Senate Committee on Intergovernmental Relations

Interim Report
79th Legislature

December 2004

TEXAS SENATE COMMITTEE ON INTERGOVERNMENTAL RELATIONS

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SENATOR BOB DEUELL
SENATOR MARIO GALLEGOS
SENATOR JEFF WENTWORTH

December 8, 2004

The Honorable David Dewhurst
Lieutenant Governor
2E.13, Capitol Building
Austin, Texas

Dear Governor Dewhurst:

The Senate Committee on Intergovernmental Relations hereby submits its 78th interim report. The report reflects extensive testimony and input from various state agencies, organizations and other interested and professional entities.

The Committee appreciates the opportunity to address these important charges. It is our sincere hope that the work of this committee will assist in resolving some of these challenging issues so that the members of the Seventy-Ninth Legislature may make use of our recommendations.

Respectfully Submitted,

Frank Madla
Senator Frank Madla
Chairman

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Vice-Chairman

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MARIO GALLEGOS, JR.

December 8, 2004

The Honorable Frank Madla, Chair
Senate Committee on Intergovernmental Relations
P.O. Box 12068
Austin, TX 78711-2068

Dear Chairman Madla:

I support the worthwhile endeavors of our committee and recognize the effort you and your staff contributed to the report of the Senate Committee on Intergovernmental Relations. The committee and staff have spent many hours studying the issues raised in Charges One, Two, and Three. I support the committee's recommendations under these charges. However, I cannot support the entire report because of the following concerns I must state for the record.

While I appreciate one of the goals of Charge Four was to study and recommend ways to increase the economic impact of the wine production industry in Texas, I feel the committee did not have ample time to study the numerous recommendations submitted in the committee report. Many of these recommendations are huge policy shifts that warrant intensive study and deliberation.

Recommendations such as the creation of new taxes, the dedication of existing tax revenues, the establishment of a new state agency or quasi-state agency, and the creation of a number of FTEs at public universities must be fully vetted before action can be taken. In addition, major changes to who may hold an alcoholic beverage permit and a broadening of the hours of sale and premises where alcohol may be sold represent drastic changes to established laws regarding the regulation of alcoholic beverages.

I appreciate the commitment of the members of the Senate Committee on Intergovernmental Relations to the promotion of the wine industry in Texas. In addition, your dedication to this valuable economic resource should be applauded. Yet, the major policy shifts suggested by the Committee warrant much more legislative and public scrutiny. Because many of the recommendations under Charge Four are so broad and were either never discussed or not discussed at length, I regret that I cannot support the committee's report.

Sincerely,

Mario Gallegos Jr.

Mario Gallegos, Jr.

SENATE COMMITTEE ON INTERGOVERNMENTAL RELATIONS

Interim Charges

The Committee shall:

1. Study and make recommendations on the need for statutory language relating to fees charged for copies of documents filed electronically or in paper format with a county clerk. Examine all state and local policies relating to document fees and analyze the impact of any recommended changes on local and state revenues.

2. As required by SB 264, 78th Legislature, jointly study with the House Urban Affairs Committee the effect of subdividing uniform state service regions into urban/exurban areas and rural areas and upon the provision of state and federal financial assistance to meet housing needs of rural areas.

3. Study the unique challenges and opportunities in rural areas from an economic development standpoint. Study the future and unmet needs of rural communities, residents and businesses and examine the quality of infrastructure, housing, health care, and community involvement. Make recommendations for promoting investment in growth industries in rural areas.

4. Study and make recommendations relating to development of the Texas wine producing industry. Assess the impact of state and federal laws on the shipment and delivery of wine and make recommendations for increasing the economic impact of the wine producing industry in Texas.

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Charge One

Study and make recommendations on the need for statutory language relating to fees charged for copies of documents filed electronically or in paper format with a county clerk. Examine all state and local policies relating to document fees and analyze the impact of any recommended changes on local and state revenues.

Background

Senate Bill 453, relating to the fee charged by a county clerk for providing copies of certain documents in paper or electronic format, was filed during the 78th Legislative Session and referred to the Senate Committee on Intergovernmental Relations (Committee). County clerks, as well as interested stakeholders, could not agree on the appropriate fee, and SB 453 failed to pass. In an effort to address the issue, Lt. Governor Dewhurst charged the Committee to study and make recommendations on the need for statutory language relating to fees charged by county clerks.

County clerks receive numerous requests for copies of documents involving interests in deeds and titles. Generally, persons requesting this information are individuals seeking a manageable amount of customized information or a business, such as a title company, seeking large volumes of information.

County clerks generally maintain public records in one of three manners: paper copy storage, microfilm storage, or electronic storage. Fees charged for reproduction of public records are deposited in the county's general revenue fund. Many small and rural counties do not have the resources to provide information in any format other than paper.

Three different sections of law govern the charges assessed and collected for providing copies of public records. Chapter 118, Local Government Code, provides a fee schedule for county clerks to use when providing paper copies of public records [See Appendix A-1 Local Government

Code]. Chapter 552, Government Code, addresses the calculation of charges for non-paper copies of public records [See Appendix A-2 Government Code]. Title 1, Part 5, Chapter 111, Subchapter C, Texas Administration Code, contains similar instructions [See Appendix A-3 TX. Admin. Code]. In addition, the Texas Building and Procurement Commission (TBPC) provides county clerks with a mathematical formula on the calculation of charges incurred by the county clerk for time spent retrieving and reproducing the information via electronic format [See Appendix A-4 How To]. However, the complexity of calculating charges for non-paper copies when using the formula provided by the TBPC and the guidelines in Chapter 552, Government Code, often yields inconsistent results.

Committee Findings

The Committee held a public hearing on July 12, 2004 in Austin to discuss this charge. Stakeholders expressed consensus regarding assessment of a dollar fee for paper copies, however, opinions differed regarding the appropriate fee to assess for reproduction of documents in electronic formats.

The County and District Clerks Association of Texas (CDCAT) recommended a fee not to exceed $.02 for each image of a recorded document issued in a non-paper format. However, some county clerks and interested stakeholders worried that a fixed amount would not be appropriate or sufficient to cover the costs incurred by every county for each request. CDCAT also requested that the rules established by the TBPC be revised to produce greater consistency in the results.

Recommendations

Because of the differing costs incurred by county clerks across the state to reproduce documents requested in an electronic format, it was difficult for the Committee to provide recommendations regarding a specific fee. Therefore, the Committee formulated the following recommendation based on testimony, correspondence and research:

Recommendation 1.1 ***Amend Section 51.605, Government Code, to require all county clerks, or their appointed designee, as part of their continuing education, to include one hour of instruction on the rules established by the Texas Building and Procurement Commission for the calculation of charges for fulfilling requests for public information.***

Currently, Section 51.605, Government Code, requires county clerks to complete twenty hours of continuing education courses including at least one hour dedicated to registry funds and one hour dedicated to fraudulent court documents. County clerks should also be required to take at least one hour of training on the method established by the Texas Building and Procurement Commission to calculate charges for electronic formatted data. Although, CDCAT requested rules established by the TBPC be revised in order to reduce various interpretations and enable county clerks to produce consistent results, the Committee concluded a knowledge of the subsequent use of this formula will allow county clerks to properly assess fees when information is requested from their office.

Charge Two

As required by SB 264, 78th Legislature, jointly study with the House Urban Affairs Committee the effect of subdividing uniform state service regions into urban/exurban areas and rural areas and upon the provision of state and federal financial assistance to meet housing needs of rural areas.

Background

Senate Bill 264, relating to the continuation and functions of the Texas Department of Housing and Community Affairs, passed by the 78th Regular Legislative Session, required the Texas Department of Housing and Community Affairs (TDHCA) to allocate housing funds to both urban/exurban and rural areas in the state. During the 78th Interim, the Senate Committee on Intergovernmental Relations (Senate Committee), in conjunction with the House Urban Affairs Committee (House Committee), was charged by the Lieutenant Governor to study the effect of subdividing uniform state service regions into urban/exurban areas and rural areas and upon the provision of state and federal financial assistance to meet housing needs of rural areas.

Currently, no definition of exurban exists in statute nor is there a commonly-accepted definition in academic or public policy fields. The U.S. Census Bureau defines what constitutes both urban and rural areas but does not define exurban. From the U.S. Census Bureau's website:

> For Census 2000, the Census Bureau classifies as "urban" all territory, population, and housing units located within an urbanized area (UA) or an urban cluster (UC). It delineates UA and UC boundaries to encompass densely settled territory, which consists of:
>
> - core census block groups or blocks that have a population density of at least 1,000 people per square mile, and
> - surrounding census blocks that have an overall density of at least 500 people per square mile.
>
> In addition, under certain conditions, less densely settled territory may be part of each UA or UC.
>
> The Census Bureau's classification of "rural" consists of all territory, population, and housing units located outside of UAs and UCs. The rural component contains both place and nonplace territory. Geographic entities, such as census tracts, counties, metropolitan areas, and the territory outside metropolitan areas, often are "split" between urban and rural territory, and the population and housing units they contain often are partly classified as urban and partly classified as rural.[1]

[1] http://www.census.gov/geo/www/ua/ua_2k.html

The Exurban Change Project, a collaborative project at Ohio State University between the Agricultural, Environmental and Development Economics and the Human and Community Resource Development Departments, was commissioned to study the population and land use changes that have occurred across the rural-urban continuum in Ohio and the Midwest and to identify the social, economic, and environmental implications of these changes for exurban and rural communities. One of the project goals was to create a definition for the term “exurban”. Their definition states that "exurbia or exurbs are a type of spatial pattern of settlement that differ from their suburban counterparts. Exurbs are areas that are in transition from their traditional rural setting to something more urban. They are often transformed into suburbs or edge cities within a 20-30 year period."[2]

A mandate to TDHCA to split its allocations into urban/exurban and rural would increase the number of service regions from 26 to 39 [See Appendix B-1 (RAF)]. This increase could possibly affect the financial assistance available to meet housing needs in rural areas. Information provided by TDHCA noted both positive and negative implications of further subdividing the state. Positive implications suggest that urban, exurban, and rural areas would no longer have to compete for funds because there would be a reserve for each service region area. Negative implications suggest that three distinct funding pools would minimize allocations to each service region and reduce funding for development.

Committee Findings

[2] http://aede.osu.edu/programs/exurbs/index.htm

The Senate Committee and the House Committee on Urban Affairs conducted a joint hearing on March 24, 2004 in Austin, Texas. Testimony was received from TDHCA, the Office of Rural Community Affairs (ORCA), and for-profit and non-profit housing organizations. Testimony indicated additional research may be needed to determine the effects of further subdividing the state service regions regarding on the financial assistance available to meet rural housing needs. The House Committee has issued separate findings as well as a House Committee recommendation. [See Appendix B-2 Findings].

Recommendations

Based on testimony, correspondence, and research, the Senate Committee concluded there is a need to further study the issue and recommends the following:

Recommendation 2.1 - *Direct the TDHCA, in conjunction with appropriate stakeholders, to conduct, for presentation to the Senate Committee on Intergovernmental Relations and the House Committee on Urban Affairs by January 1, 2006, a needs-assessment study to determine whether establishment of an urban/exurban region is necessary for the purpose of allocating housing funds. If deemed necessary, the study shall:*

- ***clearly define the category of urban/exurban based on the most current geographical and demographical information available;***
- ***identify programs that will be administered by TDHCA for the purpose of funding urban/exurban, and rural housing projects; and***
- ***recommend safeguards, if necessary, to ensure funding for rural housing projects will not have to compete with urban/exurban projects.***

Currently, there is not sufficient data from the TDHCA substantiating the need to have an urban/exurban region to analyze the fiscal impact of further subdividing current regions.

Additional research by TDHCA will allow the Legislature to better determine whether the term urban/exurban is needed and to develop a definition for the term.

Charge Three

Study the unique challenges and opportunities in rural areas from an economic development standpoint. Study the future and unmet needs of rural communities, residents and businesses and examine the quality of infrastructure, housing, health care, and community involvement. Make recommendations for promoting investment in growth industries in rural areas.

