



TEXAS ASSOCIATION OF COMMUNITY DEVELOPMENT CORPORATIONS

**TACDC'S 80TH TEXAS LEGISLATIVE SESSION
DEBRIEFING REPORT**

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The 80th Texas Legislature ended on May 28th 2007. During the 140 days the Legislature met, 4,140 house bills and 2,050 senate bills were filed. Of the total bills filed, only 1,480, or 23%, made it to the Governor's desk, where 51 bills were vetoed.

The 80th Legislative session will be remembered for the Speaker's race at the beginning of the session and the attempts to oust the Speaker late in the session and not for any major legislative accomplishments. Tensions flared in the House as the Local and Consent Calendar filled with bills from the Speaker's allies while non controversial bills from the Speaker's opponents were left to perish.

Housing issues fared well with a few legislative changes that will have a significantly positive impact on CDCs and others providing affordable housing. TACDC was very successful in accomplishing three of our four big objectives for the legislative session while preventing several attempts to change existing laws in ways that would be harmful to community development efforts across the state.

The following is a brief recap of legislation passed in the 80th Legislature and how it will impact CDCs across the state.

I. Housing Production

Senate Bill 1908 (Ellis, D-Houston) was the main legislation making changes to affordable housing production programs governed by the Texas Department of Housing and Community Affairs. The bill became the main housing production bill of the session as legislators amended other housing bills that were not going to pass onto SB1908. The overarching policy direction of the bill is to give TDHCA more discretion in administering programs, allocating funds, and imposing penalties on affordable housing owners that mismanage projects.

Several programmatic or policy changes are contained in the bill, including:

Regional Allocation Formula.

Senate Bill 1908 maintains the basic underpinnings of the regional allocation formula (RAF) but provides the department additional flexibility when creating the formula. The need for affordable housing and consideration of additional housing resources are factors that the agency must still consider, but are not necessarily the only factors the agency must consider. The bill exempts from the regional allocation formula funding for people with disabilities and funding for programs within the Housing Trust Fund that are less than \$3 million.

The RAF is clarified so that 95% of HOME Funds are to go to non-participating jurisdiction areas of the state and that the remaining 5% is reserved for people with disabilities to be used anywhere in the state.

The regional allocation formula will now provide at least 20% of low-income housing tax credits to rural areas and guarantees that at least \$500,000 in credits be available per region for rural developments. Five percent of the rural funds are to be reserved for projects receiving funding from the USDA.

Low Income Housing Tax Credit Scoring

Senate Bill 1908 contained several provisions making minor changes to the mandatory scoring elements for low income housing tax credit developments. Most significant is the change regarding letters of support from state elected officials. Under the new policy, developers only have to receive one letter of support from either a state representative or senator, not both as in previous years of the program. Also among the changes is the inclusion of points for tax credit developments in areas that have been declared state disaster areas within the last two years. Lastly, points will be awarded for developments that provide on-site notary public services to residents.

TDHCA Compliance and Monitoring

Senate Bill 1908 enables the Texas Department of Housing and Community Affairs to impose penalties on developers or owners of TDHCA funded properties that violate standards that the agency will set forth in rule. This is an attempt by the agency to drive bad developers out of business in the state and to improve the perception of affordable housing in Texas. SB 1908 also allows cities to petition district courts to transfer ownership of poorly managed properties to nonprofits to rehabilitate the property. These two efforts may go a long way to addressing many of the concerns of NIMBY groups in Texas and may eventually lead to a wider distribution of affordable housing in the state.

Texas Residential Construction Commission

The Texas Residential Construction Commission regulates homebuilders and home repair contractors across the state. Most CDCs have registered with the TRCC as part of their single family building programs, however some CDCs fall into a grey area of the TRCC's enabling legislation because they do not "build" affordable housing. Instead, these CDCs hire contractors to build the homes and then the CDCs sell the homes to qualifying families. In these cases, the TRCC considered the CDC as the homebuilder, even though the CDC was not materially involved in the construction of the home. HB 2936 by Farrar (D-Houston) clarifies that a CDC does not have to register with the TRCC if the CDC hires a contractor that is registered with the TRCC and is contractually obligated to the homebuyer to fulfill all warranties and building and performance standards of the TRCC.

House Bill 1038 by Ritter (D-Nederland) provides the TRCC with more statutory authority to levy fines against or revoke the licenses of homebuilders that habitually violate TRCC building standards or who do not register with the TRCC. The bill

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specifically gives TRCC authority to ensure that the third party inspection and dispute resolution process works equitably for the parties involved in disputes.

