the legal theory of discrimination known as disparate impact. The Office of the Attorney General has provided the Committee with a briefing regarding this ongoing litigation.
- HUD has long provided guidance on AFFH and has recently promulgated rules. It has its genesis in a section of the federal Fair Housing Act providing that the secretary of HUD shall administer HUD programs in a manner that affirmatively furthers the purposes and policies of the Fair Housing Act. HUD has interpreted this as a mandate to work to eradicate historical patterns of segregation. In connection with the administration of federal disaster recovery funding under the Community Development Block Grant Act (to recover from hurricanes Ike, Dolly, and Gustav), two advocacy organizations (Texas Low Income Housing Information Services and Texas Appleseed) filed a complaint with HUD alleging that the State of Texas had falsely certified that it had complied with its obligation to affirmatively further fair housing. The complaint was ultimately resolved through a HUD-approved Conciliation Agreement.

As a result of these three matters and a national understanding of fair housing that continues to deepen and grow more refined, TDHCA programs to finance the development of affordable rental housing reflect:

- A policy preference for dispersion of development that includes a preference for development in areas of opportunity (using such factors as low poverty, higher incomes, and higher-rated schools) and for development in areas undergoing concerted plans of revitalization.
- A robust set of criteria for assessing development sites that involve identified undesirable characteristics such as schools that do not meet state standards, lack of access to full service

grocery stores and pharmacies, presence of hazardous situations, areas of high crime, and presence of blight.

- A continuously developing articulation of factors that constitute 'opportunity.'

There has also been a fair amount of ongoing controversy regarding certain scoring items, most notably local resolutions of support or opposition, state representatives' letters of support or opposition, and neighborhood resolutions of support or opposition. Because the competitive low income housing tax credit program operates based on score and tie breakers, local interest weighing in on proposed developments is not able to affect the outcome unless issues are expressed through one or more of these scoring items. Furthermore, because of how close the scoring in the competition for credits is, each of these scoring items may determine the winner so when a proposed development seeking support fails to secure it, and therefore fails to obtain an award, it is contended by some that fair housing concerns may be implicated.

Although much of the focus on fair housing issues has centered on race issues, it is critical to remember that the Fair Housing Act protects against discrimination on the basis of race, color, national origin, religion, sex, disability, or familial status. Other federal or local laws may identify other or additional protected classes. There are many laudable public policy objectives such as assisting specific subpopulations (wounded warriors, homeless veterans, persons fleeing domestic violence, youth aging out of foster care, etc.) that must be scrutinized under fair housing laws to ensure that they are either fully compliant or that they are under a specifically permitted exception.

Additional background on each of these matters is set forth below:

WHAT PROGRAMS ARE INVOLVED?

The Texas Department of Housing and Community Affairs ("TDHCA" or the "Department") is the state agency charged with administering the low income housing tax credit program and the HOME Investments Partnership ("HOME"). The tax credit program is created under federal law, specifically §42 of the Internal Revenue Code (the "Code"). Among other things §42 of the Code requires the state to adopt a QAP that meets certain requirements enumerated in §42. Under Texas law, specifically TEX. GOV'T CODE Chapter 2306, Subchapter DD, the QAP must also implement certain requirements of state law, including the scoring criteria under which applicants for competitively awarded 9% tax credits are selected for award.

The Department also allocates 4% tax credits which are paired with tax exempt private activity bonds ("PABs") issued by TDHCA or another qualified issuer. At present, due chiefly to market conditions, the availability of tax exempt bond cap and associated 4% credits exceeds demand and as a result these are not awarded in a competitive process. The HOME program, received through HUD, is subject to HUD's requirements on AFFH. Multifamily HOME new construction deals are also subject to HUD's site and neighborhood standards. HOME funds are used for, among other things, making loans to developers of affordable rental housing. TDHCA is required to use 95% of its HOME funds outside of the large cities that receive HOME awards directly from HUD, known as participating jurisdictions ("PJs").

Under the American Recovery and Reinvestment Act of 2009 ("ARRA") TDCHA administered approximately \$148,354,769 in federal stimulus funds under a program known as the Tax Credit Assistance Program ("TCAP"). TCAP was administered as a repayable loan program, and TDHCA is now receiving approximately \$6 million per year in TCAP loan repayments which it also uses to make loan to developers of affordable rental housing.

It is noteworthy that tax credits are a financial resource but not considered 'funds.' They are the legal right to claim credits against federal tax liability on the tax returns of the parties that receive them. The awardees create limited partnerships so that participating limited partners can receive those tax benefits. The investment of the limited partners in these partnership structures creates the capital to develop affordable rental housing. Typically 9% credits create development capital of about 70% of the 'above the ground' costs of developments and 4% credits create about 30% of this cost.

These different funding sources, alone or in combination with each other, are often part of a larger 'funding stack' in which the developer also incorporates other sources such as direct equity, bank debt, other types of tax credits (historic tax credits, new market tax credits, etc.) or loans under other governmental programs including programs administered by HUD and, especially in rural areas, the United States Department of Agriculture ("USDA").¹

Through these funding sources the Department will assist in the development of approximately 12,018 units of new or rehabilitated affordable rental housing each year through the programs and funding sources described, above.

Affirmatively Furthering Fair Housing ("AFFH")

For many years HUD operated under guidance, as opposed to formally adopted regulations, requiring that recipients of Community Planning and Development ("CPD") HUD funds perform an analysis of impediments to fair housing choice (an 'AI'), develop specific strategies to address and overcome those impediments and keep records of its results. Generally updating AIs aligned with the consolidated plan cycle of five years. The AI was a combination of data analysis, results of extensive public engagement, research into specific issues, including localized issues, crystallization of identified impediments, and development of strategies to address them.

HUD has now adopted long anticipated regulations to cover AFFH and has replaced the AI with a new document called an assessment of fair housing ("AFH"). The AFH centers upon HUD-generated data, local data, and a significant community participation process to

¹ This is not intended to be a complete or exhaustive list of programs or funding administered by TDHCA, or a complete list of those programs or funding sources that have fair housing implications. As an example, in the Fall 2016, the Department will receive approximately \$4.7 million in federal dollars to administer and produce housing for those individuals at 30% AMI or below under the National Housing Trust Fund. By federal statute, these funds must be largely used for rental housing. The figure of 12,018 units of new or rehabilitated affordable housing does not include additional units of affordable housing created through National (or State) Housing Trust Funds

identify disproportionate housing needs, disparities in access to opportunity and patterns of integration and segregation. The AFRH rule articulates HUD's position that it covers not only HUD funds but other sources, such as low income housing tax credits, and even state funds, such as the general revenue appropriated to the Housing Trust Fund. In public comment on various aspects of these regulations the State of Texas has raised concerns over HUD's scope assertions, and also has expressed constitutional concerns over elements of the HUD regulations that appear to direct race-based decision making.



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**House Committee on Urban Affairs
Public Hearing on Interim Charges
Testimony of Antoinette M. Jackson
May 23, 2016**

Good morning Madame Chair and committee members, my name is Antoinette M. Jackson known to most as Toni. I am a partner with the law firm of Jones Walker practicing in the area of affordable housing finance. I have a developer practice representing for profit and nonprofit developers and public housing authorities. I represent clients in the development of multifamily housing and mixed use developments utilizing tax credits, FHA financing and other public funding sources. My practice is based here in Texas but I also represent developers across the country and as such I am familiar with the practices of some other state housing agencies.

I truly appreciate this opportunity to come before you today and share some of my thoughts on improving affordable housing in Texas.

Interim Charges #3 and #4

It is encouraging that the Committee's interim charges seek comments regarding the recent Supreme Court decision of the *Texas Department of Housing and Community Affairs ("TDHCA") v The Inclusive Communities Project ("ICP"), et. al* as well as the recent HUD final rule on Affirmatively Furthering Fair Housing. The Supreme Court decision and HUD final rule greatly impact the housing community and how developers will make decisions going forward.

In 2008, ICP filed a disparate impact claim against the TDHCA alleging that it was disproportionately awarding most of the tax credits in racially segregated neighborhoods. Disparate impact is when a policy or practice has an adverse impact on any one group. More specifically ICP claimed that TDHCA was preserving racial segregation in the manner in which it was awarding the tax credits. This claim contended that although its policies appeared race neutral, the TDHCA policies in fact had a discriminatory effect on poor, minority communities.

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JONES WALKER LLP

ALABAMA ARIZONA CALIFORNIA DISTRICT OF COLUMBIA FLORIDA GEORGIA LOUISIANA MISSISSIPPI NEW YORK OHIO TEXAS

The lawsuit was brought so that TDHCA would change its rules and policies and therefore distribute these awards of credits in more suburban areas.

A month after the Supreme Court ruling, HUD released its final rule for Affirmatively Furthering Fair Housing ("AFFH") which further set forth the requirements to meet fair housing obligations when utilizing federal funds. The Supreme Court ruling along with the AFFH final rule added to developers' considerations when identifying development locations which utilize tax credits and other public funding. However, the decisions that are made by tax credit developers are also driven by the Texas Qualified Allocation Plan ("QAP") and its scoring system.

Every state that administers Low Income Housing Tax Credits ("Tax Credits") sets out its rules and scoring system in its QAP. However, here in Texas, the top scoring items in the QAP are set out by statute making it one of the most heavily legislated QAPs in the country. As such, TDHCA in conjunction with the development community does not always have the ability to craft the QAP in a manner that is most responsive to both need and fundamental real estate principles. Instead, developers are forced to put together projects that are statutorily point-driven and this doesn't necessarily produce the best product for the residents.

Those statutory items or "above the line" criteria drive the developments and leave very little room for the agency to add criteria that is responsive to industry needs. Having the QAP written in statute does not give the agency the ability to truly create housing policy that is driven by industry standards and housing needs. It also takes away the ability for the QAP to be flexible and nimble. Instead, the housing community is required to wait until the legislature is in session to make any "above the line" changes. And even if the changes are consensus recommendations from the housing industry, the industry is still subject to the legislative and political process which means the changes are not guaranteed to be passed. This leaves the agency and housing industry without the ability to effectively govern a very complex program. It also removes the ability to respond quickly to major policy changes or laws impacting the industry such as the TDHCA v. ICP decision and the AFFH final rule.