Background

According to the Office of Rural Community Affairs (ORCA), there are currently three million Texas residents living in rural areas. Of Texas' 254 counties, over 68 percent are classified as rural according to the United States Office of Management and Budget.

In order to address the needs of rural Texas, Lt. Governor Dewhurst charged the Senate Committee on Intergovernmental Relations (Committee) to "study the unique challenges and opportunities in rural areas from an economic development standpoint." In addition, the Committee was to "study the future and unmet needs of rural communities, residents and businesses and examine the quality of infrastructure, housing, health care, and community involvement," and "make recommendations for promoting investment in growth industries in rural areas."

Based on testimony from the July 27, 2004 public hearing, various stakeholder meetings and extensive research, the Committee identified the following agencies and programs which provide a variety of services to rural communities.

United States Department of Agriculture

The United States Department of Agriculture (USDA) Office of Rural Development is responsible for coordinating assistance to rural communities and offers a number of programs in the areas of housing, business development, and infrastructure. USDA's Texas office, maintains 22 programs targeting infrastructure and business-cooperative development.

The Safe Family Home Ownership Direct Program provides safe, well-built, affordable homes for rural Americans. Another important program is the Value-Added Agricultural Product Market Development Program which assists independent agricultural producers by providing funds for conducting feasibility studies or feasibility business plans.

The Rural Business Enterprise Grant Program is another valuable program offered to rural communities. This program finances and facilitates the development of small and emerging private business enterprises. Grants can be used to buy and develop land, construct buildings, plants, equipment, access streets and roads, parking areas, utility and service extensions, and rural distance learning networks. Lastly, the Rural Business Opportunity Program provides businesses with technical assistance for development planning. The grant provides technical assistance, leadership training, and assists rural areas with establishing business support centers and economic development plans.

Texas Department of Agriculture

The Texas Department of Agriculture (TDA) operates a variety of programs designed to boost local economies while combating problems common to rural Texas. The programs focus on three areas of rural economic development: tourism, small-town revitalization, and agriculture-diversification.[3]

Tourism is important to the economic survival of rural communities. According to the Office of Rural and Community Affairs, tourism is the third largest industry in Texas. In 2000, rural tourism spending accounted for $2.5 billion (nearly ten percent of statewide total spending) and created over 40,000 jobs. In 2003, the TDA received state funding to promote tourism in rural Texas. The Texas Yes! Hometown STARS (Supporting Tourism and Rural Success) matching reimbursement program assists rural areas offset the cost of marketing local tourism events. The program will match communities for their promotional costs up to $15,000. The Bootstrap Bucks program provides match funding for promotional costs up to $500 per award. Funding for these programs is available through FY 2005.

TDA also focuses on small-town revitalization as a means of fostering economic growth in rural areas. Through the Texas Capital Fund Program, federal funds are awarded to non-entitlement communities for infrastructure and public improvements in downtown areas. Non-entitlement communities are generally those cities with less than 50,000 population and counties with less than 200,000 population in the unincorporated area of the county. The Main Street Improvement Program requires designation by the Texas Historical Commission (THC) as a Main Street City.

[3] *TDA Testimony from Deputy Commissioner Martin Hubert to Committee, July 27, 2004*

A similar program is the Downtown Revitalization Program for cities that lack the Main Street designation and need the assistance with infrastructure improvements to downtown areas. Each of these programs receives an allocation of $600,000 per year. The minimum amount awarded is $50,000 while the maximum awarded for theses program is $150,000.

TDA also oversees the Infrastructure Development and Real Estate Program. The program provides funding for public infrastructure or real estate to assist businesses that plan to create or retain permanent jobs. Awarded projects have included water and sewer systems, refurbishment of a rail line, and road improvements. [4] The minimum amount awarded for the Infrastructure Development and Real Estate Program is $50,000 and the maximum award is $750,000.

Texas Water Development Board

Adequate water and wastewater infrastructure are vitally important to both local residents and potential new businesses in rural communities. The Texas Water Development Board (TWDB) has initiated a number of programs to improve rural access to adequate water and wastewater systems.

The Rural Community Water and Wastewater Loan Program provides loans to rural communities less than 5,000 in population for building, acquiring, or improving water and wastewater systems. Total funding for this program is $1.35 million annually.[5] The Small Community Hardship Program provides funds to economically distressed political subdivisions for planning, designing, or constructing water and wastewater systems. Funds are also available for the consolidation or purchase of water and wastewater systems. The Clean Water State Revolving Fund and the Drinking Water State Revolving Fund are both part of federally initiated programs designed to provide funding for disadvantaged communities. The Rural Water Assistance Fund assists small rural utility providers in obtaining low-cost financing for water and wastewater projects. Eligible communities include rural political districts, water districts, or municipalities serving no more than 10,000, and those already qualified for federal financing.

[4] *TDA Testimony from Deputy Commissioner Martin Hubert to Committee, July 27, 2004*
[5] *TWDB Testimony from Executive Administrator J. Kevin Ward to Committee, July 27, 2004*

Loans may be secured with terms up to 40 years, and the total funding available is approximately $25 million per year.[6]

Texas Department of Housing and Community Affairs

The Texas Department of Housing and Community Affairs (TDHCA) administer several programs to help meet rural housing needs. The HOME Investment Partnerships Program (HOME) is comprised of federal dollars, which are administered by TDHCA to strengthen public-private partnerships and provide block grants for repair and replacement of single family homes as well as homebuyer assistance programs. TDHCA also administers low income housing tax credits (LIHTC) and single and multifamily bond programs.

In addition to the HOME and LIHTC programs, TDHCA administers several important programs that assist the needs of rural communities. Some of these programs are the Housing Trust Fund (HTF) which is the only state-authorized program dedicated to increasing the state's supply of affordable housing; the Manufactured Housing Division which implements state and federal laws to regulate the manufactured housing industry in Texas; and the Down Payment Assistance Program (DPAP) which helps low-income families purchase homes by providing interest-free loans. A detailed list of all programs administered by TDHCA can be found on their webpage (www.tdhca.state.tx.us).

The Office of Colonia Initiatives (OCI) focuses on colonias along the Texas-Mexico border. OCI, in conjunction with the TDHCA, administers the Texas Bootstrap Loan Program. This program is a self-help construction program, designed to provide very low-income families an opportunity to help themselves through the form of sweat equity. Another important program for OCI is the Contract for Deed Conversion Initiative. This program is specifically designed to assist residents that are currently purchasing residential property within 150 miles of the Texas-Mexico border and reside in a colonia.

[6] *TWDB Testimony from Executive Administrator J. Kevin Ward to Committee, July 27, 2004*

Office of Rural and Community Affairs

House Bill 7 from the 77th Legislature created the Office of Rural and Community Affairs (ORCA). ORCA serves as the lead agency in coordinating programs affecting rural Texas and to find and promote solutions to address rural problems. ORCA also administers and coordinates the dispersal of various funds to rural communities.

In conjunction with the federal Department of Housing and Urban Development (HUD), ORCA operates the Community Development Block Grant Program (CDBG), also known as the Texas Community Development Program (TCDP). This program is designed to stimulate economic development by providing grants to communities. Currently, ORCA has two programs that specifically use CDBG funds for housing. These programs are the Housing Infrastructure Fund (HIF) and the Housing Rehabilitation Fund (HRF). Both funds are administered on a competitive application on a statewide basis.

The TCDP program also includes the Disaster Relief/Urgent Need Program which offers assistance to rural communities that have suffered severe damages as a result of a natural disaster.

The Texas Capital Fund is operated in conjunction with and administered by the Texas Department of Agriculture (TDA). The program promotes employment opportunities in certain rural communities by providing infrastructure improvements and real estate assistance to employers.

ORCA also serves as the State Office of Rural Health. As such, they oversee a variety of funding streams designed to increase access to rural healthcare. Some issues include: Critical Access Hospitals, Emergency Services, Facility Support, Loan Reimbursement, Locum Tenens, Practice Start-up, Physician Recruitment and Retention, Scholarship Opportunities and Stipend Opportunities.

Texas Department of State Health Services

The Texas Department of State Health Services (SHS) serves the entire state, however, some programs have a greater importance to rural healthcare. The Texas Primary Care Office's (Office) mission statement is, "To improve the health of Texans who live in underserved areas, through timely and accurate assessment, planning, and assistance, to increase access to primary care providers of medical, dental, and mental health services."[7]

One measure the office uses, is a health professional shortage area (HPSA) designation. A HPSA is an area, facility, or population group with a demonstrated shortage of primary care, dental or mental health providers.[8] SHS explains further:

> Primary care HPSAs are defined by a population-to-primary care physician ratio of at least 3,500:1 and other requirements specified in the federal designation criteria. Indicators of need for primary medical care such as the poverty rate, infant mortality rate, and fertility rate (live births per 1,000 female populations) are also considered as well as indicators of insufficient capacity to meet existing needs. Insufficient capacity is indicated by excessive waiting times, high visit per [full-time equivalent] ratio, and providers not accepting new patients. Additionally, for primary care, excessive emergency room use may indicate insufficient capacity.[9]

Area Health Education Centers

Area Health Education Centers (AHEC) are not a state agency, but they do work with the state's universities to achieve some of the same goals set out by SHS. AHECs work to "improve the health of our communities by developing a quality health workforce and helping address unmet health needs."[10] AHEC programs are a coordinated effort between University Health Sciences Centers, healthcare providers, and communities. The collaborative program focuses on developing health care providers of the future as well as supporting current healthcare professionals. Services are carried out with strategically located AHECs. University Health Sciences Centers provide general oversight and support for the effort — contracting with the AHEC centers to provide the actual services. Staff works closely with community leaders, school counselors, local healthcare providers, and others with an interest in the future of

[7] http://www.dshs.state.tx.us/chpr/aboutchp.shtm
[8] http://www.tdh.state.tx.us/chpr/chprw10.htm#hpsa
[9] http://www.tdh.state.tx.us/chpr/chprw10.htm#hpsa
[10] http://www.etxahec.org/

healthcare in Texas.[11] The goals of the AHEC are consistent with what other states have seen as necessary to sustain rural healthcare, the 'grow-your-own' concept and the use of mid-level practitioners.[12]

Committee Findings

On July 27th, 2004, the Committee heard testimony from various state and federal agencies, including USDA, ORCA, TDA, TWDB, TDHCA, SHS, and the Texas Department of Transportation (TxDOT), as well as other interested parties. Witnesses focused on the current problems faced by rural communities, and suggested strategies for local communities to implement. In addition, the Committee surveyed rural community leaders across Texas asking them to identify obstacles their communities face in developing their economies.

In order for rural communities to attract new businesses and grow their economic base, certain needs must be met. First, an adequate system of infrastructure must be in place. Businesses require well-constructed roads with increased capacity to handle shipping and commuter needs. Water and wastewater, and utility systems must also be on par with the needs of both community residents and businesses. Second, low and middle income housing needs must be met. Businesses require adequate housing at affordable prices for new employees; existing residents also benefit from reduced housing costs. Finally, rural residents and business employees must have access to quality healthcare within a reasonable distance of their community.

Infrastructure

For rural communities to foster economic growth, it is vital that new businesses come to the community and that existing businesses expand. In trying to "recruit" new businesses, local communities often rely on tax incentives or local and state government grants, both of which may be outside the boundaries of what rural communities can afford. Businesses also have certain needs that must be met before they can consider prospective locations, including an

[11] http://www.etxahec.org/ and http://southtexas.uthscsa.edu/html/about_cstp.htm and http://www.ttuhsc.edu/ruralhealth/Community%20Programs/AHEC_ProgramOffice.htm
[12] National Conference of State Legislatures. *State Health Notes*. Volume 25, Number 429. October 4, 2004

adequate network of roads for commerce and commuting, a sufficient water and wastewater system, adequate electric and other utility services, and high-speed internet access.

Rural Housing

During the July 27, 2004 Committee hearing, TDHCA was asked how they attracted experienced developers to build in rural areas. Executive Director, Edwina Carrington testified "the 2004 tax credit program provided incentives for experienced developers to partner with rural developers, yet only four applications resulted from this effort."[13] Because rural developments are smaller, it is difficult to attract developers and builders. One idea proposed to attract more developers to rural Texas is to create incentives for stakeholders, seeking a way to build in rural areas, to partner with experienced developers.

