

# **Executive Summary**

## **Committee Charge # 1**

*Evaluate the potential benefits offered through the “design-build” form of bidding, which allows engineers, architects, and builders to form teams and bid on state projects in contrast to the current method which mandates that each entity bid separately. The Committee shall compare the State of Texas practices to other states and to the private sector and evaluate the “design-build” option as it relates to buildings, roads, and other publicly funded projects.*

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Today there is growing concern that Texas will not have the technical and management resources available to meet its roadway and prison system infrastructure needs. New alternative procurement methods may provide more efficient alternatives to meet those construction needs, however, many state agencies do not have the authority to use the alternative methods. For this reason, Lieutenant Governor Perry charged the Intergovernmental Relations Committee with evaluating design-build as it relates to buildings, roads, and other publicly funded projects. The charge was eventually narrowed by Lieutenant Governor Perry to focus on projects procured by only two state agencies, specifically the Texas Department of Transportation (TXDOT) and the Texas Department of Criminal Justice (TDCJ).

As defined, design-build is a “team based system organized to provide efficient design and construction processes, where the owner contracts with a single entity to provide the whole service.” When an owner enters into a single contract for both the design and construction of a building project, they are using the design-build procurement method. The main difference between design-build and the traditional design-bid-build method is the team-based organization. Additionally, having a single source of accountability reduces the possibility of litigation stemming from problems associated with the project<sup>1</sup>. Those who have used the design-build method, both in the public and private

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<sup>1</sup> Hovet, Timothy D. “Allowing the Design/Build Project Delivery Method in the Procurement of Public Construction Contracts.” 1994 Oregon Better Government Competition, Cascade Policy Institute.

sector, claim that the process has facilitated the project to being completed under budget, shortened the length of completion time for the project, and resulted in a well built facility. Opponents of the process claim design-build is a subjective process that promotes favoritism and does not maximize tax payers' dollars.

Design-build has been widely used for various project types in the private sector, but has only recently been introduced and authorized for use in the public sector. Until recently, many states' procurement laws did not specifically authorize the use of design-build. States that have begun to use design-build, particularly in horizontal projects (roads and bridges) include California, Utah, Arizona and Georgia. These states have reported numerous successes with design-build and are continuing to use it for projects. In Texas, alternative delivery methods could not be used because of the requirement that a complete set of plans be available for bid. This was changed in 1995 when SB 583 was passed to allow public schools to use any project delivery system that provided the district with the "best value." Current law, however, continues to place limitations on other state agencies regarding their use of alternative construction methods.

The Committee held three hearings to discuss the issue, and at the suggestion of Senator Moncrief, formed a working group (the group) comprised of agency representatives and industry professionals to discuss the Committee's interim charge relating to design-build.

Based on the testimony received by the Committee and the recommendations made by the work group, the Committee weighed both the pros and cons of design-build and made its recommendations accordingly. Because there was concern regarding the use of design-build by TXDOT and the Texas Turnpike Authority (TTA), the Committee chose to continue the study of its use with a pilot program. No reservations were placed on the use of design-build by TDCJ.

**Recommendation 1.1 - *Authorize the Texas Department of Transportation (TXDOT) and the Texas Turnpike Authority (TTA) to enter into design-build contracts under a pilot program.***

The Committee recommends that TXDOT and TTA be authorized to use the design-build method of procurement under a pilot program.

**Recommendation 1.2 - *Authorize the Texas Department of Criminal Justice (TDCJ) to enter into design-build contracts.***

The Committee recommends that TDCJ be authorized to use the design-build method of procurement.

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**Committee Charge # 2**

*Study the funding and expenditures of Councils of Government (COGs) and examine the changing relationship between COGs and the state and federal governments since 1982. The Committee shall monitor the compliance by COGs regarding publication of financial statements, as referenced in the General Appropriations Bill, HB 1, 76th Legislature, Regular Session.*

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Councils of Governments (COGs) are voluntary associations of local government that perform comprehensive regional planning and coordination. They receive funding from local, state, and federal governments and some private sources. COGs play a significant role in enabling regions to cope with challenges of regional growth and development through regional cooperation. Their presence within local governments has been critical to regional success in the past and will continue to be in the future.