The process is further complicated by the fact that the number of points awarded in the categories of support outweighs the points for development factors. Developers understand the importance of getting local support for their deals and they want to be good neighbors. However, they also want the ability to give weight to factors such as location, type of development and other development and market factors when determining what to build.

TDHCA v. ICP raised issues about the importance of the location of tax credit developments. However, when the weight given to support letters exceeds development factors, those persons

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and entities empowered to write these letters are able to drive the location of tax credit development. The housing industry is being met with the growing sentiment of Not In My Back Yard or NIMBYism. This community opposition has become very loud, strong and sophisticated. When developers are required to get letters from neighborhoods and legislators who know very little about the development and are sometimes unwilling to listen and learn, the letters of opposition allow these persons and entities to effectively drive development.

A number of states used to require legislative letters as scoring criteria but later determined that these letters were often driven more by political influence than genuine housing need. We have seen examples of legislators who have been educated about the tax credit process and given their verbal and written commitment of support only to retract it later after learning that there is a group of constituents that oppose the deal. This retraction is not made because the legislator learned of changes in the development or was misled. This retraction is made because of the threat of being voted out of office or challenged by an opponent willing to oppose potential housing. This is problematic for the development community because it does not provide a system that can be relied upon.

In July 2013, the Texas Sunset Advisory Commission Final Report recommended that the requirement for letters of support from state senators and representatives be eliminated. The commission report read as follows:

This recommendation was based on the Sunset Commission's finding that the law governing the tax credit awards process was the only state law that required state representatives and senators to provide letters in support of, or opposition to, development projects of this nature. The Commission concluded that given the size of many electoral districts and the short application timeframe, elected officials were often not in a position to meaningfully evaluate a proposed development or obtain community input sufficient to draft the required letters. Given the point value associated with these letters, if officials opt not to provide letters, projects, especially in the most competitive areas, will almost certainly not be funded.

As a result of that recommendation, the Texas Senate voted to remove senators from the requirement of providing a letter for tax credit deals. However, this continues to be a contentious subject among state representatives and despite the recommendation, the letters from state representatives remain in place. The point system for the letters have changed since that time but the fact remains the same as found by the Commission, state representatives who do not provide a letter or oppose a development effectively kill an application.

The neighborhood letters are also problematic. The development community has experienced examples where neighborhoods may choose not to meet with a developer but yet will write a letter opposing a potential project. In the City of Houston, the Super Neighborhoods are recognized by the QAP and as such allows groups from a distance as far as 5-7 miles away to oppose a development that is not slated in its immediate neighborhood. These letters are problematic because the neighborhood groups are not governed by our process and are often swayed by wrong and misleading information. Yet developers are subject to these neighborhood groups that can kill a deal without a solid, legitimate reason.

The letters of opposition from elected officials and neighborhood groups are a form of NIMBYism and rises to the level of being a fair housing violation. The AFFH final rule is intended for jurisdictions to identify those barriers to affordable housing. The elected official letters and the neighborhood letters are barriers in the tax credit program. The weight of these support letters allows for these parties to effectively drive where housing will or more importantly, will not be placed.

TDHCA v. ICP allows housing policies and practices to be challenged under the Fair Housing Act. The policies and practices set forth in Texas statute that requires letters from elected officials is a policy that is subject to challenge under the Fair Housing Act. Further, this practice does not Affirmatively Further Fair Housing because there is not a process set out that allows the legislator and neighborhood to effectively and objectively evaluate the development. Instead these support letters have become one of the biggest barriers to building new housing in Texas.

Interim Charge #5

The Tax Credit program has become the most successful and effective program for the building and rehabilitation of affordable housing units. The housing industry is dealing with the difficulty of declining resources and the loss of older housing stock. The ability to maximize the number of housing units that are built can only come from maximizing and leveraging the resources.

TDHCA needs to be charged with creating a comprehensive housing plan for the state that sets the housing priorities and identifies additional resources to assure the best use of funds. The agency allocates tax credits utilizing a regional formula. This regional approach could be used to partner with local jurisdictions in identifying the priorities of those areas. Also, having a more nimble QAP would allow TDHCA the ability to respond more effectively to the needs of the state.

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Recommendations to the Committee

In summary, I would request for consideration the following:

1. Remove the QAP from statute
2. Remove the requirement of elected official letters
3. Remove the requirement of neighborhood letters and in the alternative, reduce the weight of the neighborhood letters
4. Direct TDHCA to create a comprehensive housing policy

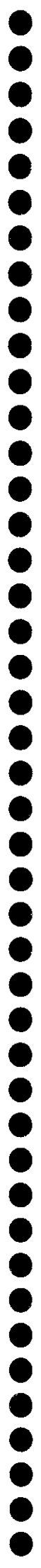
Thank you again for this opportunity to testify and submit written comments.

Respectfully submitted,


Antoinette M. Jackson

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1



CHARGE 4

Review existing housing programs and policies in Texas to determine how to best comply with the U.S. Department of Housing and Urban Development's new Affirmatively Furthering Fair Housing Rules.



SUMMARY OF COMMITTEE ACTION CHARGE 4

CHARGE 4: Review existing housing programs and policies in Texas to determine how to best comply with the U.S. Department of Housing and Urban Development's new Affirmatively Furthering Fair Housing Rules.

Committee Hearing

The House Committee on Urban Affairs met in a scheduled public hearing on Monday May 23, 2016 at 10:00am at Houston City Council Chambers, Houston.

The following is the list of invited testimony who either testified on behalf of themselves or the listed entity:

Bobby Bowling (Texas Affiliation of Affordable Housing Providers)
Charlie Duncan (Texas Low Income Housing Information Service)
James Eccles (Texas Dept. of Housing and Community Affairs)
Tracey Fine (National Church Residences and Leading Age TX)
Brian Gage (Houston Housing Authority)
Joy Horak-Brown (New Hope Housing)
Tim Irvine (Texas Department of Housing and Community Affairs)
Antoinette Jackson (Housing Developers/Jones Walker)
Mary Lawler (Texas Association of CDCs and Avenue CDC)
David Long (TX State Affordable Housing Corp.)
Richard Milk (San Antonio Housing Authority)
David Mintz (Texas Apartment Association)
Chrishelle Palay (Texas Low Income Housing Information Service)
Neal Rackleff (City of Houston)
Lisa Stephens (Self; TXCAD)
Mike Sugrue (Self; Texas Association of Builders)
Jim Washburn (Rural Rental Housing Association)
Ron Williams (Texas Association of Local Housing Finance Agencies)

Background

For many years, HUD operated under guidance, as opposed to formally adopted regulations, requiring that recipients of Community Planning and Development (CPD) HUD funds perform an analysis of impediments to fair housing choice (an "AI"), develop specific strategies to address and overcome those impediments, and keep records of its results. Generally updating AIs aligned with the consolidated plan cycle of five years. The AI was a combination of data analysis, results of extensive public engagement, research into specific issues, including localized issues, crystallization of identified impediments, and development of strategies to address them.

HUD has now adopted long anticipated regulations to cover AFFH and has replaced the AI with

a new document called an assessment of fair housing (“AFH”). The AFH centers upon HUD-generated data, local data, and a significant community participation process to identify disproportionate housing needs, disparities in access to opportunity and patterns of integration and segregation. The AFFH rule articulates HUD’s position that it covers not only HUD funds but other sources, such as low income housing tax credits, and even state funds, such as the general revenue appropriated to the Housing Trust Fund. In public comment on various aspects of these regulations the State of Texas has raised concerns over HUD’s scope assertion, and has expressed constitutional concerns over elements of the HUD regulations that appear to direct race-based decision making.

The new AFFH rule provides long-awaited guidance and data to help state and local governments connect housing and community development dollars to neighborhood opportunity and ensure that public investments connect every neighborhood to good schools, well-paying jobs, public transportation options, and safe places for children to play and grow.

The Fair Housing Act of 1968 was intended to prohibit discrimination and dismantle historic segregation. Even when there is no current intent to discriminate, historical policies continue to limit the housing choices and opportunities of people of color, people with disabilities, families with children, and religious groups. Policies and processes that may look neutral on their face may have originally been put in place for discriminatory reasons and continue to have a disparate impact, again, even if there is no current discriminatory intent. The goal of the AFFH requirement is not to punish state and local governments for the sins of the past, but to help them identify and overcome the remnants of that history and ensure all their residents have real access to opportunity and the American Dream.

Legislative Letters of Support

There has also been a fair amount of ongoing controversy regarding certain scoring items, most notably local resolutions of support or opposition, state representatives’ letters of support or opposition, and neighborhood resolutions of support or opposition. Because the competitive low income housing tax credit program operates based on scores and tie breakers, local interest weighing in on proposed developments is not able to affect the outcome unless issues are expressed through one or more of these scoring items. Furthermore, because of how close the scoring in the competition for credits is, each of these scoring items may determine the winner -- so when a proposed development seeking support fails to secure it, and therefore fails to obtain an award, it is contended by some that fair housing concerns may be implicated.

The Sunset Commission recommended removing these letters for both the House and Senate in 2013, and the Senate chose to heed that recommendation. These letters currently carry a 16-point swing and represent the only scoring category where an application can lose points for opposition. Additionally, legislators do not need to provide any reasoning for their objection to a LIHTC project which creates a veil for discrimination. There is an extraordinary amount of misinformation-based fear of locating affordable housing in higher opportunity areas. However, affordable housing does not decrease property values or increase crime rates, two of the most popular reasons cited for opposing affordable housing.¹

References

¹ See, e.g. “Don’t Put It Here! Does Affordable Housing Cause Nearby Property Values to Decline?” Center for Housing Policy, Washington, DC. 2009.

www.nhc.org/media/documents/Dontputithere.pdf

Popkin, Susan J., et. al. "Public Housing Transformation and Crime: Making the Case for Responsible Relocation." *Cityscape: A Journal of Policy Development and Research*. 2012. 14:3. http://www.huduser.org/periodicals/cityscpe/vol14num3/Cityscape_Nov2012_pub_house_trans.pdf

Lens, Michael C. "The Impact of Housing Vouchers on Crime in US Cities and Suburbs." *Journal of Urban Studies*, May 2014, 51:6.