In March 2003, TDHCA distributed over 2,000 copies of the 2003 Community Needs Survey [See Appendix C-1 Survey Instrument] to cities, counties, local housing authorities and councils of government. From that survey, 76 percent of the respondents felt that there was a severe or significant housing problem in their areas. The final section of the survey contained a series of questions that were asked of all respondents, with the answers broken down by urban and rural response. Data from the survey listed the following areas as important to rural respondents:

- There is a shortage of reasonably priced mortgage financing available for low income households in their community.
- There is a lack of homebuyer education and credit counseling services.
- Local market conditions and population demographics work against the creation of affordable housing in the communities.
- The lack of a local construction industry, including materials and builders, impedes affordable housing in their community.

During the July 27th hearing, John Henneberger, Co-Director of the Texas Low Income Housing Information Service (www.texashousing.org) discussed many issues important to rural housing. Some of the issues included:

[13] *Capitol Clearinghouse Publication*, August 15, 2004.

- The need for a comprehensive strategy to combat the housing crisis in rural Texas.
- The lack of adequate funding for housing programs.
- The need for more capacity building.

There was a concern brought before the Committee at the July 27th hearing, that ORCA may no longer require a set-aside for housing needs, but would allow the Regional Review Committees to determine the set-aside needs for each region. A Regional Allocation Taskforce composed of representatives from ORCA's Executive Committee, regional review committees, the state review committee and directors of various COG's met in early 2004 to review the regional allocation formula. From this taskforce a decision was made to allow the regions to determine their own needs as to how they want to allocate their CDBG funds. Due to most communities needing water and wastewater projects as well as infrastructure needs, the Committee is concerned that all the CDBG funds will be used for those type of projects therefore, leaving no available funding to rehabilitate older homes that are prevalent in rural areas.

Colonias

Correspondence from OCI Director Homero Cabello stated that, "the Texas Water Development Board has reported over 1500 Colonias with an estimated population of 400,000. I truly believe the 400,000 figure is low, I have heard other estimates of 700,000 colonia residents. We (TDHCA) do not conduct studies of the number of Colonias and total population. We mainly concentrate on delivering housing initiatives and consumer education". As the struggle with providing affordable housing continues, a new type of substandard housing called "non-border colonias" are cropping up in areas far from the border region. Border colonias are identified "as an unincorporated community located within 150 miles of the Texas-Mexico border, or a city or town within said 150 mile region with a population of less than 10,000 according to the latest U.S. Census, that has a majority population composed of individuals and families of low and very low income, who lack safe, sanitary and sound housing, together with basic services such as potable water, adequate sewage systems, drainage, streets and utilities."[14] However, non-border colonia's have yet to be official defined and therefore receive little attention. Non border

[14] http://maps.oag.state.tx.us/colgeog/colonias.htm

colonias face similar challenges as border colonias such as homes having no running water, electricity, nor access to sewer facilities. Federal law directs ORCA to set aside 12.5% of CDBG funds to go directly toward border area programs, 2% for administrative costs and 1% for technical assistance.

Rural Healthcare

Although the correlation between healthcare, economic stability and growth is not always recognized, access to local healthcare greatly improves the economic health of a community. For example, former ORCA Executive Director Sam Tessen notes the shortage of healthcare professionals "represents lost economic opportunities, since the healthcare industry itself is such a significant economic engine. The addition or loss of a single physician, advanced practitioner, or nurse, for example, has economic ripple effects in terms of other jobs, income, spending, and the local tax revenues needed to support basic community services." This relationship is further corroborated by the Federal Office of Rural Health Policy that reports one local physician can create more than five full-time jobs and $233,000 in local economic activity. "And there's a multiplier effect . . . if a rural hospital employs 80 people directly, another 40 jobs are created in the community as the physicians, nurses, pharmacists and aides build houses, eat at restaurants, purchase groceries and enroll their children in the local child-care centers."[15]

Communities with a rural hospital benefit from the economic input it provides. [See Appendix C-2 Texas Counties with no Hospitals.] According to the Texas Organization of Rural Community Hospitals, hospitals in Texas employ more than 300,000 workers. This represents the second largest source of private sector jobs in Texas. Further, hospitals generate annual payroll and benefits of approximately $14 billion, and a total economic impact estimated to be nearly $75 billion. A community hospital can help attract and retain business and industry in rural areas.

Other healthcare services also add to the value of a community. When patients travel long distances to access basic healthcare, local communities lose dollars. Keeping an elderly person

[15] National Conference of State Legislatures. *State Health Notes*. Volume 25, Number 429. October 4, 2004.

in his or her home, rather than in an assisted-living or nursing home situation in another area, keeps healthcare expenditures in the community and maintains or increases the local economy. This becomes more vital when you consider Dr. Ray Perryman's findings that service provision is the fastest growing sector of the economy, and healthcare is the fastest growing service. Many rural communities are dependent upon the business and commerce generated by the healthcare industry to remain a viable community. As noted by Eric Scorsone, assistant processor a Department of Agricultural Economics, University of Kentucky, "There are three major roles for healthcare in rural economic development: as a contributor to the local economy; as an economic base industry attracting external dollars; and as a factor to recruit businesses, workers and retirees to the community."[16]

Both geography and demographics impact the characteristics of rural areas causing rural healthcare to differ from urban healthcare.

- 177 of Texas' 254 counties are rural, with a total of 2.9 million people. [See Appendix C-3 Rural and Frontier Counties.]
- Texas has 58 frontier counties. The Texas Department of State Health Services (SHS) defines a frontier county as a county with a population of less than 50,000 with an average population density of less than six people per square mile.
- The isolation of these areas makes access to quality healthcare a challenge for residents. Rural areas often do not have a citizen base large enough to support a healthcare practice site.
- Often the remoteness of rural areas requires citizens to travel long distances to healthcare providers. [See Appendix C-4 Distance to Primary Care Physicians in Texas.]

Rural areas have different demographic characteristics and, therefore, different needs than their urban counterparts.

- SHS reports rural residents are less likely to seek care, which often results in the need for more intensive and costly treatment later.

[16] National Conference of State Legislatures. *State Health Notes*. Volume 25, Number 429. October 4, 2004

- Rural areas have a higher proportion of the elderly population than urban areas. [See Appendix C-5 Change in Senior Population.]
- The last several decades have seen a large increase in the number of Hispanics living in rural areas [See Appendix C-6 Percent Hispanic], but healthcare facilities often face a shortage of Spanish-speaking personnel, particularly in East Texas.
- In addition, rural areas suffer from a higher poverty rate than urban areas.

Funding for rural health facilities and personnel is extremely difficult to secure. Rural healthcare is not as profitable an enterprise as that of urban healthcare because rural communities tend to be much more susceptible to economic downturns. Furthermore, rural hospitals and healthcare facilities must compete with their urban counterparts when hiring and retaining personnel, and both face shortages. Rural healthcare facilities simply do not have the financial resources to make this competition fair. For instance, rural communities do not have the ability, due to lack of financial resources, to outsource as many functions.

The Committee consistently heard two major areas of concern regarding the relationship between rural healthcare and economic success: personnel and coordination.

An increasing shortage of physicians and nurses have plagued rural areas in recent years. In addition, rural areas were the first to feel the effects of the nursing shortage. Shortages have a more negative impact in rural areas where the loss of one physician can lead to the loss of five or more additional jobs and hundreds of thousands of dollars to the local economy.

One hundred twenty-two counties in Texas have received a whole county primary care HPSA designation. Sixteen are partial primary care HPSA designated. [See Appendix C-7 Primary Care Health Profession Shortage Area.] The personnel shortages apply not only to primary care physicians. There are also dental and mental health HPSAs. [See Appendix C-8-9 Dental Health Professional Shortage Area and Mental Health Professional Shortage Area.] Many areas also lack specialists. As noted by one rural hospital administrator:

> Rural hospitals are changing to little more than temporary stopping points for patients. After a preliminary evaluation, patients are often transferred

> to urban healthcare facilities for more specialized care. While a majority of the care is well within the ability of the rural facility to provide, there is a critical lack of specialty supervision which makes the transfer necessary. This results in increased costs and inconvenience and basically transfers the burden from rural to urban areas, removing reimbursement from the rural provider.

Some communities simply do not have any healthcare providers. [See Appendix C-10 Number of Doctors by County.] Twenty-one counties in Texas have no physician. Sixty counties have only one-to-three physicians.

Multiple factors contribute to personnel shortages such as low pay and a lack of education institutions to train healthcare workers. Making matters worse is the projected increase in the need for healthcare services as baby-boomers age. As the increasing need for nursing combines with the decrease in the available number of nurses — half of all nurses are over age 45 — the nursing shortage can only be expected to get worse.

To alleviate the personnel shortages, the legislature should continue to find ways to subsidize nurse educators. Texas should continue to increase enrollment in state nursing schools as was done during the 77th Legislative Session with SB 40, which provided tuition assistance for licensed vocational nursing students who agreed to practice in long-term care facilities following their licensure and SB 572, which established a program to increase enrollments in nursing education programs, increased nursing faculty, and created a nursing workforce data center. A continued effort is needed to secure more commitments and support from the state's educational institutions to properly screen and select the best candidates and adequately train and support them as they begin practicing in rural areas.

Lack of coordination remains a problem for rural healthcare. While there usually is collaboration among healthcare providers, there seems to be a breakdown in the area of rural economic development between planners, grantees, and the state. As one stakeholder noted, "Data and statistics are not reported or shared in a manner that identifies rural and urban differences in health status and access to care. This limits community and regional leaders' ability to identify specific areas of concern and to effectively plan and coordinate to implement programs designed to address those needs." For example, the Texas Workforce Commission has programs and funds that potentially could be used for healthcare, but providers express concern that workforce boards do not see healthcare as a workforce area in need of support.

Another area where coordination seems problematic is the delivery of services. Two common options for providing services are Federally Qualified Health Center Programs (FQHC's) [See Appendix G-11 Federally Qualified Healthcare Centers Main Sites and Satellite Clinics] and Rural Health Clinics (RHC) [See Appendix G-12 Rural Health Clinics in Texas]. Different communities find FQHCs favorable to RHCs and vice-versa, and have advocated to encourage the expansion of one or the other. However, stakeholders note there is not enough coordination to get either type of facility operating. One stakeholder commented, "There is a need for new healthcare facilities, but the planners and the state and the cities must all agree on that point before it can become a priority." Many communities need the state to provide technical assistance in these efforts due to a lack of resources to coordinate local efforts.

Another coordination issue is "out-shopping." In rural communities where access to medical care is available, residents still commute to large urban areas for treatment. This can happen when a resident is unaware of services, or because residents sometime erroneously believe that an urban facility will better suite their needs.

> When communities contribute to the design of local healthcare services, they are more apt to spend their healthcare dollars locally . . . Marketing high-quality health services and creating a link between business groups, the community and the healthcare sector are important steps to keeping healthcare dollars at home and improving the quality of local healthcare. [Two impediments are] local economic development committees rarely communicate with health service providers, and . . . that recruiting and retaining high quality health staff in rural areas remains an ongoing and complicated issue.[17]

Communities need the ability to inform residents of local healthcare options and the importance of supporting those options.

[17] National Conference of State Legislatures. *State Health Notes*. Volume 25, Number 429. October 4, 2004

Recommendations

Based on testimony and research, the Committee has formulated the following recommendations to further improve the economic development outlook for Texas' rural communities.

Recommendation 3.1 - Amend Section 487.051, Government Code, to require the Office of Rural and Community Affairs (ORCA) to develop programs to assist rural businesses.

The establishment of new business is vital to economic development in rural communities. Businesses considering relocating or expanding in rural communities may need assistance and guidance to succeed. As the state agency "dedicated solely to serving rural Texas," ORCA should be responsible for developing new programs to assist rural businesses.

Recommendation 3.2 - Amend Section 487.051, Government Code, to require ORCA to develop an easily accessible resource guide detailing available state and federal resources dedicated to rural communities.