II. Resources for Affordable Housing and Community Development

Several changes in state law will positively impact the resources CDCs have in providing affordable housing. However, affordable housing advocates still have not been able to convince the Legislature to appropriate adequate resources to the state housing trust fund. Discussions between housing advocates, Senator Lucio, and the Lt. Governor provided a modest increase in the housing trust fund but fell far short of the initial funding target.

Nonprofit Affordable Housing Tax Exemption

One of TACDC's major legislative accomplishments during the 80th Texas Legislature was to restore the single family homeownership property tax exemption for nonprofits back to 100 percent. House Bill 3191 by Hill (R, Richardson) also removes the opt-out provision for counties with a population of 1.4 million or more for single family homeownership properties. These changes will allow CDCs and Habitat for Humanity affiliates that acquire property through CHDOs to save on property taxes and pass those savings onto the homebuyers. The new law takes effect January 1, 2008.

The only other piece of legislation that passed concerning the nonprofit property tax exemption was SB 426 by West (D-Dallas). The bill states that a property receiving a 100% tax exemption under section 11.182 (the old exemption) that is sold at foreclosure can remain off the tax role if the new owner is a qualifying entity and the entity submits to the chief appraiser evidence they qualify for the exemption within 30 days of the sale of the property. This language is currently included in Section 11.1825 (the new exemption) and SB 426 put the same language into the former tax exemption statute.

Private Activity Bond Financing for Affordable Housing

House Bill 3552 by Rep. Orr (R-Burleson) was the major private activity bond bill passed this session. Championed by the Texas Association of Local Housing Finance Agencies, the bill amended the private activity bond (PAB) allocation program to accomplish the following:

- Allow multiple sites within one multifamily application if at least 51% of the units are in a county of less than 75,000 or in a county with an AMFI of less than that of the State.
- Allow for mixed income in the multifamily program.
- Amend the "rural set-aside" for multifamily in Regions 3, 6, and 7 to exclude Region 7 (Austin area) and to allow rehab in metro area to use the set-aside.
- Amend the process for reporting the "Utilization percentage" for single family programs.
- Amend the traditional carryforward application process to have the same signature requirements as a regular application.

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- Allow available carryforward from previous years to be used earlier.
- Set aside a designated percentage of the PAB subceiling for housing for exclusive use by local housing finance corporations (HFCs), TDHCA, and the Texas State Affordable Housing Corporation (TSAHC) up to the rollover date of August 7th. Local HFCs will have exclusive use of 56.66% of the subceiling before the rollover date, TDHCA will have access to 33.34%, and TSAHC will have access to 10% of the allocation.

Funding for the State Housing Trust Fund

The State Housing Trust Fund, the only general revenue the state invests in affordable housing, will almost double thanks to the efforts of affordable housing advocates, including TACDC, and Senator Lucio. The housing trust fund will increase by \$5 million over the biennium with just over \$5 million available per year in the budget. While this amount is low compared to other states, we hope that it is one of the first signs that the state's budget writers are acknowledging the need for additional affordable housing in the state.

Texas State Affordable Housing Corporation Homebuyer Assistance Programs

The Homebuyer Assistance Programs for professional educators, police, security professionals, and fire fighters administered by TSAHC were further amended to include the following categories or employees:

- Emergency medical services personnel.
- Juvenile correctional officers.

TDHCA First Time Homebuyer Program

House Bill 1637 by Menendez (D-San Antonio) formalized the First Time Homebuyer Program within TDHCA and increased the maximum income threshold from 60% AMFI to 80% AMFI to allow more low-income residents the opportunity to become homeowners.

Texas Capital Access Program

TACDC worked with the state's CDFIs to secure additional funding for the Texas Capital Access Program. Despite the best efforts of the program's main legislative champion, Rep. Villarreal, and the advocates working the issue, the Governor's Office proved unwilling to fund the program for the 2008-09 biennium.

III. Consumer Protection and Colonia/Border Issues

The 80th Texas Legislature passed several bills aimed at protecting consumers of rental and owner occupied housing, with a particular focus on regulating the relationship between landlord and tenant. The legislature also focused on colonias, promoting cooperation between agencies, gathering information regarding government programs in colonias, and adding enforcement mechanisms.