Arizona State University Housing Research Synthesis Project, Research Brief, No. 1, "How Does Affordable Housing Affect Surrounding Property Values?" (August 2008) Available: <http://stardust.asu.edu>;

Recommendations

1. QAP Point assignment and scoring preferences that give an effective veto to an individual State Representative should be eliminated.
2. Tailor the AFH assessment form to the size of the jurisdiction. A form that is more closely tailored to the conditions and resources of a small community may facilitate a higher level and quality of compliance, and will reduce the burden on their limited resources.

The following exhibits were provided to the committee:

1. Texas Appleseed written testimony
2. San Antonio Housing Authority written testimony



**Written Testimony of Texas Appleseed to the House Committee on Urban Affairs on
Charge 3, Charge 4, and Charge 5
May 18, 2016**

Thank you for the opportunity to provide to the House Urban Affairs Committee on Interim Charges Three, Four, and Five.

Texas Appleseed (Appleseed) is a non-partisan, non-profit, 501(c)(3) organization and part of a national network of public interest law centers. Our mission is to promote justice for all Texans by leveraging the volunteered skills and resources of lawyers and other professionals to identify practical solutions that create systemic change on broad-based issues of social equity and equal opportunity, including disaster recovery and fair housing.

Charge Three (3)

Examine whether changes are needed to the Texas Department of Housing and Community Affairs' (TDHCA) low-income tax credit program to ensure compliance with the U.S. Supreme Court decision in *Texas Department of Housing and Community Affairs et al. v. Inclusive Communities Project, Inc.*, et al. on fair housing in Texas.

Texas Department of Housing and Community Development v. Inclusive Communities Project is currently on remand to the federal District Court. We cannot predict what that decision will be, or how it will apply the legal standards established by the United States Supreme Court to the facts of *TDHCA v. ICP*.

We do want to note that the Supreme Court's decision (*Inclusive Communities Project v. Texas Department of Housing and Community Development* (135 S.Ct. 2507 (2015))) did not change existing law. The federal Circuit Courts had been in agreement that disparate impact was a cognizable claim under the Fair Housing Act for decades: the Supreme Court's decision affirmed existing precedent and established a definitive test for evaluating disparate impact claims.

However, as the case has made clear, state administration of the Low Income Housing Tax Credit (LIHTC) program is a major factor in whether racial and ethnic segregation is perpetuated and in whether members of protected classes have fair access to higher opportunity areas. This is particularly true as the LIHTC has become the dominant source of financing for affordable housing developments since the 1990s. Texas has already made a number of appropriate and effective changes to its Qualified Allocation Plan (QAP) over the last several years. We would recommend the following additional changes:

1. Jurisdictions cannot be given the power to effectively veto affordable housing based on discriminatory bias towards members of protected classes. Assigned points and scoring based

on neighborhood opposition, local support, or requirements for local approval should be eliminated. Point assignment and scoring preferences that give an effective veto to individual legislators, at the local, state, or federal level, should also be eliminated: jurisdictions cannot avoid their fair housing and civil rights obligations by seeking to remove decision-making power from the public process. There is an extraordinary amount of misinformation-based fear of locating affordable housing in higher opportunity areas. However, affordable housing does not decrease property values or increase crime rates, two of the most popular reasons cited for opposing affordable housing.¹

2. The current distribution of LIHTC developments is primarily in lower-income neighborhoods and those with minority concentrations. The LIHTC program continues to be ineffective in providing low-income children with access to high-performing lower poverty schools in most metropolitan areas.² As more LIHTC properties reach the end of their compliance periods, preferences for preservation or rehabilitation that do not take into account the implications of the current geographic location of affordable housing will perpetuate segregation and continue to deny members of protected classes access to opportunity.
3. "Concentrated community revitalization plans" must be defined in a way that ensures they are meaningful and effective, and QAPs must set out clear standards for review and assessment of these plans. Allowing jurisdictions to simply designate nominal "revitalization" areas perpetuates segregation by steering LIHTC developments into distressed neighborhoods. Even the most positive research on the effect of LIHTC developments on low-income neighborhoods

¹ See, e.g., "Don't Put It Here! Does Affordable Housing Cause Nearby Property Values to Decline?" Center for Housing Policy, Washington, DC, 2009. www.nhc.org/media/documents/Dontputitthere.pdf; Popkin, Susan J., et. al. "Public Housing Transformation and Crime: Making the Case for Responsible Relocation." *Cityscape: A Journal of Policy Development and Research*. 2012. 14:3. http://www.huduser.org/periodicals/cityscop/vol14num3/Cityscape_Nov2012_pub_house_trans.pdf; Lens, Michael C. "The Impact of Housing Vouchers on Crime in US Cities and Suburbs." *Journal of Urban Studies*, May 2014, 51:6; Arizona State University Housing Research Synthesis Project, Research Brief, No. 1, "How Does Affordable Housing Affect Surrounding Property Values?" (August 2008) Available: <http://stardust.asu.edu>; Michael MaRous, "Low-Income Housing in Our Backyard: What Happens to Residential Property Values?" *The Appraisal Journal* 64, 1, (1996): 27-34; Richard K. Green et al., *Low Income Housing Tax Credit Housing Developments and Property Values*. Center for Urban Land Economics Research, University of Wisconsin, 2002; Ingrid Gould Ellen et al., "Do Homeownership Programs Increase Property Value in Low Income Neighborhoods?" Joint Center for Housing Studies, Harvard University, Low Income Homeownership Working Paper Series, September 2001; Maxfield Research, *A Study of the Relationship Between Affordable Family Rental Housing and Home Values in the Twin Cities* (Minneapolis, MN: Family Housing Fund, 2000); Joyce Siegel, *The House Next Door*, Innovative Housing Institute, 1999. <http://www.inhousing.org/housenex.htm>; Elizabeth Warren, Robert Aduddell, and Raymond Tatlovich. *The Impact of Subsidized Housing on Property Values: A Two-Pronged Analysis of Chicago and Cook County Suburbs*. Center for Urban Policy, Loyola University of Chicago, Urban Insight Series No. 13, 1983; Paul Cummings and John Landis, *Relationships Between Affordable Housing Developments and Neighboring Property Values*. Institute of Urban and Regional Development, University of California at Berkeley, Working Paper 599, 1993; Jeffery Baird, *The Effects of Federally Subsidized Low-Income Housing on Residential Property Values in Suburban Neighborhoods*. Northern Virginia Board of Realtors Research Study, December 1980; Hugh Nourse, "The Effect of Public Housing on Property Values in St. Louis." *Land Economics* 60 (2), 1984; Carol Babb, Louis Pol, and Rebecca Guy, "The Impact of Federally-Assisted Housing on Single-Family Housing Sales: 1970-1980." *Mid-South Business Journal*, July 1984; Robert Lyons and Scott Loveridge, *An Hedonic Estimation of the Effect of Federally Subsidized Housing on Nearby Residential Property Values*. University of Minnesota, Department of Applied Economics, 1993. National Crime Prevention Council, Topics in Crime Prevention. "Strategy: Ensure Supply of Affordable Housing." <http://www.ncpc.org/ncpc/ncpc/?pg=2088-9318>.

² Ellen, Ingrid Gould, and Karen Mertens Horn [2012]. "Do Federally Assisted Households Have Access to High performing Public Schools?" Furman Center for Real Estate and Urban Policy and Moelis Institute for Affordable Housing Policy.

found a limited effect on property values within a 0.1 mile range of the development.³ There is no research showing an impact on other neighborhood quality measures – access to high-performing schools, jobs, improved infrastructure, or improved health – in contrast to the overwhelming body of research on the negative effects of living in concentrated poverty on individuals and families, and on the positive impact, particularly on children, of moving to higher-opportunity areas.⁴ Even revitalization plans that go beyond an area designation cannot be considered “concentrated community revitalization plans” unless there is a sufficient concentration of resources and interventions in non-housing (infrastructure, economic development, school improvement, etc.) that they can reasonably be expected to result in a racially and economically integrated neighborhood of opportunity within a reasonable period of time. LIHTC investment as the sole or first investment in community revitalization is ineffective and cannot meet the standard for a revitalization plan.

The Fair Housing Act and the AFFH mandate require jurisdictions to redress historical disinvestment in minority communities and foster access to opportunity. Because the LIHTC program is a housing production program, the state’s primary concern in assessing its QAP and program administration must be whether the tax credit program is producing housing opportunities in high opportunity areas.

Charge Four (4)

Review existing housing programs and policies in Texas to determine how to best comply with the U.S. Department of Housing and Urban Development’s new affirmatively Furthering Fair Housing Rules.

While HUD’s rule on affirmatively furthering fair housing (AFFH) may be new, the obligation of jurisdictions that receive federal housing and community development funds to affirmatively further fair housing is not: it was included in the Fair Housing Act of 1968. State and local jurisdictions have participated in a process to identify and address barriers to a free and fair housing market and equal opportunity for 48 years.

The new AFFH rule provides long-awaited guidance and data to help to state and local governments connect housing and community development dollars to neighborhood opportunity and ensure that public investments connect every neighborhood to good schools, well-paying jobs, public transportation options, and safe places for children to play and grow. For decades, the United States government engineered a segregated America, creating “redlining” maps that told banks it was unsafe to invest in minority and integrated neighborhoods, for example, and ensuring that 99% of home and small business loans guaranteed by the post-World War II GI Bill went to white veterans, giving them an opportunity for homeownership and a boost into the middle class that was denied African-American and Latino veterans.⁵ The government required developers building the new suburban America in the 1940s and 1950s to make those suburbs white-only with racially restrictive covenants, and the country’s massive investment in creating the federal highway system connected the white suburbs to the cities, at the expense of African-American and other minority neighborhoods that were destroyed and isolated by the

³ Diamond, Rebecca and Timothy McQuade, “Who Wants Affordable Housing in Their Backyard?: An Equilibrium Analysis of Low Income Housing Development” NBER Working Paper No. 22204 (April 2016). There are a number of other issues with this study, but the extraordinarily limited effects found as opposed to the large positive effects of access to higher opportunity neighborhoods and integration alone undermine the conclusion.