Currently, there is no clearinghouse or other central source of information detailing resources available to rural communities. As "the state agency dedicated solely to serving rural Texas," ORCA should develop a comprehensive guide detailing available state and federal resources dedicated to rural communities.

Recommendation 3.3 - Amend Subchapter I, Chapter 487, Government Code, to require ORCA to set aside four percent of Community Development Block Grant program funds for rural housing.

Currently, ORCA has some discretion regarding the allocation of Community Development Block Grant program funds. To provide for a guaranteed continuous source of funding available for rehabilitation and accessibility modifications of older homes in rural areas, a portion of available funds should be set aside to address rural housing needs.

Recommendation 3.4 - Direct, by concurrent resolution, TDHCA's Office of Colonia Initiatives and ORCA to assess the current status and needs of non-border colonias and report their findings to the Legislature by January 1, 2007.

While it is known that the number of non-border colonias has increased, an assessment of their prevalence and needs should be prepared to enable the state to act accordingly.

Recommendation 3.5 - Recommend the Legislature increase appropriations to the state's Area Health Education Centers (AHEC) to better utilize and leverage their existing infrastructure.

AHECs have begun to develop an extensive network to address the state's critical need for rural workforce development. The state's three AHECs will increase access to rural healthcare by assisting communities to 'grow their own' healthcare providers, increasing access to healthcare education, assisting with provider recruitment, and providing professional support and community coordination.

Recommendation 3.6 - Amend the Health and Safety Code to require the Department of State Health Services, in conjunction with stakeholders, to:

- ***research and report on the current and potential use of non-physician healthcare practitioners in medically underserved areas and health professional shortage areas where efforts to recruit physicians have been unsuccessful; and***
- ***determine which practitioners could, within the scope of their license or certification, augment physician services.***

The Department of State Health Services should establish a method for determining which shortage areas have been unsuccessful in recruiting physicians and what other healthcare practitioners could be beneficial when physicians are not available to provide basic healthcare.

Recommendation 3.7 - Amend the Development Corporation Act of 1979 to clarify that certain healthcare services are qualified for infrastructure and job training funding as allowable under the 4A/4B Economic Development Sales Tax.

Currently, it is unclear whether economic development corporations may provide infrastructure or job training assistance for healthcare services. Data shows healthcare is a critical part of local rural economies and, therefore, should be an allowable use under the 4A/4B Economic Development Sales Tax.

Recommendation 3.8 - Amend Chapter 487, Government Code, to require the Governor's state grant writing team, in conjunction with the State Office of Rural Health, to establish an easily accessible information resource to assist rural communities with research and basic grant writing instruction.

Most small communities do not have the resources or expertise immediately available to properly research and develop a grant proposal. Increasing the access to grants for local communities will improve their ability to draw down both federal and private foundation funding.

Recommendation 3.9 - Amend the Health and Safety Code to require the Department of State Health Services to evaluate and update health data reporting mechanisms in a manner that distinguishes rural health dynamics from urban health dynamics.

Currently, data submitted to the Department of State Health Services regarding health status and access to care is not reported in a manner that identifies rural and urban differences. Distinguishing the differences in data could better help identify healthcare needs and thus expand rural communities' access to federal assistance programs.

Recommendation 3.10 - Amend Subchapter F, Chapter 2308, Government Code to require Workforce Development Boards to have representation from the healthcare industry. Additionally, local chambers of commerce should be encouraged to have representation from the healthcare industry.

Healthcare must be a consideration for workforce development boards to ensure the viability of rural communities.

Charge Four

Study and make recommendations relating to development of the Texas wine producing industry. Assess the impact of state and federal laws on the shipment and delivery of wine and make recommendations for increasing the economic impact of the wine producing industry in Texas.

Background

As with many other states, the modern commercial wine era effectively began in Texas in the late 1970's. However, despite broad-based predictions of great success and dedicated efforts by the state's wine and grape producers throughout the last two decades, the development of the Texas wine producing industry has not kept pace with the growth in other states with similar or equal potentials. Industry reports by Motto Kryla & Fischer LLP (MKF) attribute a $2.4 billion annual impact on Washington State's economy from its wine in 1999[18] and a $45.4 billion impact for the State of California in 2002[19] [See Appendix D-1]. The Texas wine industry's impact on this state's economy, while significant, was substantially lower at $133 million in 2002 and $170 million in 2003.[20] In addition, states that have been proactive in removing barriers to their respective industries' growth are quickly approaching Texas' production levels. The 2004 MKF report indicates that Texas has fallen from its long-standing national rank of 5th in production to 9th. Compounding concerns is the fact that while Texas ranks 4th in consumption only five percent of the wine consumed is manufactured within the state.

In recognition of both the direct and indirect revenues that could be generated for the state by a robust wine industry, Lt. Governor Dewhurst charged the Senate Committee on Intergovernmental Relations (Committee) to examine the Texas wine producing industry, assess the impact of state and federal laws on the shipment and delivery of wine, and make recommendations to increase the impact of the wine producing industry on the state's economy.

In response to the charge, the Committee collected and compiled relevant data, distributed a comprehensive questionnaire to Texas wine and grape producers, and conducted a public hearing on October 6, 2004 to take testimony from industry stakeholders and experts. The following is the result of those efforts:

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[18] Motto Kryla & Fisher, LLP, *Economic Impact of the Washington State Wine and Wine Grape Industries*, St. Helena, CA 2001.
[19] Motto Kryla & Fisher, LLP, *Economic Impact of the California Wine and Wine Grape Industries*, St. Helena, CA 2004.
[20] Texas Wine Marketing Research Institute, College of Human Sciences, Texas Tech University, *A Profile of the Texas Wine and Wine Grape Industry 2003*, 5

Development of the Texas Wine Producing Industry

"*Nature seems to have intended Texas for a vineyard to supply America with wines*"
Stephen F. Austin, 1830.[21]

Texas has a long history in viticulture. Grapes have grown abundantly wild in the state for thousands of years, and over half of the world's known grape species grow in Texas. Vineyards were established and wine was made a full century before vines were planted in California. As early as 1662, Spanish missionaries were fermenting native grapes at the Ysleta Mission in the El Paso Valley when the state was still a part of Mexico and, for over a century, Texas species have played an important role in providing genetic resistance for grape rootstocks used around the world.

A Texan, Thomas Volney (T.V.) Munson, (1843-1913) of Denison, was one of the most important grape taxonomists in history.[22] Much of Munson's work centered on improving the American grape, and his studies led to the introduction of more than 300 different grape varieties. His *Foundations of American Grape Culture*, became the standard reference for grape culture in the United States, and he is generally attributed with saving the European grape and wine industry from disaster during the late 19th Century.[23]

Although wine and grape production in Texas was sporadic between its early beginnings in the 17th Century and the mid-1800's, by the 1850's American wines were gaining recognition, and wineries in Dallas and El Paso were producing around 200,000 gallons each year.[24] Despite concerted efforts by the temperance movement in Texas to prohibit the manufacture and sale of all alcoholic beverages, including the passage, in 1843, of what may have been the first local-option measure in North America[25], there were over two dozen wineries operating throughout the

[21] Stephen F. Austin, 1830 Papers
[22] Dr. George Ray McEachern, "*A Texas Grape and Wine History*", Proceedings of the 10 Annual Oktober Gartenfest, jointly sponsored by Texas Cooperative Extension and The University of Texas Center for American history (Dr. William C. Welch, Committee Chairman) Winedale, Texas 2003
[23] "MUNSON, THOMAS VOLNEY." The Handbook of Texas Online. http://www.tsha.utexas.edu/handbook/online/articles/view/MM/fmu8.html [Accessed Oct 28 2004]
[24] Dr. Russell D. Kane, Texas Wine Society, "Texas Wine - Past, Present & Future", http://www.winesocietyoftexas.org/rising_star-presentation_files/frame.htm#slide0104.htm
[25] PROHIBITION." The Handbook of Texas Online.

state by 1900. As with the rest of the country, the ratification of the 18th Amendment to the U.S. Constitution on January 16, 1919 resulted in the decimation of the wine industry in Texas. The Val Verde Winery, which was established in 1883, was the only wine operation in the state to resume wine production after Prohibition. Although Texas wineries and vineyards started springing up again after Prohibition[26], it would not be until the late 1970's when the right combination of human determination, science, education, and market demand, came together to form the foundation of the modern Texas wine and grape industry.

In the late 1960's, Robert Mondavi and a few other California winemakers kicked off a new American wine age by challenging their colleagues to begin producing wines that would be competitive worldwide. Dr. Bobby Smith of Springtown, Texas, who became acquainted with Mr. Mondavi, believed that superior quality wines could also be made in Texas.[27] In 1972, he purchased an old dairy farm and began planting grapes, never imagining that the laws of this state would prohibit him and other growers in dry counties from making and selling wine from their crops. In the late 1970's he joined forces with Ed Auler, of Fall Creek Vineyards, and a Lubbock partnership called the Sandy Lake Growers Association to take up the challenge of changing the state law to allow the Texas wine and grape industry to take root and grow.[28] These efforts resulted in the passage of the Texas Farm Winery Act of 1977 and unlocked the door to a new wine era in Texas.

Since that time, the legislature has maintained an interest in monitoring the progress of this industry and its impact on the Texas economy. There have been eight interim charges issued which resulted in seven legislative reports that included research and recommendations regarding the Texas wine producing industries. These reports were the result of interim studies conducted by committees of the Texas House of Representatives and the Joint Interim Committee on Agriculture Policy between 1977 and 2000 [See Appendix D-2]. The overall conclusions that can be drawn from these reports is that, despite inherent agricultural challenges, wine grapes can be successfully grown in Texas and the Texas wine producing industry has tremendous

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http://www.tsha.utexas.edu/handbook/online/articles/view/PP/vap1.html [Accessed Oct 30 2004]
[26] John Carlson. *A Brief History of Texas Wine*. RiverBottom.com http://www.river-bottom.com/txwine/txhistory.html <accessed Nov 5,2004> .
[27] Wes Marshall, *The Wine Roads of Texas.* Austin, Texas: 2003.
[28] Marshall, 197

agricultural and economic potential for the state.

In response to the findings of these committees and requests by industry stakeholders, a number of bills have been passed, and many more considered since 1977 [See Appendix D-3]. Most recently, Texas Legislators enacted HB 892 (77R) that created the Texas Wine Marketing Assistance Program (TWMAP); SB 855 (78R) that made the funding mechanism for that program permanent; and HJR 85 (78R) that granted the Texas Legislature the authority to enact laws and direct the TABC to set policies for all wineries in this state regardless of the outcomes of local option elections. HJR 85 was adopted as Proposition 11 by 62 percent of Texas voters on September 13, 2003. This Constitutional Amendment, applied in concert with the provisions of its enabling legislation, HB 2593 (78R), effectively legalized the manufacture and sale of wine in the state. According to testimony provided at the October 6, 2004 hearing of the Committee, the passage of Proposition 11 has already resulted in tremendous growth in the industry.

The Texas Wine Marketing Research Institute's (TWMRI) most recent "Profile of the Texas Wine and Wine Grape Industry," indicates there were approximately 3,000 acres of vineyards, 54 producing wineries, and several new wineries in various states of development at the end of 2003[29] [See Appendix D-4]. As of November 30, 2004, that number had increased to 91 bonded wineries permitted by the U.S. Department of the Treasury's Alcohol and Tobacco Tax and Trade Bureau (TTB), 84 of which were permitted by the TABC [See Appendix D-5]. Testimony at the hearing indicated that in August of 2004 there were more winery permits pending at the TTB from Texas than there were from California and predicted the possibility of the state being home to 400 wineries within a five year period and 1,000 wineries by 2015. In addition, results of the questionnaire distributed by the Committee and compiled in *The Texas Wine Industry: Barriers To and Assets of Winemaking in Texas,* David Scotch, CPA, indicated that a majority of Texas grape-growers and vintners planned to increase their production of grapes and wine over the next five years [See Appendix D-6].