Within the past couple of years concerns have been raised regarding the lack of fiscal accountability and abuse of tax dollars by certain COGs. In 1996, the House Committee on Appropriations was charged with

examining the accountability of state, regional and local entities' funds used for certain state programs and with reviewing the efficiency of funding programs through the COGs. After reviewing the COGs' financial data, the Committee found certain instances of unnecessary and excessive expenditures. In an attempt to address the Committee's findings, Representative Rob Junell and Senator Bill Ratliff passed Senate Bills 174, 175, 176 and 177 during the 76th Legislative Session. These bills were enacted with the intent of holding the COGs fiscally accountable in addressing concerns of salary schedules, restrictions on travel costs, certain reporting and accounting requirements, restrictions on commission costs, and restrictions on employment.

In September of 1999, the Senate Committee on Intergovernmental Relations was charged with studying the funding and expenditures of Texas' 24 COGs and monitoring compliance with state requirements regarding the publication of financial statements. The Committee received public testimony in support of COGs as well as several letters from state officials, consulting firms, small businesses and special districts endorsing their local COGs. The committee found that Senate Bills 174-177 address most of the fiscal accountability issues as they relate to the IGR interim charge and the majority of COGs submitted their financial statements in a timely manner. Based on these findings, the Committee formulated its recommendations to further enhance and improve accountability, service provision, and reimbursement procedures performed by the COGs.

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***Recommendation 2.1 - Require the State Auditor's Office to fully review COG's financial audits.***

Currently, no single entity is designated to review COG's entire financial audits. The Committee recommends this review be completed by the State Auditor's Office.

***Recommendation 2.2 - Request both the State Auditor's Office and the Governor's office to work towards developing a more simplified reporting process for COGs, to include what specific items need to be reported and to what entities.***

This would help to reduce the duplication of efforts by COGs in their requirement to supply

numerous financial reports to various entities, the Committee recommends a more simplified reporting process be developed along with assistance.

***Recommendation 2.3 - Amend Chapter 391 of the Local Government Code to strengthen state and regional coordination of planning and program development.***

The Committee recommends the Local Government Code, Chapter 391 be amended by adding the following language:

" In carrying out planning and program development responsibilities, state agencies shall, to the maximum extent feasible, coordinate planning with regional councils to ensure effective and orderly implementation of state programs at the regional and local levels."

***Recommendation 2.4 - Amend §391.006(b), Local Government Code, to encourage and facilitate participation by members of the public.***

Currently, at least two-thirds of the members of a governing body of a commission must be elected officials of participating counties or municipalities. The Committee recommends the Local Government Code, Chapter 391.006 (b) be amended as follows:

"No more than two-thirds and at least one-half of the members of a governing body of a commission must be elected officials of participating counties or municipalities."

***Recommendation 2.5 - Require the State Comptroller's Office to evaluate and report back to the Committee any concerns regarding the current invoice and payment procedures between COGs, state agencies, and service providers.***

To determine and correct instances of delayed reimbursements to service providers, the Committee recommends the State Comptroller's Office review the current invoice and payment procedures between COGs, state agencies, and service providers, and make these findings available to the Committee.

### **Committee Charge # 3**

*Review the statutory authority granted to local governments to regulate the development of residential subdivisions. The Committee shall identify conflicting provisions and make recommendations to clarify existing statutes.*

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Upon receipt of the interim charge, the Committee staff requested the Texas Legislative Council to prepare a comparison of municipal and county authority relating to the Regulation of Subdivisions of Land. Following receipt of a memorandum from the Texas Legislative Council on December 10, 1999, the Committee staff discussed the charge and the memorandum with interested parties, which included representatives from various cities and counties, the Texas Association of Builders, the Texas Association of Urban Counties, the Texas Municipal League, and members of the public to develop a better understanding of the issue and the problems that needed to be addresses by the Committee. On October 28, 1999 and June 12, 2000, the Committee held public hearings in Austin to take formal public testimony on the charge.

Based upon the information included in the memorandum prepared by the Texas Legislative Council and the testimony provided to the Committee at the hearings, the Committee prepared its recommendations.