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Tenants Rights

Several bills increase requirements to disclose rights of tenants and other criteria in lease agreements or communications between landlords and tenants. SB 1733 by Gallegos (D-Houston) requires the Texas Department of Housing and Community Affairs to establish rules regarding lease terms for properties funded by low income housing tax credits. The change is a response to a recent Internal Revenue Service ruling requiring multifamily developments supported by housing tax credits to specify in their lease agreements what qualifies as just cause for eviction or refusal to renew a lease.

In order to ensure that tenants understand the rapidity with which eviction proceedings can take place and provide access to affordable legal services, Senate Bill 1483 by Lucio (D-Brownsville) requires eviction notices to contain specific language in English and Spanish regarding immediate deadlines and providing the toll-free number for the Texas Bar Association.

House Bill 3101 by Anchia (D-Dallas) requires landlords to include in the lease agreement notification of the landlord's right to change locks and charge late fees and of the criteria used in selecting residents. The landlord must also notify the tenant in writing of the location where late rent may be paid and inform the tenant of their right to obtain a new key to the premises if the locks have been changed.

Other laws addressed tenants' right of access to hot water and to nondiscrimination in access to public housing. Currently landlords are not required to provide hot water to tenants or to repair a broken hot water heater. House Bill 177 by Bailey (D-Houston) requires landlords to provide a device to supply hot water. Under Texas law, housing authorities are subject to the federal Fair Housing Act, but not the Texas Fair Housing Act. HB 2353 by Thompson (D-Houston) remedies the situation by requiring public housing comply with the Texas Fair Housing Act.

Mortgage Fraud Protection

The legislature also moved to address concerns over the perceived prevalence of mortgage fraud in the state. Texas ranks 6th in the nation in foreclosures, which can indicate high levels of mortgage fraud. House Bill 716 by Solomons (R-Carrollton) makes it a felony to knowingly make false statement to in connection with a residential mortgage loan. It also requires the Office of the Attorney General to establish the residential mortgage fraud task force, collect reports of suspected fraudulent activity, and share this information with the mortgage fraud taskforce.

Refund Anticipation Loans

House Bill 1344 by Villarreal (D-San Antonio) addresses issues of high interest rates and fees attached to income tax refund anticipation loans (RALs). Currently, Texas does not require facilitators of RALs to register with the state or to disclose certain information regarding the cost of the loans. It is common for those seeking refund anticipation loans to also file for the earned income tax credit.

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House Bill 1344 require RAL facilitators to possess an Internal Revenue Service e-file authorization and register with the Texas Office of Consumer Credit. Facilitators must also disclose and discuss the conditions of the loan, including the estimated total fees and annual percentage rate for the loan. The facilitator must also clarify that the taxpayers actual refund may not cover the full amount of the loan.

Consumer Debt Management Services

Senate Bill 884 by Eltife (R-Tyler) removes the requirement that credit counseling agencies be nonprofit organizations. This bill follows the IRS's finding that many nonprofits providing consumer credit counseling fail to meet the charitable purposes test set forth in their mission statements. SB 884 requires nonprofits provide additional information to the Finance Commission at registration, however, the bill does not provide the same reporting requirements for for-profit companies.

Colonia and Border Issues

The Legislature also moved to increase oversight of government funded activities in colonias and improve enforcement of laws intended to prevent the formation of colonias. Senate Bill 99 by Zaffirini (D-Laredo) instructs Secretary of State to compile information concerning colonias from a variety of state departments, bureaus and commissions, and report every two years to the Legislature on progress of state-funded programs providing water or wastewater services, paved roads and other assistance to colonias. It also requires the creation of Colonia Ombudspersons who will collect data on colonias in their counties and assist the Secretary of State in preparing the report.

The bill establishes a grants program for financial assistance for colonia roadway access. It also requires select institutions of higher education to create partnerships with governmental agencies and counties to develop alternative technologies to assist colonias that have inadequate services or are without services.

The legislature also passed a law allowing consumers to take action in the courts to help stop the expansion of colonias. Current law allows the Office of the Attorney General and county officials to request court injunction against developers that violate Texas law in building substandard dwellings. However, the federal grant used for enforcement expired in 2001 and developers have taken advantage of weak enforcement. SB 781 by Lucio (D-Brownsville) provides victims of unscrupulous developers the same legal remedy currently afforded to county and state officials. This bill authorizes district courts to stop the violation or threatened violation of Texas' colonia prevention laws at the request of a consumer and requires the developer to bring the lots into compliance with state law.