Another indicator of new growth in this industry is the pending approval of a new American Viticultural Area (AVA) in Texas. An AVA is a delimited grape-growing region distinguishable

[29] Texas Wine Marketing Research Institute 2003, 5

by geographical features, the boundaries of which have been delineated in Part 9 of Title 27, Code of Federal Regulation (CFR). The November 30, 2004 edition of the Federal Register (Vol. 69, No. 229) contains the official "Notice of proposed rulemaking" for 27 CFR 9, which proposes the establishment of the new Texoma Viticultural Area (2003R–110P) in north central Texas' Montague, Cooke, Grayson, and Fannin Counties [See Appendix D-7]. The new AVA will consist of approximately 2.3 million acres within a 3,650 square mile area on the southern side of Lake Texoma and the Red River, along the Texas-Oklahoma State line. Currently there are seven AVAs within Texas. The Texas Hill Country AVA is the second-largest in the U.S. It spans an area of 15,000 square miles, and is larger in size than New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, Hawaii, New Jersey, Delaware, or Maryland.[30]

State	Area	Acres	Estimated Sq. Miles	Rank of 152	Date TD Effective	27 CFR Section
TX	Texas Hill Country	9,600,000	15,000	2	12/30/91	9.136
TX	Texas High Plains	7,680,000	12,000	3	04/01/93	9.144
TX	Texoma *[Proposed]*	2,300,000	3,650	12	*2005*	9.___
TX, NM	Mesilla Valley	284,800	445	34	03/18/85	9.100
TX	Texas Davis Mountains	270,000	422	37	05/11/98	9.155
TX	Fredericksburg in the Texas Hill Country	70,400	110	64	01/23/89	9.125
TX	Escondido Valley	32,000	50	80	06/15/92	9.141
TX	Bell Mountain	3,200	5	128	11/10/86	9.055
SOURCE: Combined Data from California Wine Institute[31] and the Texas Wine Marketing Research Institute[32]						

Note: Although the Mesilla Valley Viticultural Area does cross into the far western tip of Texas, the majority of the area is located in New Mexico. Currently, there are only around 40 acres under vine in this AVA.

The acreage cited by the California Wine Institute for the Texas High Plains AVA appears to be incorrect. The data in the table above have been adjusted to reflect the acreage cited by the TWMRI.

The Impact of State and Federal Law on the Shipment and Delivery of Wine

While the prospect for growth is bright for Texas viniculture, both research and testimony revealed that several barriers remain which prevent the Texas grape and wine industries from reaching their full potential. One of the most significant barriers to their growth has been the inability of smaller Texas wineries to deliver their product to consumers throughout Texas and in other states in an efficient and cost-effective manner. In July 2003, Federal Trade Commission

[30] The Wine Institute, http://www.iwineinstitute.com/ava/avabysize.asp, accessed Nov 18, 2004
[31] The Wine Institute, op. cit.
[32] Texas Wine Marketing Research Institute, 12.

staff found that state bans on interstate direct shipping are the largest barrier to expanded e-commerce in wine and contribute to higher prices and reduced choices for consumers.[33]

The state and federal laws governing the distribution, shipment, and delivery of alcoholic beverages grew from the concerns of a post-Prohibition society, shell-shocked by over a decade of criminal activity and lawlessness spawned by the passage of the 18th Amendment to the U.S. Constitution. The passage of the 21st Amendment to the U.S. Constitution in 1933 repealed the 18th Amendment, ended Prohibition and generally empowered states to regulate the transportation and importation of alcohol into their borders [See Appendix D-8]. Texas voters ratified the repeal of the state's Prohibition law in 1935[34] and the 44th Legislature passed the Texas Liquor Control Act (HB 77, Second Called Session) "as an exercise of the police power of the state for the protection of the welfare, health, peace, temperance, and safety of the people of the state"; mandating that the laws "be liberally construed to accomplish this purpose" and creating the Texas Liquor Control Board to carry out the mandate. The Board assumed its present name of the Texas Alcoholic Beverage Commission in 1970 and the Liquor Control Act was codified into the Texas Alcoholic Beverage Code with the passage of HB 815 (65R); the same legislative body that enacted the Texas Farm Winery Act (HB 1517).

Great insight can be gained into the continuing influence that the specter of Prohibition wielded in this state as late as 1977 by reviewing Section 6.03, Alcoholic Beverage Code [See Appendix D-9]. Although entitled "CITIZENSHIP REQUIREMENTS" the section serves as a dissertation on the impact of Prohibition and the foothold established by organized crime in the distribution of alcoholic beverages in the United States between 1919 and 1933. The statute advances the notion that post-Prohibition lawmakers created a framework of regulation to protect the citizens of Texas from domination of the new and legal distribution of alcohol by the massive criminal empires that were built during Prohibition. This framework, commonly known as the three-tier system, maintains a strict separation of the three tiers of the alcoholic beverage industry – manufacturers, wholesalers, and retailers. The provisions of this section further imply that the

[33] Federal Trade Commission, *Possible Anticompetitive Barrieres to E-Commerce: Wine Report,2003.*
[34] Texas Almanac, *Texas History Timeline: 20th Century*, 2000-2001 Millennium Edition , http://www.texasalmanac.com/20th_2000.htm (Accessed Nov 5,2004)

strict maintenance and enforcement of the three-tier system are fundamental to preventing this criminal element from reestablishing itself in the alcoholic beverage industry in this state.

> *The Three Tiers*
>
> *Manufacturer*
> Upper tier. Licensed to produce and sell alcoholic beverages to wholesalers.
>
> *Wholesaler*
> Middle tier. Licensed to purchase alcoholic beverages from manufacturers and sell to retailers. Referred to as wholesalers for liquor and wine products, and as distributors for beer products.
>
> *Retailer*
> Lower tier. Licensed to sell alcohol to consumers. Includes package stores, grocery stores, convenience stores, restaurants, and bars.
>
> SOURCE: Texas Sunset Commission

While there is no question that the three-tier system of alcohol distribution is one of the most efficient and cost-effective ways of moving large quantities of alcoholic beverages from the manufacturer to the retailer; that it is the cornerstone of a seamless method of distribution for large alcoholic beverage producers who have drawn the attention of consumers and the wholesale tier; that such a system can play a vital role in ensuring the safe consumption of alcoholic beverages in accordance with the fiscal priorities and regulatory preferences of state and local governments;[35] and that it contributes greatly to a state's economy, there is a national debate raging as to whether strict adherence to the three-tier system is the only way of accomplishing those economies and efficiencies while protecting the best interest of the public. In no context has this issue been more hotly debated than that of the shipment and delivery of wine from the manufacturer to the ultimate consumer for personal use.

In a November 7, 2004 article in the Los Angeles Times, a comment by St. Helena, California, wine consultant Vic Motto, illustrates one of the reasons for the battle: "The system no longer serves the needs of the several thousand smaller, independent winemakers who have sprouted up in all 50 states. Most of these boutique producers are too small to attract the attention of the shrinking number of major wholesalers, who prefer dealing with large-volume clients. In order to survive," Motto said, "the smaller winemakers need direct access to customers in other states." As it is now," he said, "it is exactly like doing business in 50 separate countries."

[35] The Perryman Group, *The Impact of the Three-Tiered Licensed Beverage Distribution System on Business Activity in Texas*, Waco, TX 2002.

A variety of reciprocity provisions in 13 states, including California, Washington, and Oregon, prohibit the importation of wine from non-reciprocal states, while a patchwork of interstate and intrastate permit requirements, reporting, fees, tax collection, and criminal penalties in other states serve to restrain the ability of smaller wineries to effectively get their product into the national marketplace. These restrictions have also mobilized consumers. Wine consumption in the United States has been increasing annually for a number of years and wine aficionados and collectors are discovering that, despite new technologies that make it possible for them to locate and purchase the wines they want anywhere in the world, they cannot achieve delivery without physically visiting the winery. Efforts to remedy the regulatory schemes at the legislative level have been met with great resistance from the wholesale tier, which has maintained a strong lobby for decades. As a result, both wineries and consumers have looked to federal officials and the courts for relief.

On November 4, 2002, President Bush signed the U.S. Department of Justice's Appropriations Bill that included a provision allowing wine purchased while visiting a winery to be shipped to the visitor's home state if that state's law allowed the resident to carry the wine home [See Appendix D-10]. The provision was included as a result of heightened airline security in the wake of the September 11, 2001 tragedy and will remain in effect during any period that the Federal Aviation Administration has restrictions on airline passengers to ensure safety. Evidently, the frequency with which travelers were checking cases of wine with their luggage or carrying wine-laden bags through security, created a situation that required attention. While this provision provided a modicum of relief for tourists, it did not address the heart of the problem.

Over the last several years, lawsuits have been filed in 12 states, including Texas, challenging statutes that prohibit, or otherwise impede, the shipment of wine to adult consumers for their personal use [See Appendix D-11]. On December 7, 2004, the U.S. Supreme Court heard oral arguments on both 2nd and 6th Circuit U.S. Court of Appeals' cases that challenged New York's and Michigan's discriminatory bans on interstate, direct-to-consumer wine shipments. The Supreme Court has narrowed the cases to one core question: does the 21st Amendment permit states to discriminate against out-of-state wineries or does such activity violate the dormant Commerce Clause? The decision on these cases, which is anticipated sometime during the spring of 2005, could very well impact the future regulation of wine shipments across the country.

Texas is in a unique position in this dynamic legal environment. On August 29, 2002, U.S. District Judge Melinda Harmon, Southern District of Texas, Houston Division issued a ruling on *Dickerson v. Bailey*, 212 F, Supp.2d 673,695 (S.D. Tex. 2002) finding that Texas's ban on direct shipment by out-of-state wineries violates the dormant Commerce Clause and noted that the state had "failed to demonstrate how a statutory exception for local wineries from Texas' three-tier regulatory system … is justified by any of the traditional core concerns of the twenty-first amendment" or to show "that the core interests of taxation and orderly market conditions ... could not be effected by alternative, nondiscriminatory options for these out-of-state wineries." Specifically, Judge Harmon declared Sections 107.07(a) and (f); 6.01; 11.01; 37.03; and 107.05(a), Alcoholic Beverage Code, Aunconstitutional as applied to Texas residents over twenty-one years of age, not otherwise statutorily prohibited from possessing alcoholic beverages, seeking to purchase and ship wine for their personal consumption in 'wet' areas of Texas@ and enjoined the officials of the State of Texas from enforcing those statutes [See Appendix D-12]. She stayed the injunction, pending an appeal to the Fifth Circuit and possible amendment of the Texas Alcoholic Beverage Code by the incoming 78th Texas Legislature. SB 770, which was filed during the 78th Legislative Session to address this ruling, died on the House Major State Calendar on May 27, 2003. On July 26, 2003, the Fifth Circuit Court of Appeals upheld Judge Harmon's ruling. Under the Court's opinion, the State of Texas is enjoined from enforcing these laws. Entry of the Court's injunction allows Texas consumers to order wine from out-of-state suppliers and to have that wine shipped to them by permitted carrier in "wet" areas of Texas. There is no requirement that either the supplier or the consumer report this transaction to the state or pay taxes on the sale.[36]

While this would seem to be an ideal situation for Texas direct shipping proponents, the remaining statutory environment is not conducive to the development of a responsible, equitable, and seamless system of direct-to-consumer wine shipping. The inability of the TABC to impose even the most fundamental safeguards, such as requiring the signature of an adult on a delivery

[36] Texas Alcoholic Beverage Commission, http://www.tabc.state.tx.us/Wine.htm (accessed Dec 2, 2004).

of wine, could have negative consequences for members of the public. Section 110.053, Alcoholic Beverage Code, requires a Texas winery to route purchases by a Texas resident through a package store that participates in the Texas Wine Marketing Assistance Program if the purchaser is not physically present at the winery at the time of the sale. This provision discriminates against Texas wineries by imposing a restriction on them that is not applicable to out-of-state shippers and tips the level of the playing-field to the significant advantage of the out-of-state wineries. Section 110.54, Alcoholic Beverage Code, authorizes package stores participating in the Texas Wine Marketing Assistance Program to deliver wine into dry areas; a privilege not specifically authorized for either Texas or out-of-state wineries. Even though a Texas resident over the age of 21 who lives in a dry area may go into a wet area, purchase alcoholic beverages, and then transport that purchase back into the dry area for their personal consumption, Section 107.03, Alcoholic Beverage Code, prevents a carrier from delivering alcoholic beverages into a dry area without specific statutory authorization. Because that specific authority does not exist, consumers are still unable to achieve delivery of legally purchased wines from Texas and out-of-state wineries. This lack of specific authority for carriers, combined with the absence of an official and functional list of wet and dry areas in the state has a chilling effect on the entire delivery system, often causing carriers to refuse to accept legitimate shipments of wine for delivery to Texas residents living in wet areas.