⁴ See, e.g. Kevin Sharkey, *Stuck in Place* (2013); and, Chetty and Henderson (2015)

⁵ See, e.g. Michael Bennett, “The Law That Worked,” *Educational Record*, 75 (Fall 1994) pp. 6, 12, Ira Katznelson, *When Affirmative Action Was White*, W.W. Norton & Co. (2005).

new highways. Many neighborhoods with racially restrictive covenants also had restrictions on the religion of families that could buy in that neighborhoods, excluding Jews in particular.

The Fair Housing Act of 1968 was intended to prohibit discrimination and dismantle historic segregation. **Even when there is no current intent to discriminate**, historical policies continue to limit the housing choices and opportunities of people of color, people with disabilities, families with children, and religious groups. Policies and processes that may look neutral on their face may have originally been put in place for discriminatory reasons and continue to have a disparate impact, again, even if there is no current discriminatory intent. The goal of the AFFH requirement is not to punish state and local governments for the sins of the past, but to help them identify and overcome the remnants of that history and ensure all their residents have real access to opportunity and the American Dream.

The new AFFH rule includes the following provisions:

1. **The AFFH rule creates a planning tool, it does not mandate that state and local governments take specific actions.** HUD's rule emphasizes local control in the development and implementation of solutions to remove obstacles to opportunity. Once an analysis of the barriers to fair housing is complete, governments and PHAs have the power to decide for themselves which of the issues they and local stakeholders identify are important to prioritize and address. HUD leaves these choices to the discretion of state and local governments and PHAs.
2. For the first time, HUD will provide substantial data on housing, demographics and other local conditions for state and local policymakers to assess in determining, among other things, the degree of segregation, concentrated poverty, and barriers to equal opportunity in their communities. HUD's provision of data and mapping removes a substantial financial and administrative burden from state and local governments, who were previously responsible for obtaining this data, but the rule also encourages local jurisdictions to include their own data and knowledge if it is necessary to fully describe local conditions.
3. The rule implements recommendations made by the General Accounting Office (GAO) in 2010. The GAO's report recommended that HUD reform its AFFH process, in particular by improving the guidance that it provides to state and local grantees.⁶ HUD's rule implements the GAO's recommendations by providing state and local governments and PHAs with data about the demographics and housing needs of their communities as well as a framework, in the form of an Assessment Tool, that they can use to identify and address issues that contribute to isolation and economic inequality. The previous guidance on conducting an assessment was relatively vague and non-specific, frustrating grantees.
4. The new rule provides a clearer and more specific definition of what it means to "affirmatively further fair housing," and additional HUD assistance and guidance. AFFH is not solely about housing choice, it is also about ensuring that all neighborhoods are good places to live.
5. Not every jurisdiction needs to use the new process immediately and HUD is still in the process of finalizing Assessment Tools specifically for states and Public Housing Agencies. The slow rollout of the new AFFH rule will ensure that any problems can be identified and fixed before the majority of jurisdictions start the process.
6. HUD's AFFH rule helps curb discrimination against people with disabilities, including veterans and the elderly. Each year, over 50% of all reported complaints of housing discrimination are

⁶ GAO-10-905 Housing and Community Grants: HUD Needs to Enhance its Requirements and Oversight of Jurisdictions' Fair Housing Plans (September 2010) Available: <http://www.gao.gov/new.items/d10905.pdf>

initiated by people with disabilities. This alarming trend will continue and affects Americans returning from conflicts abroad with a disability and the growing percentage of elderly Americans with a disability. HUD's AFFH rule will help governments identify strategies and solutions to expand accessible and supportive housing choices for our veterans and elders with disabilities.

Although we have made some progress, we remain a highly segregated society in a number of ways, including growing economic segregation. At the same time, there is a large and increasing body of research showing that "zip code is destiny" that Americans' life outcomes depend not on personal qualities or hard work, but on the neighborhood in which they live.⁷ Neighborhood determines access to opportunity: the schools children attend, the jobs their parents have access to, the quality of a family's surroundings and exposure to violent crime, and access to transportation, grocery stores, and other important community resources. In Texas, too many children are growing up in neighborhoods that lack these resources. This not only limits their life prospects, but undermines our state's future. There is also good news coming out of this research. Children who move to higher opportunity neighborhoods, particularly when they are under 13 are more likely to go to college, have lifetime earnings 31% higher than their peers in distressed neighborhoods, and are less likely to become single parents.⁸ They also lived in higher-opportunity neighborhoods as adults, passing on those benefits to their children. Making sure all children have access to opportunity, no matter where they live, has tremendous positive outcomes for those families and for Texas as a whole.

Texas Appleseed has made extensive comments to HUD about how the AFFH process can be improved to work better for state and local jurisdictions. We believe there is particular promise in a process Texas pioneered under a 2011 Analysis of Fair Housing Choice for regions affected by Hurricanes Ike and Dolly, the Fair Housing Activities Statement - Texas (FHAST) process.

The FHAST process was created to set up a streamlined process for jurisdictions applying for Community Development Block Grant – Disaster Recovery (CDBG-DR) funds from the state to certify that they were in compliance with their AFFH obligations and eligible for those funds, and made it easier for the State of Texas to monitor its subrecipients for compliance with the affirmatively furthering certification, and to make its own truthful AFFH certification, otherwise a significant challenge for states. While the FHAST process happened before the new AFFH rule was adopted, and was imperfect in a number of ways, we believe it is an important model for the state-level Assessment of Fair Housing (AFH) process and ensuring that implementation of the AFFH rule is successful in the state and insular jurisdiction context.

In 2014, the State of Texas conducted a compliance review of 143 jurisdictions that had submitted FHAST forms and received CDBG-DR grants from the State in 2011. Texas Appleseed used GLO compliance data to evaluate trends in compliance and conducted surveys and interviews with

⁷ See, e.g. Patrick Sharkey, *Stuck in Place*, University of Chicago Press (2013), Raj Chetty, "The Effects of Neighborhoods on Intergenerational Mobility: Childhood Exposure Effects and County Level Estimates" (2015) Available: http://equality-of-opportunity.org/images/nbhds_paper.pdf

⁸ Raj Chetty, "The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment" (with Nathaniel Hendren and Lawrence Katz), *American Economic Review* 106(4): 855-902 (2016) Available: http://equality-of-opportunity.org/images/mto_paper.pdf See, also, The Equality of Opportunity Project, <http://equality-of-opportunity.org/>

participants representing 18 CDBG-DR subrecipients.⁹ This research produced the following information and lessons learned.

First, survey participants said that most small cities and their elected bodies were in support of fair housing and wanted to comply, but that it was difficult and many lacked the necessary resources, including guidance and technical assistance, to do so effectively. Small cities and counties had more difficulty with both the FHAST process and compliance. Grantees with populations of less than 25,000 made of 83% of the non-compliant grantee population, compared to only 73% of the grantee population as a whole.

Second, participants reported issues understanding and filling out the FHAST form and this feedback was especially prevalent among (though not limited to) representatives of small jurisdictions for whom the form's technical fair housing language was new and unfamiliar. Despite efforts to create an assessment form that was simplified and more tailored to smaller non-entitlement jurisdictions, because of time pressures, the FHAST form sent to local jurisdictions was the set of impediments and action steps identified in the State's Analysis of Impediments, which meant that many of the provisions were inapplicable to smaller jurisdictions and that there was less opportunity for local analysis and solutions than anticipated.

Based on the feedback of local jurisdictions, we recommend the following in order to make the process easier and more effective:

- a. **Tailor the assessment form to the size of the jurisdiction.** A form that is more closely tailored to the conditions and resources of a small community may facilitate a higher level and quality of compliance, and will reduce the burden on their limited resources.
- b. **Offer more robust training and technical assistance.** Access to more in-depth training and technical assistance was an almost universal request from grantees, particularly from small communities that reported an ongoing lack of clarity about what was required for many of the individual action items. According to one grant consultant, the state could improve the FHAST process by having "a true training session on what the impediments are, each one of them...and how those impediments can apply to smaller communities." Providing templates and models would also help small communities that lack the resources to establish new policies from scratch (as well as larger communities that are still grappling with the concept of AFFH.) Moreover, it may help raise the quality of compliance and ensure that jurisdictions are interpreting complex action items as the State intended. For example, offer a model Anti-NIMBYism action plan. Ensure that resources are regionally accessible and affordable so small communities.
- c. **Ensure that training and technical assistance focuses on the meaning of AFFH beyond housing programs.** Several grant consultants said that, once the idea of fair housing was explained to jurisdictions, most were receptive and in full support of FHAST efforts, but initially struggled to understand the relationship between the FHAST and the infrastructure projects for which they had initially received the funding. One consultant summarized this challenge: "The first challenge is basically trying to get people to understand Affirmatively Further Fair Housing. The number one question we heard is, 'This is an infrastructure project. What does that have to do with housing?'" The adoption of the new AFFH rule clarified this definition and sets out a clear way for

⁹ Additional data available.

jurisdictions to evaluate non-housing specific projects.

Even amidst a process wrought with challenges and frustrations, most survey participants were able to share some success stories. Notably, when queried about specific potential challenges, survey participants did *not* identify any challenges associated with public participation, stakeholder involvement, local leadership, or data availability. Participants reported somewhat weak participation in public meetings on FFAST issues (as is typical with most public hearing processes), but participants emphasized that communities and local leadership were largely supportive and making a good faith effort to comply, despite challenges. In fact, many survey participants expressed their view that requiring communities to go through the FFAST process was beneficial, overall, because of its positive effects on awareness of fair housing.

"The FFAST process was a good idea because it kept fair housing at the forefront and forced us to go back and review it once in a while to make sure we were complying. So, it is serving a very good and useful purpose, and we look at it quite frequently and test ourselves to make sure we are complying with what we say we are going to comply with.