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**Recommendation 3.1 - *Legislation should be drafted for consideration by the 77<sup>th</sup> Legislature to accomplish the following:***

1. Provide counties, on a local option basis and after a referendum of their citizens, authority for (A) land-use planning, (B) limited construction and/or building codes (basic protection from hazards of fire, windstorm and substandard construction), and (C) water quality protection.

2. Implement comprehensible guidelines in the extra territorial jurisdiction (ETJ) where city and county authorities may conflict.

**Recommendation 3.2 - *Maintain the language of all Government Code sections dealing with municipalities authority to protect their citizens.***

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#### **Committee Charge # 4**

*Monitor the implementation of SB 89, 76th Legislature, Regular Session relating to municipal annexation.*

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Senate Bill 89, 76R, is the first comprehensive rewrite of the state’s annexation statute in over 30 years. The legislation is a culmination of over two years joint effort between the Senate Interim Committee on Annexation, the House Committee on Land and Resource Management, and scores of local elected officials and interested parties from across the state.

The premise of SB 89 requires home rule municipalities to adopt a “three-year annexation plan” (§43.052, Local Government Code). Requiring advanced planning allows orderly annexation, ensures ETJ residents a meaningful role in the process, and provides assurance that newly annexed areas will receive appropriate services. SB 89 created the framework within which cities have adequate time, prior to annexation, to properly prepare, and affected parties have a sufficient opportunity to resolve differences over service levels and other matters.

Lieutenant Governor Rick Perry charged the Senate Committee on Intergovernmental Relations with monitoring the implementation of SB 89, 76R. In an attempt to gather statewide input on this issue, the Committee sent a letter to all home rule municipalities requesting any comments they would like



considered in developing recommendations for the 77th Legislature (See Appendix D-1). The deadline for responding was June 1, 2000 and as of that date the Committee received twelve responses (See Appendix D-2).

As referenced above, the backbone of SB 89 is the requirement that home rule municipalities adopt a three-year advanced annexation plan. Cities were required to adopt their first plan on January 1, 2000 for annexations that will occur on December 31, 2002. Due to the fact that cities are just beginning to apply in practice all of the various changes to the state's annexation policies, many cities did not feel that there has been sufficient time to adequately evaluate these changes.

In addition, several comments were received regarding the exception to a cities annexation plan if "...the area contains fewer than 100 separate tracts of land on which one or more residential dwellings are located on each tract" (§43.052(h)(1), Local Government Code). Questions centered on two primary concerns: (1) how to account for vacant tracts; and (2) what is the legal definition of "tract".

Finally, the Committee received many inquiries with regard to the continuation of land use after an area is annexed (§43.002, Local Government Code). Again, due to the fact that cities are just beginning to apply in practice all of the various changes to the state's annexation policies, no recommendation has been made with regard to this section. However, the Committee requested input from the Texas Association of Builders on this issue and their response has been included in the appendices (See Appendix D-3).

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**Recommendation 4.1 - *Continue to monitor the implementation of SB 89, 76th Legislature, Regular Session relating to municipal annexation.***

Home rule municipalities are just beginning to apply in practice all of the various changes to the state's annexation policies. Many cities did not feel that there has been sufficient time to adequately

evaluate these changes and requested that the Committee continue to monitor the implementation of SB 89.

**Recommendation 4.2 - *Provide a clear definition of “tract of land” and provide direction on how to account for tracts that are either vacant or are occupied by one or more residential dwellings.***

§43.052(h)(1), Local Government Code, provides an exclusion of an area from the municipality’s annexation plan if “...the area contains fewer than 100 separate tracts of land on which one or more residential dwellings are located on each tract.” Questions centered on two primary concerns: (1) how to account for vacant tracts; and (2) what is the legal definition of “tract”.