Section 2 of HB 269 (77R) directed the TABC to compile a listing of dry precincts, municipalities, and counties in the state, and the agency has made an effort to accomplish that charge. However, TABC relies on localities to maintain the information on what areas are wet or dry. With 254 counties, nearly 850 precincts, and numerous cities, the lines between wet and dry areas can be difficult to track. Also, the boundaries of a locality can change, as with census shifts and incorporations, but the wet or dry status remains within the original voting boundaries.[37] Since September 2004, alone, there have been 29 local option elections conducted [See Appendix D-13].

The TABC has indicated that it could remedy most of these informational shortcomings if it were permitted to develop and maintain an automated system that could produce local area wet

[37] Texas Sunset Advisory Commission, *Staff Report: Texas Alcoholic Beverage Commission*, 2004.

and dry maps and verify the wet/dry status of specific addresses upon demand. The agency notes, however, that such an approach would require a significant degree of additional funding and take three to five years to accomplish. The agency is in the process of updating its automated licensing system, and this could prove to be the optimum opportunity to plan for the integration of a wet/dry area identification application within the agency. Policy-makers may also want to explore other methods of providing this information to the public It is the understanding of the Committee that private entities and individuals have taken the initiative to develop interactive websites and other programs that identify the wet/dry character of an area by zip code. One such entity is wine.com. Another resource that might be adapted for this purpose is this state's *Who Represents Me* system (http://www.capitol.state.tx.us/fyi/fyi.htm). *Who Represents Me* is a robust, internet accessible, information system that utilizes United States Postal Service data and election boundaries, as small as the precinct level, from the Texas Legislative Council's Redistricting section to provide information to the public. While some cost to the state would be incurred, the expense to incorporate the wet/dry data into the existing system could possibly be more cost and time-effective than creating a second system within the TABC or utilizing a private resource.

For the purposes of shipping wine alone, however, the solution may already be at hand. The passage of Proposition 11 (September 2003) may have had the unintended consequence of making the entire state wet for wine. In a letter of December 5, 2003, TABC's General Counsel offers, for discussion and debate, some "initial and tentative conclusions about several issues regarding the regulation of wineries and transportation of wine within the state." Included in that document is the following interpretation of the effect of the passage of Proposition 11 on shipping into dry areas:

> Subject to limited exceptions, wine may only be commercially transported in Texas by holders of a Carrier permit, *Alcoholic Beverage Code* §*41.01*. Section 107.03 of the code mandates that "no carrier may transport liquor to a person in a dry area in this state except for a purpose authorized by this code." Always before in the history of this state, the "dry" status of a particular area was simply determined by reference to the outcome of the last relevant local option election. It occurs to us that the recent amendment to Article XVI §20 of our constitution may have changed this analysis for wine.
>
> Section 251.71 of our code defines a "dry area" as one in which the sale of an alcoholic beverage of a particular type and alcoholic content is unlawful. Pursuant to our recent

constitutional amendment and adoption of §16.011, we may issue a winery permit, and the winery may sell its product, "in an area in which the sale of wine has not been authorized by a local option election." Thus, while areas may be dry with respect to other types of permits, there is no area of Texas in which the sale of wine is unlawful. Accordingly, permitted carriers may deliver wine anywhere in the state.

A consequence of this understanding of the law is that, like out-of-state suppliers, Texas wineries may ship their product directly to Texas consumers through the agency of permitted carriers. Of course, if the winery or the consumer chooses an alternative method, "the winery may ship the wine to a package store that participates in the [Texas Wine Marketing Assistance] program. *Alcoholic Beverage Code §110.053(b)[See Appendix D-14]*.

To date, there has not been an official acceptance or rejection of this interpretation by the agency. As such, the question is ripe for discussion by the 79th Legislature as it considers the actions of the courts, proposed legislation, and the future of the Texas wine producing industry.

Increasing the Economic Impact of the Wine Producing Industry in Texas

As previously discussed, legislative studies have concluded the Texas wine industry has tremendous agricultural and economic potential for the state. The 69th Legislature's House Committee on Liquor Regulation's Interim Report to the 70th Legislature (1986) cites predictions that wine production in Texas, then ranked 9th in the U.S. would, upon maturity, "rank among the top five, eventually reaching the number two spot, second only to California." The report went on to caution, however, that if the Texas wine industry was "to flourish, it must achieve out-of-state recognition on a commercial level. The Texas wine industry must expand its market, facilitating a wider distribution, greater exposure, and competitive pricing for Texas wines." By 1988, Texas had risen to 6th in production and, by some accountings, has held the position of 5th in production for at least a decade. What is troublesome is the recent ranking of 9th in production being reflected in at least one well-respected industry report (See Appendix D-15).[38] Throughout the nation, states are recognizing the increased popularity of wine, the ensuing growth in wine consumption, and the exceptional economic value of the vertically-integrated wine industry. As a result, many states are becoming extremely proactive in their support of

[38] Motto Kryla & Fischer LLP, California 2004, Appendix 1.3

their wine and grape industries. If the State of Texas is to benefit from what some have remarked to be the "Oil–Boom of the Twenty-First Century", Texas policy makers must become proactive, as well, and eliminate the obstacles remaining in the path of this industry's success.

A review of the histories of some of the most successful wine states, California, Washington, and Oregon, reveal that, without exception, the legislatures of those states have recognized and established, by legislative action, an interest in the growth and development of their respective state's wine industries. Such formal recognition and expression of support for an industry by a legislative body provides focus and a foundation for action by subsequent legislatures and state agencies.

California
74501. The production and distribution of wine and wine-related products constitute an important industry of this state that provides substantial and necessary revenues for the state and employment for its citizens. It also furnishes an important food that benefits the public health and welfare. 74502. The maintenance and expansion of the wine industry of California and of its local, national, and foreign markets is necessary to assure the consuming public of a continuous supply of these products and the maintenance of needed levels of income for those engaged in the wine industry in this state. [California Food and Agricultural Code]

Washington
RCW 15.88.025 (In part) Regulating wine grapes and wine -- Existing comprehensive scheme -- Applicable laws. The history, economy, culture, and future of Washington State's agriculture involves the wine industry. In order to develop and promote wine grapes and wine as part of an existing comprehensive scheme to regulate those products the legislature declares: (1) That it is vital to the continued economic well-being of the citizens of this state and their general welfare that its wine grapes and wine be properly promoted by (a) enabling the wine industry to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing of wine grapes and wines they produce; and (b) working to stabilize the wine industry by increasing markets for wine grapes and wine within the state, the nation, and internationally [Revised Codes of Washington]

Oregon
"The Legislative Assembly finds and declares that: (1) The development of world-class wine grape growing and wine making industries is important to Oregon as a whole. The health of the wine grape growing and wine making industries affects the well-being of Oregonians and Oregon rural economies and environments. (2) It is in the public interest to encourage the orderly growth and development of sustainable labor-intensive, value-added agricultural industries, such as the wine grape growing and wine making industries. (3) State involvement in the wine grape growing and wine making industries must be coordinated to respond to state interests and to encourage appropriate partnership and cooperation between the public and private sectors in ensuring orderly growth and realizing statewide objectives for world-class wine grape growing and wine making industries." [Chapter 576.751, Oregon Revised Statutes]

Testimony provided at the October 6, 2004 hearing, the TWMI industry profile, and the results of the questionnaire revealed that at the end of 2003, approximately 69 percent of all the wine made in the state was made by four wineries. However, as with most states, the majority of growth in the Texas wine industry has been mainly comprised of smaller wineries working very hard to grow. Since the tables below were published, 30 additional wineries have been permitted by TABC. Although their productions levels have not yet been calculated, it is a safe assumption that most, if not all, of these will have productions under 5,000 gallons for several years. The composition of the Texas industry in 2003 is illustrated in the following tables.

Number of Texas Wineries by Production Category, 1999-2003					
Production Category in Thousands of Gallons	**1999**	**2000**	**2001**	**2002**	**2003**
<5 (Less than or equal to 5,000 gallons annual production)	**18**	**23**	**20**	**26**	**32**
5-10 (5,000 - 10,000 gallons annual production)	**4**	**5**	**7**	**6**	**7**
10-50 (10,000 - 50,000 gallons annual production)	**8**	**8**	**9**	**10**	**11**
>50 (More than 50,000 gallons annual production)	**4**	**4**	**4**	**4**	**4**
Total	**34**	**40**	**40**	**46**	**54**
Source: Texas Wine Marketing Research Institute					

Percent Adjusted Gallons Produced* by Production Category, 1999-2003					
Production Category in Thousands of Gallons	**1999**	**2000**	**2001**	**2002**	**2003**
<5 (Less than or equal to 5,000 gallons annual production)	**3%**	**3%**	**2%**	**4%**	**4%**
5-10 (5,000 - 10,000 gallons annual production)	**3%**	**3%**	**4%**	**6%**	**6%**
10-50 (10,000 - 50,000 gallons annual production)	**11%**	**12%**	**11%**	**23%**	**21%**
>50 (More than 50,000 gallons annual production)	**83%**	**82%**	**83%**	**67%**	**69%**
Total	**100%**	**100%**	**100%**	**100%**	**100%**
Source: Texas Wine Marketing Research Institute					
*Adjusted for juice and bulk wine sales between Texas wineries					
Source: Texas Wine Marketing Research Institute [39]					

While even the smallest winery operations in the state are prepared to take up the challenge of open competition with the other wine states and nations, their success depends upon their ability to fully market their product. If the Texas wine industry is to become a significant economic generator for the state, policy-makers must provide the industry with the tools it needs to grow and a level playing field upon which to compete with other wine-producing states and nations.

Responses from the questionnaire that was distributed to winegrowers and testimony received by the Committee provided some very specific recommendations for change to enhance the

[39] Texas Wine Marketing Research Institute 2003, 20

economic viability of this industry and increase its economic contribution to the state. [See Appendix D-16].

Regulatory Issues

As previously discussed, the ability to ship wine directly to consumers is a high priority for many Texas wineries. The great majority of these businesses are too small to attract the attention of distributors and do not produce enough volume to absorb the cost of wholesale distribution. Testimony provided at the hearing indicated that the price a distributor will pay for a bottle of wine could be less than half of what it costs a small producer to make that wine. Additional testimony indicated that it typically takes a winery at least five years to grow to the point where it is ready for a distributor. Wineries producing fewer than 1,000 cases of wine sell the majority of their product from their tasting rooms. Wineries producing over 5,000 cases of wine, annually, are generally at the point in their business development where they can begin using a distributor. It is the wineries producing between 1,000 and 5,000 cases that are "in a no man's land" of distribution. Using the TTB conversion factor of 3.17 gallons per case,[40] on the gallons produced by category in the tables above, there are as few as 39 and as many as 50 of the 54 wineries noted that fall within this 1,000 to 5,000 case range. Until a winery can produce enough volume to lower the cost of per bottle production, the use of a distributor is impossible. Further, a recent analysis by Tim Dodd, PhD, Executive Director, TWMRI, of the economic impact of a single $10 bottle of wine sold through an array of distribution schemes, clearly shows that the greatest benefit to the state's economy would result from that bottle of wine being sold in Texas ($33.56). The second greatest benefit ($31.46), would result, even without the collection of sales taxes, from that same bottle of wine being sold and shipped directly from the winery to a consumer out-of-state (See Appendix D-17).