City Official, medium jurisdiction

Survey participants consistently identified increased awareness of fair housing as the largest benefit of the FFAST process, relaying that the FFAST was very effective for raising awareness among small cities. The process, for example, raised awareness about what groups are included in a protected class, and generated a more proactive attitude toward implementing and maintaining fair housing practices at the local community level. Several grant consultants, for example, relayed anecdotes of local officials proactively reaching out to them annually to ensure that the city was meeting its fair housing requirements or even requesting *additional* training on fair housing topics because they believed it would benefit residents in their communities. For example, one grant consultant shared, "We have had several people come to us [regarding] various scenarios presented in the training...and they were like, 'You know, I never stopped to think of that being a fair housing issue. It's just something we've always done, and we never thought of what the ramifications might be.' I think this is a very positive thing with regard to the leadership, and I think has opened our eyes more to Affirmatively Furthering Fair Housing." Another grant consultant, who had otherwise shared an experience of frustration with the FFAST process, said, "You can't look at a form of that detail and not have your eyes opened. Pulling together the FFAST information group, just the general awareness of AFFH and the requirements, and the reason why it is important...that is an absolute plus...This brought [fair housing] to a new level to help [jurisdictions] understand its importance and what they need to do."

Participants in the FFAST process were CDBG-DR grant applicants: the process did not require all jurisdictions who might be at some point be eligible subrecipients of state-administered housing and community development funds to participate, which would be a particularly daunting number of jurisdictions in Texas. As in the FFAST process, we recommend a local assessment be part of the federal grant application process to the state, ensuring that the state can monitor its grantees and that grantees consider their proposed projects in the context of whether those projects are consistent with affirmatively further fair housing.

Charge Five (5)

Monitor and evaluate the availability of low-income housing in the State of Texas. Identify best practices to ensure that the agencies and local providers receiving state or federal funds for low-

income housing are maximizing the number of units of housing available to Texans who need this program.

The amount of federal funding available for housing affordable to lower-income Texans (and lower-income Americans generally) is grossly inadequate. Texas ranks 22nd in the nation in "housing wage," or how much someone needs to earn in order to afford rent and utilities. The 2015 statewide housing wage for Texas is \$16.62 an hour, around the national average. But the statewide minimum wage in Texas is just \$7.25 hourly, meaning that the average Texan minimum wage earner must work *92 hours a week* to avoid spending more than 30 percent of their income on two-bedroom units at Fair Market Rent.¹⁰ In 2013, there were only 28 adequate and affordable rental units available for every 100 renter households whose income was 30% or less of the area median income across the United States.¹¹

There is simply not enough funding, at any level, to meet the need for affordable housing. But this does not mean that maximizing the number of units produced should be the only priority for the use of these funds, or that it is the most appropriate priority. As compelling as housing as many people as possible is, housing is not just shelter, housing is access to opportunity in the form of education, jobs, transit, sidewalks, safety from violent crime, reduced exposure to environmental hazards (e.g. Flint, Donna Lake), and good health. Not only does the location of housing have significant impacts on the families that live there, but it has fiscal and policy implications for state and local governments.

Metropolitan regions with higher levels of racial and skills segregation perform worse economically than more integrated areas, with slower rates of income growth and property appreciation for all residents of the region.¹² Couple with the evidence of better economic outcomes for children who move from concentrated poverty to higher opportunity areas (discussed above), prioritizing locating affordable housing in high opportunity areas, even if it results in a reduced number of units produced, is a better strategy economically, as well as in terms of the long-term well-being of families and communities.

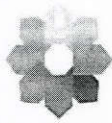
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¹⁰ NLIHC, *Out of Reach 2015* Available: <http://nlihc.org/oor>

¹¹ Josh Leopold, Liza Getsinger, Pamela Blumenthal, Katya Abazajian, and Reed Jordan, "The Housing Affordability Gap for Extremely Low-Income Renters in 2013" Urban Institute (June 2015) Available: <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/2000260-The-Housing-Affordability-Gap-for-Extremely-Low-Income-Renters-2013.pdf>

¹² See, Huiping Li, Harrison Campbell, and Steven Fernandez, "Residential Segregation, Spatial Mismatch and Economic Growth across US Metropolitan Areas," (2014) available: <http://usj.sagepub.com/content/50/13/2642>



**Texas House of Representatives, Urban Affairs Committee
Public Hearing
Monday, May 23, 2016**

RE: Interim Charges 2016-2017, SAHA Testimony

Dear Representative Alvarado:

Thank you for the opportunity to provide testimony on the interim charges related to the State of Texas' affordable housing conditions.

First, the San Antonio Housing Authority (SAHA) would like to commend the Texas Department of Housing and Community Affairs (TDHCA) for its new citizen input committee structure. SAHA had the opportunity to lead the "At-Risk Subcommittee" this year, bringing together a diverse set of stakeholders to develop specific recommendations for TDHCA staff.

SAHA's testimony is responsive to the Affirmatively Furthering Fair Housing (AFFH) charge, recognizing that there may be overlap with the other charges. **The State of Texas has several opportunities to take advantage of HUD's AFFH Rule in order to improve low-income residents' access to affordable housing:**

- Promote a balanced approach to fair housing;
- Support projects in Racially and Ethnically Concentrated Areas of Poverty (R/ECAPs)¹;
- Expand the conversation regarding opportunity for low-income people; and,
- Support greater coordination at the local and regional levels through joint and regional Assessments of Fair Housing.

The following provides more information about these topics, how SAHA is applying the strategies and areas where the State could provide additional support and changes. I hope you will consider this viewpoint as you consider revising Texas' existing housing policies and programs.

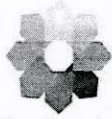
¹ R/ECAPs have a non-white population of 50 percent or more **and** a poverty rate that exceeds 40% **or** is three or more times the average tract poverty rate for the metropolitan/micropolitan area, whichever threshold is lower.

Creating Dynamic Communities Where People Thrive

Interim President and CEO
David Nisivoccia

Board of Commissioners: Morris A. Stribling, DPM, Chairman | Charles R. Muñoz, Vice-Chair | Thomas F. Adkisson | Francesca Caballero
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If you would like more information about any of SAHA's programs or would like to speak to a representative in more detail, feel free to contact Richard Milk, Director of Policy and Planning, at 210-889-9561 or richard_milk@saha.org.

Sincerely,

Richard Milk
Director of Policy and Planning

Rosario Neaves
Director of Communications and
Public Affairs

Enclosure:
Large Agency Viewpoint: Leveraging AFFH Rule in Texas

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2



Large Agency Viewpoint: Leveraging the AFFH Rule in Texas

Promote a balanced approach to fair housing in Texas

The AFFH Rule addresses how to increase the number of low-income families living in neighborhoods of opportunity. There are two strategies to operationalize this goal: one is to help more families move to existing neighborhoods of opportunity, and the other is to build more neighborhoods of opportunity where low-income families currently live. These strategies are not mutually incompatible.

The AFFH Rule explicitly supports both strategies; therefore, it provides the State of Texas an opportunity for Texas Department of Housing and Community Affairs (TDHCA) to affirm support for a balanced approach to affordable housing. The language in the rule references both mobility-based and place-based strategies. Specifically, the AFFH executive summary says: "The final rule helps to facilitate local decision-making to determine best strategies for meeting their fair housing obligations at the local level – including making place-based investments to revitalize distressed areas, or expanding access to quality affordable housing throughout a community."

SAHA's programs and practices reflect this balanced approach, implementing both strategies concurrently. Some programs expand housing options in neighborhoods of opportunity, and provide residents the information and resources to move. Additional programs increase opportunities and assets in neighborhoods that have historically been lacking. SAHA accommodates many different types of families, with varying needs and priorities. For instance, families with children¹ may prioritize the opportunity to move to high-performing school districts, whereas families with working residents² may prioritize access to employment centers and transit. Families with medical needs³ may prioritize proximity to social and medical services, as well as informal networks of family and friends that provide much-needed support.

TDHCA's support will allow housing providers increased flexibility to address fair housing issues on the ground, and also increase the ability to leverage additional local, Federal, or philanthropic resources that invest in primarily one strategy or the other.

¹ 9,600 or 53% of households

² 4,100 or 32% work-able adults working at least part-time

³ No numbers currently available on medical need. However, 9,300 or 51% of heads of household are elderly and/or with disability.

Support projects in Racially and Ethnically Concentrated Areas of Poverty (R/ECAPs)

HUD's AFFH rule also provides data on Racially and Ethnically Concentrated Areas of Poverty (R/ECAPs)⁴. These areas will naturally be the focus of the Assessment of Fair Housing (AFH) process and of HUD's response to the AFH.

San Antonio, Texas has twelve distinct R/ECAPs composed of 26 Census tracts. Currently, only two would receive points under the current TDHCA Qualified Allocation Plan (QAP) Opportunity Index Criteria. However, many of the R/ECAPs in San Antonio include public housing communities that are due for rehabilitation. The age and size of these communities, which are among the oldest and largest in the City, create significant potential for revitalization in areas that need it most.

SAHA has established a track record of leveraging TDHCA investments to transform R/ECAPs. The neighborhoods around San Juan, Sutton Oaks, and Refugio were designated as R/ECAPs between 1990 and 2010. Thanks in large part to Low Income Housing Tax Credit (LIHTC) investments between 2002 and 2012, those communities no longer sit within R/ECAPs.

TDHCA should strengthen support for projects in R/ECAPs. Neighborhoods with concentrations of protected classes should not be subject to a diminishment of resources. Instead, the AFH provides a framework to increase leverage and resources to address fair housing issues where they are most acute.

Expand and align the definition of "opportunity"

The AFFH data set doesn't delineate neighborhoods of opportunity as clearly as it does R/ECAP. However, it does include publicly accessible maps and tables to help assess whether significant disparities exist in spatial access to five quality of life factors commonly associated with opportunity: poverty, education, employment, transportation, and health.

The QAP Opportunity Index includes only income and education factors. The neighborhoods that score well under these criteria certainly benefit from better socio-economic conditions, but may also fail to offer basic services that families rely on, particularly access to employment and transit. A recent survey at SAHA's largest family public housing property indicated that 76% of respondents relied on walking and the bus as their primary mode of transportation.

⁴ R/ECAPs have a non-white population of 50 percent or more and a poverty rate that exceeds 40% or is three or more times the average tract poverty rate for the metropolitan/micropolitan area, whichever threshold is lower.