IV. Land Use

The Legislature also addressed issues of land use in the state, including expanding the Dallas land bank program to Houston and the rest of the state of Texas.

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The 78th Legislature authorized the city of Dallas to form a land bank program to acquire tax delinquent land and use it to develop affordable housing. HB 1742 by Giddings (D-Dallas) makes changes to the existing Dallas land bank statutes, provides land bank enabling legislation to all other cities in the states and amends the Houston land bank legislation passed in the 79th Texas Legislature.

City of Dallas Land Bank

Several provisions of the Dallas land bank law were changed. The law passed this session exempts City of Dallas land bank from responsibility for solid waste release under Health and Safety Code. It also allows the Dallas bank to take land under tax foreclosure if there are no habitable buildings, or if there are buildings on the property that are not occupied or are uninhabitable. The bill shortens the period of delinquent tax eligibility from six consecutive years to five total years and shortens period of right of first refusal for CDCs from nine to six months. The law provides that activities undertaken by an urban land bank demonstration program are a charitable function, thereby exempting the land bank from paying property taxes on the land it holds.

The law allows an increase in the maximum income limits to 115 percent of AMFI on 30 percent of the properties sold to the land bank. The remaining properties are reserved for families earning 80% of AMFI or below with 25 percent of the properties reserved for families earning below 60% of AMFI.

City of Houston Land Bank

The Houston Land Bank Program has a few provisions that make it unique in Texas, including the right of first refusal for adjacent land owners. HB 1742 amends the right of first refusal for an adjacent property owner by setting the acquisition cost at market rate and prohibiting the adjacent property owner from selling or leasing it to another party for 10 years. Under the law, the land bank has the right to develop standards of land use for property sold to an eligible adjacent property owner. The use of the property should be consistent and compatible with the residential character of the neighborhood.

House Bill 1742 also changes right of redemption for former property owners to one year and prohibit redemption claims against the new owners or land bank once the sale is final. These new provisions should speed the private sale of tax foreclosed land to the land bank and should provide an excellent resource for affordable housing in Houston.

Statewide Land Bank Law

The statewide land bank law is largely based on the Dallas land bank law, and excludes Houston, Austin, and Dallas. The law requires that properties be deed restricted to a maximum of 80 percent of AMFI, with at least 25 percent being deed restricted to 25 percent AMFI.

House Bill 1742 also extends the Homestead Preservation District policy to southern Dallas.

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Homestead Preservation Districts

House Bill 470 by Rodriguez (D-Austin) refines legislation passed last session that provides the City of Austin tools to preserve affordable housing in East Austin. The original bill, passed during the 79th regular session, allowed Austin to create a Homestead Preservation District. It gave the City Council permission to use land banks, land trusts and tax increment financing to promote retention of affordable housing in east Austin. However, the city had not taken advantage of those tools due to certain concerns that are addressed in this bill.

The new law gives the city more flexibility regarding the establishment of a land trust. The original law required the trust to be run by a nonprofit organization, precluding the city from running the land trust itself. The new law allows a land trust not created by the city to be housed in a nonprofit organization. In addition, the law provides procedures for the dissolution of the district.

The bill requires the municipality to spend at least 80 percent of the revenue expended annually from the tax increment fund for project costs, including the purchase of real property, the construction or rehabilitation of affordable housing in the district, and infrastructure improvements directly related to supporting the construction or rehabilitation of affordable housing in the district. This expands eligible activities from a sole focus on affordable housing.

In January the Austin City Council approved a resolution creating Homestead Preservation District, contingent on passage of House Bill 470.

Eminent Domain

While no significant bills regarding eminent domain were signed by the Governor, we believe it will be an issue of continuing importance to CDCs in Texas. TACDC plans to monitor activities in this area. Two bills of note, HB 2006 by Woolley (R-Houston) and HB 3057 by Callegari (R-Katy) attempted to limit government use of eminent domain.

House Bill 2006 was intended to constrain city governments' ability to redevelop low-income downtown neighborhoods by limiting the use of the 'blight' designation to condemn entire neighborhoods. The legislation required cities to make a good faith offers on private land needed for public use. The law would have made recent toll road developments more difficult and expensive and several cities opposed it on grounds that it would disrupt long-planned transportation projects. The bill was vetoed by Governor Perry.

House Bill 3057 would have redefined blight as a menace to public health, safety, morals and welfare of Texans. It defined prevention or elimination of blight as matters of state policy, and public acquisition of real property and other activities to eliminate blight are public purposes for which public monies may be used.

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