While there is no way to predict the outcome of the cases before the Supreme Court, it is highly unlikely that any ruling would prohibit a state from implementing an equitable system of direct-to-consumer shipping for both in-state and out-of-state wineries. Even if the court would restore

[40] Texas Alcohol and Tobacco Tax and Trade Bureau, http://ttb.gov/alcohol/info/faq/subpages/convtbl.html [Accessed Dec 16, 2004]

full autonomy to the state to regulate the importation of wine for personal use, policy-makers should recognize that the opportunity for Texas wineries to fully participate in the state, national, and global wine markets would be hindered by statutory provisions that do not provide for a seamless method of distribution of Texas wine to consumers and deprive the state of the revenues that would be generated through a robust wine industry.

Tourism is the third largest industry in Texas. In 2000, rural tourism spending accounted for $2.5 billion (nearly ten percent of statewide total spending) and created over 40,000 jobs.[41] Agricultural tourism (agri-tourism), the act of visiting a working farm or any agricultural, horticultural or agribusiness operation for the purpose of enjoyment, education, or active involvement in the activities of the farm or operation,[42] has become an extremely popular pastime for tourists worldwide. In 2003, tourists visiting wineries in Texas spent an estimated $26.7 million. These tourists purchased souvenir items at the wineries, food, lodging, and other items during their visits to the vineyards.[43] During 2002, California wineries attracted 14.8 million visitors who are attributed with providing over $1.3 billion boost to the state's economy.[44] Although Texas does not have systems in place to track the annual total of winery visits statewide, testimony at the Committee hearing provided some insight into the potential.

Ernie Loeffler, Executive Director, Fredericksburg Convention & Visitor's Bureau (FCVB), described the impact of the Hill Country wineries on that community and related the results of surveys conducted by the FCVB in 2000 and 2004. Seven years ago, very few visitors walked in to the FCVB requesting information on wineries. Now, everyday, visitors come in asking for information about the local wineries. In 2000, 11 percent of the 3,800 Texans and other visitors who responded to a FCVB tourism survey indicated that touring wineries was one of the primary reasons for visiting Fredericksburg. Just prior to the hearing on October 6, 2004, FCVB completed its most recent survey. The results showed that the percentage of respondents who came to Fredericksburg because of the wineries had almost doubled to 19 percent. Mr. Loeffler

[41] TDA Testimony from Deputy Commissioner Martin Hubert to Committee, July 27, 2004
[42] Small Farm Center, UC Davis http://www.sfc.ucdavis.edu/agritourism/definition.html [Accessed December 17, 2004]
[43] Texas Wine Marketing Research Institute, 5
[44] Motto Kryla & Fischer LLP, California 2004, 28

did not relate the total revenues generated by tourism for the years 2000 and 2004, but he did state that direct spending by visitors generated $46 million in 2002. If the 2000 and 2004 percentages are applied to that $46 million, it is evident that winery tourism results in millions of dollars to this small community of approximately 10,000 residents each year.

Wine fairs and festivals have also become significant agri-tourist attractions that benefit a broad range of local interests, particularly in rural areas. Common outcomes are raised awareness and additional revenues for local wineries, other event sponsors, local non-profit organizations, and the community where the event is held. This year, the Hill Country Wine and Food Festival attracted 7,000 attendees to the Texas Hill Country and produced revenues of $450,000. Grapefest, a wine oriented four-day festival in Grapevine, Texas drew 240,000 visitors and resulted in revenues totaling $1.5 million for the City of Grapevine and the city's Historic Foundation. Currently, there is a state-imposed four event annual limit on the number of wine fairs and festivals that can be held by the holder of a Texas winery permit. The limit serves no public interest and, according to testimony, impedes the ability of wineries, communities, local non-profits, and other local businesses to promote themselves, generate revenue, and take full advantage of the world-wide interest in regional wines.

Many visits to wineries result from motorists cruising the highways and byways looking for an interesting place to stop. Testimony at the hearing revealed that one winery owner's business doubled after a sign was posted marking the exit to his vineyard. Current law allows for the construction of highway signs to mark the exits of certain state agricultural interest, including wineries. However, there are certain statutory provisions regarding eligibility criteria that prevent the location of signs that could be beneficial to some wineries.

Winery tourism most often involves a concentration of visits to a number of facilities over a two to three-day period, especially during weekends. It is common for wine tourists to begin their day very early and visit several wineries each day. Currently, there are no operating hours established in statute specifically relating to wineries. The legal hours for sale of alcoholic beverages from other licensed entities range from 7:00 a.m. to 2:00 a.m. the following morning, every day except Sunday when the range of hours includes midnight to 1:00 a.m. and 10:00 a.m.

to midnight [See Appendix D-18]. The Texas Wine and Grape Growers' Association has suggested operating hours for wineries of 8:00 a.m. to midnight Monday through Saturday and 10 a.m. to midnight on Sundays. Both the winery and the state forfeit revenue if a winery is prohibited from transacting a sale because the hours of operation do not coincide with tourist activity.

Currently, the holder of a winery permit may own and serve the winery's products at a restaurant located on the winery grounds. However, the winery owner may not serve any other alcoholic beverage in that restaurant. In addition to attracting tourists for the fruit of the vine, wineries are becoming popular for weddings, meetings, and other events. While the location and ambiance of a given winery may provide the perfect setting for a meal or banquet, the wine produced by that facility may not be favored by all attendees. The inability of the winery to provide an array of alcoholic beverages with food service could deter full patronage of the winery and result in a loss of revenues for the permittee and the state.

Current law vests permitted wineries located in dry areas with the authority to engage in any activity authorized for permitted wineries located in wet areas if their wine is manufactured in the state and 75 percent of the grapes or other fruit used to manufacture that wine are grown in the state. Climatic occurrences, pestilence, market conditions, or other factors could be devastating to Texas' wineries and the revenues they provide to the state if the Texas grape supply becomes insufficient to meet the demand by local wineries. Empowering the Commissioner of Agriculture to grant a variance to this requirement, if conditions warrant, would safeguard the interests of both Texas wineries and the state.

Currently, wineries may not "furnish, give, or lend any money, service, or thing of value to a retailer." The TABC has determined, by rule, that publishing or otherwise advertising the location of retail outlets where a winery's product can be purchased is a prohibited act. This prohibition serves no public purpose, impedes ability of the winery to maximize sales through cost-effective advertising mediums, and reduces potential revenues to the state.

Exposure to extreme temperatures, for periods as short as an hour, can change the character and otherwise impact the quality of wines. Temperature-controlled transportation is expensive and often impractical. Granting greater flexibility in scheduling the receipt and delivery of wine between permit holders, to take advantage of more temperate hours of the day, will better protect the potential revenues of all parties in the transaction, including the state.

Currently, wineries are prohibited from working in formal collaboration with one another to produce their products. With the capital intensive nature of the industry, winemakers in other states often share resources, especially in the early years of their wineries' development. Removing this prohibition will facilitate a more efficient use of capital, time, equipment, expertise, and other resources; generate additional economic growth of the industry; improve profit margins; and increase state revenue.

In its Interim Report to the 71st Legislature, the House Committee on Agriculture and Livestock (1988) identified financing as one of the limiting factors for Texas wine production. Access to viable financing options is critical to the industry's success. In most states, a significant portion of the growth in winery facilities, equipment, and vineyards has been debt financed.[45] The House Committee report states that financing of a vineyard can be difficult to secure because of the time needed to establish a vineyard and the capital intensive nature of establishing a vineyard or winery. Additionally, traditional Texas lenders' unfamiliarity with the wine and grape industry often prevents those wishing to engage in viticulture in Texas from obtaining adequate financing. Requests for two changes were made to the Senate IGR Committee this interim by members of the wine producing industry to remove current statutory provisions that impede the ability for those in the wine industry to acquire business financing for their operations.

Section 16.01(a)(4)(B), Alcoholic Beverage Code, currently prohibits wineries from selling more than 35,000 gallons of wine from their tasting rooms. While very few Texas wineries have reached this level of production, the imposition of a statutory limit on sales makes it extremely difficult, if not impossible, for those in the wine production industry to acquire loans or other investment capital from financial institutions or traditional wine industry investors. There is no public interest served by maintaining this limit, and its retention will continue to impede the growth of the Texas wine industry and result in a loss of revenue for the state.

[45] Motto Kryla & Fisher, LLP, Washington 2001, 31

The State of Texas currently prohibits non-residents from holding a Texas alcoholic beverage permit. Only four other states in the United States continue to require residency for the issuance of an alcoholic beverage permit and questions have been raised regarding the constitutionality of the remaining provisions [See Appendix D-19]. Maintaining the current 51 percent ownership requirement discourages investment by out-of-state interests that could provide what would be, if this were any other industry, a welcomed infusion of funds that could lead to the growth of an industry and the creation of new jobs, and additional revenues for the state. The current limit serves no legitimate public purpose and is counter-productive to the long-term development and sustainability of the Texas wine industry by discouraging out-of-state and overseas investment.

During the 78th Interim, the TABC underwent its periodic review by the Texas Sunset Commission (Commission). The final staff report, which was published in October 2004, includes a number of recommendations that have the potential to impact Texas' wine producers. Two are specifically worthy of this Committee's attention.

The Sunset Commission found that "TABC staff approves new products to ensure that labels accurately represent the content and perform chemical analysis to ensure product quality, alcohol content, and that the container holds the stated amount. In fiscal year 2003, TABC examined and approved about 9,800 wine labels." Sunset staff concluded, however, that TABC's approval and testing processes for liquor and wine unnecessarily duplicates the federal Alcohol and Tobacco Tax and Trade Bureau's (TTB) alcohol approval and testing activities. Sunset staff found "only Texas and two other states, Virginia and Connecticut, conduct chemical analysis of all new alcoholic beverage products. In contrast, the vast majority of other states and the federal government find no need to test all products to ensure protection of public health and safety. The majority of other states also do not require any type of label approval for liquor and wine. Of the 22 states that do regulate labels, they only require registration of the federal certificate, which is less burdensome than conducting a second state-level approval."[46] TABC's wine-approval process duplicates federal processes, serves no clear public health purpose, and creates unnecessary delays in getting products to market.

[46] Sunset Advisory Commission 2004, 30-31

Policy Issues

In their report, Sunset staff affirmed that TABC was created "in 1935, following the repeal of Prohibition, to very tightly regulate the alcoholic beverage industry" and found that the agency did, indeed, heavily regulate "all aspects of the industry – everything from the production, importation, and exportation of the beverages to the storage, distribution, and eventual sale to consumers." Sunset staff concluded that the TABC and the Alcoholic Beverage Code were in "clear need of modernization" and that the reflection of that agency and the Alcoholic Beverage Code should focus more on today's regulatory concerns of "fair and balanced competition, responsible drinking, and reduced government regulation" rather than "the strong controls in place since the post-Prohibition era."[47]

The Sunset Commission's concerns echo those expressed by members of the wine producing industry and Texas consumers over two decades: that "TABC's statutory mission is outdated"; that "certain business practices tied to the production and distribution of alcoholic beverages are over-regulated, with no clear public purpose"; and that "the agency provides poor guidance to the industry in interpreting complex statutory requirements. The long-term consequences of this regulatory environment have contributed significantly to the sluggish performance of the Texas wine producing industry. While TABC's mission, as defined in statute, has always focused on public safety, it does not fully reflect today's social concerns regarding alcohol consumption but, rather, supports a regulatory role reminiscent of the last century's post-Prohibition area.[48]

HB 892 (77R) created an advisory committee within the Texas Department of Agriculture (TDA) to assist the commissioner in establishing and implementing the TWMAP. By all reports, the advisory committee has done an excellent job in promoting Texas viticulture and Texas wines but its function and purpose is statutorily limited. Various individuals and entities are beginning to develop strategies and plans for growth. The TWMRI has recently posted its 2004

[47] Sunset Advisory Commission 2004, 1.
[48] Sunset Advisory Commission 2004, 6.