Another consideration for SAHA are the 9,000 elderly and disabled households served by the agency, whose priorities include access to medical and social services, neighborhood amenities, and family networks. This population is also more likely to not drive. These residents would be at risk of social isolation in many of the neighborhoods currently identified as high-opportunity.

Given these considerations, **the AFFH provides an opportunity to align and expand the QAP opportunity index to take into account additional factors that are critical to fair housing and family well-being.** The AFFH indices associated with employment and transportation can help expand geographical targets to include neighborhoods excluded by the current index.

Secondly, maps and tables representing the QAP scoring system should be made available to the public, similar to what HUD is doing with AFFH data. This information will make clear the policy outcomes of the point system, and will help in local decision making.

As a point for future reference, SAHA is working with researchers from UTSA and University of Florida's Shimberg Center for Housing Studies to develop a definition of opportunity that is responsive to residents' stated priorities. An associated interactive tool would help families find the neighborhoods that are most aligned with their priorities and budget. When complete, this tool will also provide valuable information to local, state, and federal policy makers.

Foster collaboration between local and regional partners

The QAP should provide additional support for projects and Concerted Revitalization Plans that advance a joint or regional AFH. The AFFH Rule requires grantees to periodically complete an AFH for HUD review. While it is possible for individual grantees to each complete their own AFH, HUD encourages grantees to work together to complete a joint or regional AFH. By virtue of the close collaboration required between partners, joint and regional AFHs are more likely to develop large-scale, system-focused solutions to fair housing issues. They are also more likely to leverage diverse resources around common goals, increasing the chances of positive outcomes.

Fair housing and affordable housing, in these plans, would not be an afterthought to the development or redevelopment process. Instead, these issues would be integrated into broader municipal or regional planning processes (including transportation, infrastructure, and environmental planning).

As a result, joint and regional AFH provide an opportunity to integrate systems that are too often dealt with in isolation, especially when implemented by a Concerted Revitalization Plan. The CRPs that advance the goals of a joint or regional AFH will then also provide greater certainty to TDHCA regarding positive outcomes.

CHARGE 5

Monitor and evaluate the availability of low-income housing in the State of Texas. Identify best practices to ensure that the agencies and local providers receiving state or federal funds for low-income housing are maximizing the number of units of housing available to Texans who need this program.



SUMMARY OF COMMITTEE ACTION CHARGE 5

CHARGE 5: Monitor and evaluate the availability of low-income housing in the State of Texas. Identify best practices to ensure that the agencies and local providers receiving state or federal funds for low-income housing are maximizing the number of units of housing available to Texans who need this program.

Committee Hearing

The House Committee on Urban Affairs met in a scheduled public hearing on Monday, May 23, 2016 at 10:00 a.m. at Houston City Council Chambers, Houston.

The following is the list of invited testimony who either testified on behalf of themselves or the listed entity:

Bobby Bowling (Texas Affiliation of Affordable Housing Providers)
Charlie Duncan (Texas Low Income Housing Information Service)
James Eccles (Texas Dept. of Housing and Community Affairs)
Tracey Fine (National Church Residences and Leading Age TX)
Brian Gage (Houston Housing Authority)
Joy Horak-Brown (New Hope Housing)
Tim Irvine (Texas Department of Housing and Community Affairs)
Antoinette Jackson (Housing Developers/Jones Walker)
Mary Lawler (Texas Association of CDCs and Avenue CDC)
David Long (TX State Affordable Housing Corp.)
Richard Milk (San Antonio Housing Authority)
David Mintz (Texas Apartment Association)
Chrishelle Palay (Texas Low Income Housing Information Service)
Neal Rackleff (City of Houston)
Lisa Stephens (Self; TXCAD)
Mike Sugrue (Self; Texas Association of Builders)
Jim Washburn (Rural Rental Housing Association)
Ron Williams (Texas Association of Local Housing Finance Agencies)

Background

What are the Programs involved?

The Texas Department of Housing and Community Affairs (TDHCA or the “Department”) is the state agency charged with administering the low income housing tax credit program and the HOME Investments Partnership (“HOME”). The tax credit program is created under federal law, specifically §42 of the Internal Revenue Code (the “Code”). Among other things §42 of the Code requires the state to adopt a QAP that meets certain requirements enumerated in §42. Under Texas law, specifically TEX. GOV’T CODE Chapter 2306, Subchapter DD, the QAP must also implement certain requirements of state law, including the scoring criteria under which

applicants for competitively awarded 9% tax credits are selected for award.

The Department also allocates 4% tax credits which are paired with tax exempt private activity bonds (“PABs”) issued by TDHCA or another qualified issuer. At present, due chiefly to market conditions, the availability of tax exempt bond cap and associated 4% credits exceeds demand and as a result these are not awarded in a competitive process. The HOME program, received through HUD, is subject to HUD’s requirements on AFFH. Multifamily HOME new construction deals are also subject to HUD’s site and neighborhood standards. HOME funds are used for, among other things, making loans to developers of affordable rental housing. TDHCA is required to use 95% of its HOME funds outside of the large cities that receive HOME awards directly from HUD, known as participating jurisdictions (“PJs”).

Under the American Recovery and Reinvestment Act of 2009 (“ARRA”) TDHCA administered approximately \$148,354,769 in federal stimulus funds under a program known as the Tax Credit Assistance Program (“TCAP”). TCAP was administered as a repayable loan program, and TDHCA is now receiving approximately \$6 million per year in TCAP loan repayments which it also uses to make loan to developers of affordable rental housing.

It is noteworthy that tax credits are a financial resource but not considered “funds.” They are the legal right to claim credits against federal tax liability on the tax returns of the parties that receive them. The awardees create limited partnerships so that participating limited partners can receive those tax benefits. The investment of the limited partners in these partnership structures creates the capital to develop affordable rental housing. Typically 9% credits create development capital of about 70% of the “above the ground” costs of developments and 4% credits create about 30% of this cost.

These different funding sources, alone or in combination with each other, are often part of a larger “funding stack” in which the developer also incorporates other sources such as direct equity, bank debt, other types of tax credits (historic tax credits, new market tax credits, etc.) or loans under other governmental programs including programs administered by HUD and, especially in rural areas, the United States Department of Agriculture (USDA).

Through these funding sources the Department will assist in the development of approximately 12,018 units of new or rehabilitated affordable rental housing each year through the programs and funding sources described, above.

What are the current needs?

Currently over 8 million households reside in Texas, more than 41% of which have incomes at or below 80% of area median income (American Community Survey data 2009-2012). More than 3 million of those households face cost burden, lack of complete plumbing or over-crowding (2016 State of Texas Low Income Housing Plan and Annual Report). According to the state Consolidated Plan, the most common housing problem experienced in Texas is cost burden. Small families that rent are the largest population of cost burdened households, making up 42% of more than 1.1 million households.

The amount of federal funding available for housing that is affordable to lower-income Texans is inadequate. Texas ranks 22nd in the nation in “housing wage,” or how much someone needs to

earn in order to afford rent and utilities. The 2015 statewide housing wage for Texas is \$16.62 an hour, around the national average. But the statewide minimum wage in Texas is just \$7.25 hourly, meaning that the average Texan minimum wage earner must work 92 hours a week to avoid spending more than 30 percent of their income on two-bedroom units at Fair Market Rent. In 2013, there were only 28 adequate and affordable rental units available for every 100 renter households whose income was 30% or less of the area median income across the United States. With the demonstrated need for affordable housing in Texas and the need for more funds to meet those needs, several factors provide roadblocks to maximizing the number of units available to Texans who need the program.

Local and Governmental Support Letters

A provision allowing for letters of local and governmental support from bodies like city councils and local neighborhood organizations in the QAP is making it difficult for developers to build LIHTC units where they are in the highest demand. The development community has experienced examples where neighborhoods may choose not to meet with the developer yet will write a letter opposing a potential project. In the city of Houston, the Super Neighborhoods are recognized by the QAP and as such allows groups from a distance as far as 5- miles away to oppose a development that is not slated in its immediate neighborhood. These letters can be problematic because the neighborhood groups are not governed by statutory process and are often swayed by wrong and misleading information. Nevertheless, developers are subject to these neighborhood groups that can kill a deal without solid, data driven reasons. Local and governmental support letters are politicized and hard for developers to get because a city council or other local governing body can simply not bring forward a motion of discussion to avoid making a public decision of support on a project. This puts a heavy burden on TDHCA staff to verify these letters, and prevents the agency from fulfilling its primary duty as underwriters for LIHTC applications.

Recommendations

1. Remove the Local and Governmental Support Letters section from the QAP.
2. TDHCA should draft a comprehensive housing plan for the state that sets the housing priorities and identifies additional resources to assure the best use of funds.
3. The state should explore the possibility of a similar state tax credit program that could be created to support affordable housing. Providing an additional source of gap financing would allow for more leverage of existing programs and thereby the creation of more desperately needed units.

The following exhibits were provided to the committee:

1. Texas Low Income Housing Information Service written testimony.
2. Lisa Stephens written testimony.

Testimony to the Urban Affairs Committee, May 23, 2016

There are parts of Texas, particularly certain inner city and suburban areas, that have been artificially rendered "off limits" to tax credit development. These areas are frequently high opportunity, with low poverty rates, good schools, low crime, and are free of environmental issues. These are the areas which might help the younger generations of low-income households do better than their parents who desperately seek a home that will brighten their children's future.

What is keeping tax credits out of many of these areas is based on misperceptions held by some neighborhood organizations about what tax credit housing is and what it does to communities. That opinion, which is often based on an assumption that a tax credit housing development will lower area property values, crowd schools, increase traffic, and/or increase crime, is allowed to pervade the decision making process through the provisions of the state's Qualified Allocation Plan (QAP). These provisions go far beyond what is required by federal statute, which requires only that the "chief executive officer" of a jurisdiction be given an opportunity to provide comment.¹

Because of this discrimination against tax credit housing and its residents, the projects that do meet the state's opportunity index criteria and score high enough for a tax credit award are increasingly landing in the urban periphery of cities, rather than high opportunity inner city areas near established communities, ample job opportunities, access to transit, and other important resources and services. Most inner city and suburban high opportunity areas have been effectively roped off by neighborhood organizations, city councils, county commissioners, and state representatives.