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**Committee Charge # 5**

*Examine the powers, functions and programs administered by the Texas Department of Housing and Community Affairs (TDHCA) and the Texas State Affordable Housing Corporation (TSAHC). The committee's report will assess the methodology used in allocating the various housing funds and resources, including the Low-Income Housing Tax Credit program and the Housing Trust Fund, and the compliance by the agency with that methodology, and address whether the programs administered by TDHCA and the TSAHC meet the affordable housing demands of targeted population groups throughout the State of Texas.*

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Although the state’s economy currently is experiencing extraordinary growth, the lack of affordable housing remains a problem. According to a report prepared by the Center for Demographic and Socioeconomic Research and Education Department of Rural Sociology at Texas A&M University, the number of households in poverty will increase by 165 percent by the year 2030. Lieutenant Governor Rick Perry charged the Senate Committee on Intergovernmental Relations to examine the programs administered by

the Texas Department of Housing and Community Affairs (the Department). In order to fully study the programs administered by the Department, the Committee held two public hearings in Austin at which time the Department was given the opportunity to explain their often complicated and intricate programs and the allocation procedures associated with each.

Information and testimony presented to the Committee suggested that the programs administered by the Department are important and necessary. However, funding for the programs the Department administers is limited and as a result, many individuals and families in need of affordable housing are not being served. Furthermore, the Department is not focusing its services to those with the most need for affordable housing assistance, and therefore, not using its funds most effectively.

As federal funding continues to decrease, so will the ability of the Department to address the housing needs of most Texans. Along with the knowledge and direction of its staff and that of the Texas Legislature, it is necessary that the Department focus on its mission and provide services to those who have no other means of assistance, innovatively utilizing all options available.

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***Recommendation 5.1 - Require the Department to immediately classify preservation as a top priority and begin undertaking, through any and all possible means, accelerated attempts to preserve housing stock.***

Current affordable housing stock will continue to expire and the developments will convert to full-market rates if no actions are taken to preserve the existing affordable housing stock. Therefore, the Committee recommends the Department pursue aggressive preservation strategies to preserve the current affordable housing stock.

***Recommendation 5.2 - Require the Department to collect from participating jurisdictions, entitlement communities, and other local organizations any housing plans submitted to HUD and information on funding received from HUD for activities which the Department also offers.***

In order for the Department to focus on areas not being served directly by the U.S. Department of Housing and Urban Development, the Committee recommends that participating jurisdictions, entitlement communities, and other local housing organizations report to the Department any housing plans submitted to HUD and any funds received related to the plan submitted.

***Recommendation 5.3 - Require the Department to adopt a policy to work in conjunction with USDA Rural Development, CDCs, participating jurisdictions, Housing Finance Corporations, Texas State Affordable Housing Corporation and other providers of housing related programs to reduce overlap of expenditures and to maximize housing resources.***

The Committee recommends the Department seek out information regarding other monies that are being allocated for affordable housing projects so that the Department may minimize the duplication of funds allocated and in turn, maximize their dollars spent.

***Recommendation 5.4 - Require the Department to work with the 24 Councils of Governments in the state to distribute program information to local communities.***

The Department needs to make a concerted effort to distribute available program information to all areas of the state. In order to circulate this information, the Committee recommends the Department work in conjunction with the local COGs to disperse information regarding the programs the Department offers.

***Recommendation 5.5 - Require the Department to give priority to applications for HOME funds from non-participating jurisdictions as required by the Department's governing rules.***

The Committee recommends the Department allocate HOME funds as intended by their governing rules.

***Recommendation 5.6 - Require the Department to adopt policies regarding the use of de-obligated funds and program income, specifically the process by which they are allocated and reporting requirements regarding their use.***

Currently, there is no policy regarding the use of de-obligated funds and program income. The

Committee recommends the Department prioritize its use of de-obligated funds and program income and maintain a database of how the funds are reassigned.

***Recommendation 5.7 - Require the Department to create a single application for the Housing Trust Fund, CDBG funds, HOME funds and the Mortgage Revenue Bond Program.***

The Committee recommends the Department create a more “user-friendly” application for several of its funds to eliminate repetitiveness and unnecessary additional paperwork for the applicant.

***Recommendation 5.8 - Require the Department to monitor and strictly enforce all fair housing laws.***

The Committee recommends the Department require developers and landlords to comply with all laws that housing and related services be made accessible for people with disabilities.

***Recommendation 5.9. - Concur with the recommendations voted on by the Sunset Advisory Commission as of September 1, 2000.***

To prevent duplication between this report and the Sunset report, the Committee concurs with the recommendations made by the Sunset Advisory Commission as of September 1, 2000.