The blocking of tax credit development by these individuals and entities manifests itself in a variety of ways. A survey of tax credit housing developers sheds light on some of the scenarios they face when seeking the local support required by the Texas QAP.

Results from surveying TAAHP-affiliated developers

In the 2016 9% cycle, there were a total of 369 pre-applications submitted, of which 141 had a full application submitted, leaving 228 pre-applications on the cutting floor. This survey sought to learn more about the reasons for developers not submitting full applications on these 228 proposed tax credit developments. According to TAAHP, approximately 130 individuals received this survey.

There were 25 responses (response rate of 18 percent), of which 24 were valid (had a sufficient number of data fields completed)

Stats on valid responses (n=24):

- Average self-score of 120, ranging from 112 to 124
- Median Household Income Quartile: 14-Q1, 9-Q2, 1-Q4
- Average poverty rate: 8.6%, ranging from 1.0% to 19.9% (13 were <10%)
- 11 general, 12 elderly restricted, 1 elderly preference

¹ "...such agency notifies the chief executive officer (or the equivalent) of the local jurisdiction within which the building is located of such project and provides such individual a reasonable opportunity to comment on the project" -26 USC §42 (m)(1)(A)(ii)

- All but one were new construction (the other was a rehab)
- 18 (75%) based their decision to not submit a full app on lack of local support
- 6 based their decision not to submit a full app on other reasons
 - 2 due to proximity to hazardous uses
 - 3 due to non-competitive scores
 - 1 unknown reason

Support/Opposition data

- 2 received neighborhood organization opposition (none supported)
- 1 received school superintendent opposition (none supported)
- 7 received mayoral opposition, 2 received mayoral support
- 12 received city council opposition, 2 received city council support
- 2 received county judge opposition, 2 received county judge support
- 2 received county commission opposition, 2 received county commission support
- 4 received state rep opposition, 3 received state rep support (2 from same rep)
- 9 received community organization support (none opposed)

Statements from the survey

Beyond the numbers, the statements made by some of the survey participants about their experiences attempting to garner required local support show a set of troubling practices engaged in by these entities and individuals to block tax credit housing development within their jurisdictions.

1. Elected officials are basing their approval of a tax credit project on the approval other public officials

...to obtain a Resolution of Support or Non-Objection or Support from the County...written support from the school district and written support from the state representative would be required.

"We met with the State Rep...and were told that for her to provide a support or non-objection letter that written support from the school district would be required."

Upon being told by a county commission that written support from both the state representative and school board before receiving their support: *"I requested several meetings with the School Board and the State Representative. Neither would meet with us."*

2. Elected government bodies not placing required resolutions of support or no objection on council agendas

"Rep. wrote a letter of opposition and as a result the [city council] and [county commission] would not consider our request for a resolution of support or neutrality"

"I was told in January 2016 the council member was not going to support request for a Resolution of Support. His office told me they were not even going to place it on the agenda"

"We were informed that council had been canvassed informally and that they were opposed to anymore low income housing, whether it was family or seniors. We were told it would NOT get approved."

3. Other actions and statements that raise serious fair housing issues

"Council member...couldn't support a low income housing tax credit project for our site because it wasn't part of the city's vision for the area. The site was zoned multifamily and we were told that if we were to pursue a market rate deal, the city would be willing to work with us."

"Opposition raised concerns about: 1) children of residents living in affordable housing and how they might negatively impact schools."

"The State Rep. has a policy of not writing letter for LIHTC applications"

4. Lack of response or engagement from local entities to developer's contact for input and support, some of who were required to contact five or more individual homeowners associations

"We distributed flyers to neighborhood and held a meeting. Received one call supporting project. No one from the neighborhood attended the meeting."

"The development team reached out to stakeholders identified by the Mayor, with no response"

"Political activists organized a petition against the development. The activists never contacted the developer to discuss."

The survey cited many examples where action or inaction of a single party--be that a neighborhood organization, elected government body, or state representative--effectively vetoed a development proposal. This power is exercised in a highly competitive situation and inserts a high level of inconsistency and unpredictability for private developers who expend large amounts of money and labor to create these proposals:

This competitive award process should be based on objective metrics and processes arrived at through the public process that creates the Texas QAP. The administrative roles assigned to organizations and elected officials in the QAP, per state statute, pose unreasonable hurdles for tax credit developers in meeting an already overwhelming demand for high quality, affordable housing in high opportunity areas which serves hard-working, low-income Texas.

It is also notable and significant that the Texas Senate decided to remove themselves from this process in 2013. The House of Representatives should also reconsider their role in this process.

We ask the state house of representatives to consider this information and ask themselves:

What it is about this type of development that requires its developer to be subjected to multiple sources of arbitrary veto power, which far exceeds that required for virtually any other type of development, housing or otherwise?

Thank you,

Charlie Duncan, fair housing planner
Texas Low Income Housing Information Service

Urban Affairs Committee Meeting Testimony – May 23, 2016

Lisa Stephens, President, Saigebrook Development · I have been developing affordable housing for close to 20 years. In addition to my own experience, I represent an association of developers (TXCAD) who have joined together for the purpose of promoting good public policy. Collectively we represent more than 35,000 units in the state of Texas.

We have heard a lot this morning about the quantity of housing provided. But I'd like to quickly touch on the level of need. Currently 8M+ households reside in Texas, more than 41% of which have incomes at or below 80% of area median income (American Community Survey data 2009-2012). More than 3M of those households face cost burden, lack of complete plumbing or over-crowding (2016 State of Texas Low Income Housing Plan and Annual Report). According to the state Consolidated Plan, the most common housing problem experienced in Texas is cost burden. Small families that rent are the largest population of cost burdened households, making up 42% of more than 1.1M households. Chairman Elkins mentioned this morning that in his district only 55+ developments can get political support for approval. Yet only 13% of those with the highest need for affordable rental housing were elderly or senior households.

Texas has a greater percentage of children under 18 than the rest of the nation and the median age in Texas is 33.8, while the median age of the national population is 37.3 years. That means that we have a relatively young resident profile. A report by the National Low Income Housing Coalition found that on average in Texas, in a metro area an individual would need to earn \$16.77 an hour with a forty hour workweek to afford a two-bedroom apartment at Fair Market Rent.

As developers, we often face significant levels of difficulty and opposition when trying to provide affordable housing, particularly housing for families. I understand that what we are talking about here today: removing the requirement for support from cities, neighborhoods, and the legislature is not politically correct. And unfortunately while I appreciate the City of Houston's comments that the timelines for support letters too short, adding more time to the process for consideration only fuels the NIMBY fires. Developers spend \$30-\$50k per application to submit. To not know prior to submitting an application is like throwing money away. We should not be put in this position. This is not an easy conversation and it is one that merits much further discussion. Likewise the provision of affordable housing is not an easy task.

The HTC program is always oversubscribed, generally 3 to 1, and there are never enough resources. It's not an issue of whether affordable housing will or should be provided. As TDHCA mentioned there are always enough applications to use the funds. The question we should be asking ourselves relative to this program is are we serving those most in need, are we addressing the greatest need and are we providing the housing in the areas where it is most warranted? Do our policies have the unintended consequence of pushing housing out to more remote areas where the chances of receiving an opposition letter aren't as high? Do they have the unintended consequence of providing senior housing at the expense of families? I believe the answer to these questions is yes, and given the current Supreme Court ruling and the Affirmatively Furthering Fair Housing Rules, we should take a hard look at these policies and their impacts.

Going forward I believe we need to have a comprehensive housing policy, one that includes needs data, rather than passing individual legislation that is difficult to modify and inflexible. How can we address the large percentage of small families that are cost burdened? Mr Irvine described the Regional Allocation Formula to allocate funds between 13 different regions across the state and then further allocates

between urban and rural areas. Perhaps there should be a third allocation level between family and senior relative to the respective need levels of each.

In the last legislative session a state tax credit was implemented to encourage historic rehabilitation. Modeling after that program, a similar state tax credit could be created to support affordable housing. Providing an additional source of gap financing would allow for more leverage of existing programs and thereby the creation of more desperately needed units.

In its state of industry report issued in Dec 2015, Cohn Reznick reported that Texas has a median physical occupancy of approximately 96% and an economic occupancy median of 94-95% across its affordable housing portfolio. Those are excellent numbers. But they are not significantly different from the data found in the rest of the country. In fact nationally the cumulative foreclosure rate for HTC transactions is less than 1%. This data suggests that regardless of varying state policies and levels of oversight by agencies across the country, the private sector is doing a pretty good job of managing the risk for affordable housing transactions. Development is a process and many, many items change during that process. Rep Anderson asked about underwriting. Ultimately, not every change is worthy of or required to be underwritten and re-underwritten by the agency. In fact much of the administrative burden could be streamlined if agency reviews were more limited in nature and scope than the current rules provide. Reducing staff workload would allow the agency to focus more on policy matters and less on technicalities, as well as provide for better response times.

The programs administered by TDHCA are incredibly complex. Merging multiple levels of program requirements with the realities of actually developing and constructing housing and then ensuring long term compliance is not an easy task. As we look at the future of these programs, perhaps returning to having board members with specific relevant experience in real estate, construction and/or finance would help to streamline the decision making processes. Additionally filling the seat that is already designated for a low income representative would help to bring perspective and real life experience from someone who has struggled with the lack of affordable housing.

The HTC program is a public private partnership. TDHCA administers its programs and those resources are provided to developers who raise private equity, secure conventional loans, provide guarantees and then actually provide the housing. One side of the equation does not and cannot work without the other. The rules under which TDHCA makes awards and the commitments of those awards form the foundation for the remainder of the parties. Just like building an actual house, the financial structure for each transaction is built upon the foundation. If that foundation shifts or moves, then every other piece of the structure is impacted. It is imperative that as these transactions move forward, that the process is collaborative between TDHCA and the private sector, recognizing that the first line of defense for any risk or loss lies with those who are providing the primary sources of funds.

We heard here today that TDHCA has in its portfolio 225,000 affordable multifamily homes. While that is a significant number, unfortunately it is only a drop in the bucket for the more than 3M households that are currently facing housing issues within our state. It is our responsibility to work collectively to advance the provision of affordable housing in the state of Texas. I appreciate the time to speak before you today and will be available for any questions you might have.



CHARGE 6

Investigate the operation and regulation, including a review of standards, monitoring, and enforcement, of boarding homes in municipalities and unincorporated areas of counties. Identify communities that have adopted local standards, and review procedures for investigating and closing unlicensed facilities that are providing services which require state licensure. *(Joint charge with the House Committee on Human Services)*



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SUMMARY OF COMMITTEE ACTION CHARGE 6

CHARGE 6. Investigate the operation and regulation, including a review of standards, monitoring, and enforcement, of boarding homes in municipalities and unincorporated areas of counties. Identify communities that have adopted local standards, and review procedures for investigating and closing unlicensed facilities that are providing services which require state licensure. (Joint charge with the House Committee on Human Services)

Committee Hearing

The House Committee on Urban Affairs and the House Committee on Human Services met jointly in a scheduled public hearing on Tuesday, May 17, 2016 at 1:00 p.m. in room JHR 120, Texas State Capitol.

The following is the list of invited testimony who either testified on behalf of themselves or the listed entity:

Douglas Anders (City of Houston)
Wendy Baimbridge (Houston PD)
Chase Bearden (Coalition of Texans with Disabilities)
Theresa Chrisman (Self)
Beth Engelking (Department of Family and Protective Services)
Scott Griggs (City of Dallas)
Jason Howell (Self)
Vince Johnson (Houston Police Department)
Jean Langendorf (Disability Rights Texas)
Janie Metzinger (Mental Health America of Greater Dallas)
John Overstreet (Bexar County Fire Marshal)
Roderick Sanchez (City of San Antonio)
Gyl Switzer (Mental health America of Texas)
Jon Weizenbaum (Department of Aging and Disability Services)
Robyn Strickland (Department of State Health Services)

Background

Boarding homes are an important source of housing for many Texans on limited and fixed incomes, including persons with disabilities and the elderly. Despite a 2009 law that allows counties and municipalities to adopt standards for and regulate these settings, boarding homes remain unregulated in most parts of the state. While some boarding home operators may run safe establishments, others see the lack of regulation as an opportunity to take advantage of a

clientele with few other options and nowhere to complain. Abuse, neglect, and exploitation of residents are very real concerns. In August 2015, 22 people were found living in extremely unsafe conditions at a boarding home in Austin after the owner fled a similarly inadequate establishment in Belton called "God's Blessings" This case reopened the conversation about the appropriate regulation of boarding homes and how to strike a balance between regulation and maintaining this important source of housing. Ensuring resident safety and compliance with the federal Fair Housing Act are paramount concerns as well.

Boarding homes were last the subject of a comprehensive study in a report issued in January 2009. Pursuant to HB 1168 (80th Legislature, Regular Session, 2007), the Health and Human Services Commission (HHSC) contracted with Health Management Associates (HMA) to study methods for regulating boarding homes. The report included 14 recommendations to strengthen housing options for persons with limited incomes and strengthen monitoring and enforcement. The report also called for better education about boarding homes. HMA noted that, "[v]ery few housing options are available for [boarding home residents] given their low income level. Boarding houses have developed as an alternative option to the lack of appropriate and affordable housing for these individuals. Despite filling that void, there is a considerable amount of concern for boarding house residents, particularly unsafe environments and access to personal care services." Many of the issues identified in the HMA report persist today.

In 2009, the Legislature passed HB 216, which authorized counties and municipalities to adopt standards for the regulation of boarding homes. The bill also directed HHSC to develop model ordinance standards that address certain elements, including construction, fire safety, sanitary conditions, reporting and investigation of injuries and incidents, staff education, and assessment of residents. HB 216, however, did not require adoption of the model standards. Instead, counties and municipalities have broad discretion to enact boarding home regulations that mirror or depart altogether from these standards. If a county or municipality adopts the HHSC standards, this triggers reporting requirements. Not later than September 30 of each year, the county or municipality must report:

- the total number of facilities permitted;
- the number of active permits;
- the total number of residents in each boarding home facility; and
- the total number of inspections.

HHSC reports this information to the Legislature not later than January 1 of each odd-numbered year. HHSC assigned the Department of Aging and Disability Services (DADS) responsibility for conducting outreach on the model standards, advising communities of their obligation to report, and submitting the biennial report.

According to the December 2014 report, four communities have adopted the model boarding home standards since 2009 – Brenham, Dallas, El Paso, and San Antonio. However, because the reporting requirement was interpreted by HHSC to only apply to counties and municipalities that adopt the model standards, the report does not give a full picture of the current regulatory landscape. For example, Houston adopted an ordinance in 2013 and delegated enforcement authority to the Houston Police Department Mental Health Division.

Many boarding home residents are persons with disabilities or elderly persons with medical

needs. Thus, there is a significant overlap in persons served in boarding homes and assisted living facilities. Understanding the difference between boarding homes – which require no license or permit to operate in most parts of the state – and assisted living facilities, is key to any policy discussion. In 2009, HB 216 drew a line between these settings by requiring an establishment that provides “personal care services” to obtain an assisted living facility license. “Personal care services” are defined as:

- (A) assistance with feeding, dressing, moving, bathing, or other personal needs or maintenance; or
- (B) general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in an assisted living facility or who needs assistance to manage the person's personal life, regardless of whether a guardian has been appointed for the person.

A “boarding home facility” is defined as an establishment that furnishes, in one or more buildings, lodging to three or more persons with disabilities or elderly persons who are unrelated to the owner of the establishment by blood or marriage; and provides community meals, light housework, meal preparation, transportation, grocery shopping, money management, laundry services, or assistance with self-administration of medication but does not provide personal care services.

DADS licenses and regulates assisted living facilities in Texas. DADS can also seek an injunction to restrain the operation of a boarding home that is providing residents personal care services without a license. However, neither DADS nor the city and county attorney can bring criminal charges against a boarding home operator who knowingly operates an establishment that endangers resident health and safety.

Recommendations

1. Increase targeting in all housing programs at the Texas Department of Housing and Community Affairs (TDHCA) for individuals with disabilities at the Supplemental Security Income level of income.
2. Increase the use of Low Income Housing Tax Credits to develop supportive housing opportunities for persons with disabilities.
3. Direct the Texas Department of Agriculture to require that a portion of the Community Development Block Grant funding allocations be used to address the housing needs of low-income people with disabilities in rural communities.
4. Increase funding for the Department of State Health Services housing voucher program for persons with mental illness and create a similar voucher programs for other persons with disabilities.
5. Enact a Bill of Rights for Boarding Home Residents. A resident bill of rights is needed to ensure that residents have basic rights. In addition to setting forth the right to live in a safe and sanitary setting and the right to request a reasonable accommodation, other

rights include the right to manage personal funds, written notice of available services and charges, conditions for termination of tenancy, and notice of termination requirements.

6. Direct HHSC or a Contractor to Provide Ombudsman Services to Boarding Home Residents. Legislators should explore folding in boarding homes to existing ombudsman programs within HHSC or directing the agency to contract with a third party to act as an ombudsman. An ombudsman would help investigate complaints and gather information regarding common complaints, rights violations, and general living conditions and help shape issues for potential future statutory changes.

CHARGE 7

Conduct legislative oversight and monitoring of the agencies, including the Texas Department of Housing and Community Affairs, and programs under the committee's jurisdiction and the implementing of relevant legislation passed by the 84th Legislature. In conducting this oversight, the committee should

- a. consider any reforms to state agencies to make them more responsive to Texas taxpayers and citizens;
- b. identify issues regarding the agency or its governance that may be appropriate to investigate, improve, remedy, or eliminate;
- c. determine whether an agency is operating in a transparent and efficient manner; and
- d. identify opportunities to streamline programs and services while maintaining the mission of the agency and its programs.



SUMMARY OF COMMITTEE ACTION CHARGE 7

CHARGE 7: Conduct legislative oversight and monitoring of the agencies, including the Texas Department of Housing and Community Affairs, and programs under the committee's jurisdiction and the implementing of relevant legislation passed by the 84th Legislature. In conducting this oversight, the committee should

- a. consider any reforms to state agencies to make them more responsive to Texas taxpayers and citizens;*
- b. identify issues regarding the agency or its governance that may be appropriate to investigate, improve, remedy, or eliminate;*
- c. determine whether an agency is operating in a transparent and efficient manner; and*
- d. identify opportunities to streamline programs and services while maintaining the mission of the agency and its programs.*

Committee Hearing

The House Committee on Urban Affairs met in a scheduled public hearing on Monday, May 23, 2016 at 10:00 a.m. at Houston City Council Chambers, Houston.

The following is the list of invited testimony who either testified on behalf of themselves or the listed entity:

Bobby Bowling (Texas Affiliation of Affordable Housing Providers)
Charlie Duncan (Texas Low Income Housing Information Service)
James Eccles (Texas Dept. of Housing and Community Affairs)
Tracey Fine (National Church Residences and Leading Age TX)
Brian Gage (Houston Housing Authority)
Joy Horak-Brown (New Hope Housing)
Tim Irvine (Texas Department of Housing and Community Affairs)
Antoinette Jackson (Housing Developers/Jones Walker)
Mary Lawler (Texas Association of CDCs and Avenue CDC)
David Long (TX State Affordable Housing Corp.)
Richard Milk (San Antonio Housing Authority)
David Mintz (Texas Apartment Association)
Chrishelle Palay (Texas Low Income Housing Information Service)
Neal Rackleff (City of Houston)
Lisa Stephens (Self; TXCAD)
Mike Sugrue (Self; Texas Association of Builders)
Jim Washburn (Rural Rental Housing Association)
Ron Williams (Texas Association of Local Housing Finance Agencies)

Recommendations

1. Further research should be considered as to whether TDHCA board members should have specific relevant experience in real estate, construction and/or finance. Additionally filling the seat that is already designated for a low income representative would help to bring perspective and real life experience from someone who has struggled with the lack of affordable housing.

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