Strategic Plan on its website[49] and the Texas Wine and Grape Growers Association have begun to develop a plan, as well. Several of Texas' wine industry experts have been invited to participate in a national effort to promote U.S. wines. While these efforts are certainly a sign of progress, it is important that all interested parties work together under a single and united vision to initiate and build a sustainable long-term industry. To achieve the objectives set out in the vision, the state and the Texas wine producing industry must bring together parties that have a stake or other relevant interest in the Texas wine industry. The legislatures of states with significant wine and grape industries have created some type of state entity to assist with the overall planning, growth and development of those industries. In creating an entity for Texas, consideration should be given to expanding the membership and mission of the existing wine marketing advisory committee or assigning this mission to the Texas Agriculture Policy Board.

It has been shown by the world's major wine producing regions that investment into education and research creates an unparalleled advantage. Expansion of the Texas wine industry will need an influx of professional talent and expertise, particularly in the specialized fields of wine production and vineyard development. Nationwide, only universities in California and Washington State offer four-year undergraduate degree programs in viticulture and/or enology. Testimony at the October 6th hearing indicated that, although there are individuals and organizations ready, willing, and able to assist with the development of viticulture and enology education, there is no specific undergraduate or graduate degree program in which to vest their support. Mr. Michael Vilim, Board Member and President Elect, Texas Hill Country Wine and Food Foundation, testified that each year, the foundation, awards a $15,000 culinary scholarship. Last year, the foundation wanted to give a $10,000 scholarship for enology, but couldn't find any place to send it in Texas. The foundation didn't want to send the funds to California, and are now looking to help with the creation of an enology department or wine studies program within the system of Texas universities. Although the foundation first predicted a 10 to 15 year fundraising effort to collect the $1 million needed to accomplish this objective, interest in the project has resulted in an amended time-frame of five to eight years. The establishment of

[49] Texas Wine Marketing Research Institute, http://www.hs.ttu.edu/texaswine/TWMRI_strategic_plan_2004.pdf [Accessed Dec 14, 2004].

formal viticulture and enology degree programs is critical to cultivating the students, educators, and professionals needed to support a world-class wine industry.

The provision of research services and objective, research-based viticulture and enology education programs to grape and wine producers are critical to the success of any state's wine industry. They enable producers to remain economically competitive in the marketplace. Although a basic level of viticulture services is currently provided through Texas A&M and Texas Tech Universities, that level is insufficient to adequately meet the needs of existing grape and wine producers, much less nurture and support the growth of these industries. As can be noted in Dr. Ed Hellman's and Dr Jim Kamas' written testimony in Appendix D- 16, Texas Cooperative Extension currently has two faculty (1.25 FTE) devoted to viticulture Extension programming. The Extension Viticulture faculty operational budget was only $3,500 for FY 2005. Current research faculty positions are limited to a 0,25 FTE viticulture research position at Texas Tech paired with a joint appointment (0.75 FTE) with the Texas Cooperative Extension at Texas A&M. An agricultural technician (1.0) FTE at the Texas Agricultural Experiment Station supports the viticulture research program, which receives zero operational dollars to perform its functions. There are no enology positions devoted to enology education or research. Testimony revealed that these individuals are often put in the position of having to pay for their own gasoline to make site visits to the wineries in the state. In addition, the lack of appropriate infrastructure impedes the state's ability to acquire research grants. Policy-makers must provide adequate funding to support basic viticulture and enology education and research services if the state's wine industry is to flourish.

The enhancement of existing programs and creation of new ones to support the Texas wine and grape industries will require the infusion of new funds. Research performed by Dr. Dodd at the request of the Chairman revealed that the states of New York, Oregon, Virginia, and Washington spend between $490,000 to $4 million per year to fund their economic, education, and marketing efforts. These figures do not include the various viticulture and enology research programs that are provided. Texas appropriates approximately $310,000; $250,00 per year generated from a surcharge on certain alcoholic beverage licensing and permit fees for the TWMAP and a $60,000 per year line item in Texas Tech University's (TTU) budget for the TWMRI. While the

TWMAP funding level has been maintained since its inception in 2001, the TWMRI funding has been cut by more than half since the program was created in 1988 (See Appendix D-20). Testimony at the hearing indicated that for every dollar spent on marketing, the Texas wine industry realizes a $9.44 return, so it is vital to provide some base level funding for the Texas wine producing industry to increase its economic impact on the state. At the time of the writing of this report, the Texas Comptroller has not released her budget projections for the next biennium, nor have the Governor and Legislative Budget Board distributed their budget proposals. As such, the Committee was not able to assume that any new appropriations from existing revenues would be forthcoming during the next legislative session. In keeping, the Committee made an effort to develop ideas for possible new sources of revenue.

The concept of capturing tax increases resulting from the growth of a specific market area for economic development is a sound one that has been previously approved by the legislature. SB 456 (76R), included a strategy for capturing funds resulting from the growth of tax revenues to support the selection of Texas as the location for the 2007 Pan American Games. The bill required the comptroller to determine quarterly, in accordance with procedures developed by the comptroller, the incremental increase in the state sales and use tax receipts under Chapter 151, Tax Code, within the market area of entities that would be participating in the development of the games and related events, and depositing the amount determined in a special account of the department's treasury account called the Olympics and Pan American Support Fund. The bill specifically authorized the capture of the incremental increase in the receipts to the state from taxes imposed upon certain market areas under Title 5, Alcoholic Beverage Code. Although the site selected for the 2007 games was Rio de Janeiro, making the capture of these funds unnecessary for the purpose of supporting the games' location in Texas, the process was supported. Dedicating new revenues generated by the growth of the Texas wine industry for its support will incentivize accurate reporting, relieve demand on existing revenues, and provide a portion of the funds necessary to implement strategies to improve the Texas wine and grape industries statewide.

Pierce's Disease and other factors impact the viability of grape and wine industries throughout the nation. The citizens of Texas benefit from revenues generated by the sale of all wine, and the health of that industry, nationwide, is important to this state. Texas is a natural laboratory for the study of Pierces' disease. Two independent studies have recently confirmed the genetic origin of this insect population is Texas. The dedication of new revenues to this research will facilitate research to benefit all wine-producing states.

A number of successful wine states authorize the imposition of an additional tax or fee on the wine sold in their respective states to support the development and maintenance of their wine and grape industries. Some states also authorize the imposition of these taxes and fees on all wines sold in their state regardless of origin. While there is not unilateral support for such an assessment within the Texas wine industry, the possibilities of creating a viable voluntary assessment issue should be examined while developing legislation for the upcoming legislative session.

Miscellaneous Issues

It is difficult to compete successfully in a market if there is no clear picture of the status of the competition. Although there is a great deal of data available regarding wine industries throughout the United States, there are also great inconsistencies in what data is collected, how it is collected and compiled, what resources are used, what standards are used, what time frames are employed, in what form the data is published, etc. An annual posting of comparable data from those states in closest competition with Texas should prove to be a valuable tool to our wine industry.

The application of certain herbicides during the spring can significantly damage tender grape vines and devastate production, resulting in a loss of revenue to the vineyard and the state. Grapes are extremely sensitive to phenoxy-type herbicides, which include the active ingredient 2,4-dichlorophenoxy-acetic acid (2,4-D). While most sensitive during the early growing season, vines can be damaged whenever there is exposed green tissue. During the active growing season, exposure can cause growth to stop temporarily. Damage to young leaves is dramatic and obvious. Exposure to the herbicide can impact flowering and rootset, delay the ripening of grapes, and compromise the proper hardening off of vines during the growing season. Severely affected vines may not recover for two or more years. 2, 4-D has been in common usage since the 1950's; it is inexpensive and readily available. Even though there are some good application strategies and alternative herbicides available to address the problems caused by 2, 4-D, vineyards are relatively small and many of the field and turf crop farmers, who often outnumber wine-grape growers in a community, are resistant to changing their methods of pest control. This issue has become politically sensitive within the agricultural community. Although 2, 4-D is a regulated herbicide, state regulations are not currently sufficient to prevent common applications of this substance from damaging vineyards throughout the state. While a county commissioners' court can adopt an order applying more stringent state regulations, this authority is seldom, if ever, used because of the political ramifications in agricultural communities. In an effort to minimize or eliminate the negative impact of 2, 4-D on Texas viticulture and increase the use of less harmful herbicides while maintaining cost-efficiencies and success rates for other farmers, the legislature should charge the Agriculture Resources Protection Authority to study this issue and develop a plan for action.

Until recently, little effort has been made by the Texas wine industry to solicit services and support from agencies other than the Texas Department of Agriculture and TABC. Industry stakeholders have not been significantly proactive in advocating and soliciting broad-based support for their needs. There are a number of state and federal programs and funding streams that could be accessed to facilitate the growth of the Texas wine industry, and it would be most beneficial to make certain that relevant state agencies are aware of the potential value of the industry and its needs. Additionally, there are occasions where agencies of the state and state institutions of higher education organize, sponsor, or fund events where alcoholic beverages are served. If it is the policy of this state to support the Texas wine industry, it is only logical that Texas wines be included at state sponsored events and in state operated facilities where other alcoholic beverages are served.

There are a number of federal programs and funding streams that could be accessed to benefit the Texas wine industry. It would be beneficial to make the Texas Congressional Delegation aware of the potential value of the industry and its needs.

In FY 2005, over $42 million in federal monies will be appropriated for Pierce's Disease research and intervention. Of that, it is anticipated that $1.5 - $2 million will be routed to Texas via California to continue an existing project. Earlier in the year, a loss of these funds was threatened because of decision-makers in California. It would be most beneficial to the Texas wine industry to make the Texas Congressional Delegation aware of the potential value of researching Pierce's Disease in Texas and have them seek direct funding for this state.

Committee Findings and Recommendations

Findings:

1. Texas has all the elements necessary to be a competitive force in the national and international wine industries.
2. The Texas wine producing industry could prove to be a stellar economic generator for the state of Texas.
3. With the proper policies in place, the Texas wine producing industry is positioned to boom within the next 5 to 10 years.
4. Although progress has been made throughout the years, a number of existing state policies continue to impede the ability of the Texas wine producing industry to achieve its full potential and compete on national and international levels. Specifically:
    a. sales and distribution barriers prevent wineries from maximizing their exposure and expanding their markets;
    b. ambiguity, conflict, lack of clarity, and inconsistent interpretation of statute among Texas Alcoholic Beverage Commission (TABC) staff creates confusion and apprehension among industry members;
    c. insufficient funding and budget reductions for new and existing education, training, and research hinder the development of the industry.
5. The lack of a consistent, coordinated, and centralized effort among industry stakeholders and public policy makers to define a vision and market identity; develop appropriate programs and policies; explore, develop and access relevant funding

streams; and communicate concerns and needs to appropriate parties impedes the development of this industry to its full potential.

Recommendations

Recommendation 4.1 - Adopt, by concurrent resolution or statement in statutory amendment, that development of world-class wine grape-growing and wine-making industries is important to Texas as a whole; the vitality of the wine grape and wine producing industries affects the well-being of Texans and Texas economies; it is in the public interest to encourage the orderly growth and development of sustainable, labor intensive, value-added agricultural industries, such as the wine grape-growing and wine-making; and that it is the policy of this state to support growth and development of Texas' wine grape-growing and wine-making industries.

Recommendation 4.2 - Amend the Alcoholic Beverage Code to specifically authorize Texas wineries to utilize all delivery mechanisms, legally available to out-of-state and international wineries, to get their products to customers and grow their businesses.

Recommendation 4.3 - Repeal Section 16.08(c), Alcoholic Beverage Code, to remove the four event annual limit currently imposed on the number of wine festivals that can be held on the winery premises by the holder of a winery permit

Recommendation 4.4 - Amend Section 16.011, Alcoholic Beverage Code, to grant the Commissioner of Agriculture the authority, under certain conditions, to issue a variance to the requirement that wineries, located in an area in which the sale of wine has not been authorized by a local option election, utilize at least 75 percent by volume fermented juice of grapes or other fruit grown in this state in order to sell or dispense its wine.

Recommendation 4.5 - Amend the Alcoholic Beverage Code to establish operating hours for wineries that enable them to maximize revenues for themselves and the state by taking full advantage of the agri-tourism generated by the Texas wine and grape industries.

Recommendation 4.6 - Amend Section 16.01(a)(4)(B), Alcoholic Beverage Code, to eliminate the 35,000 gallon limit imposed on the sale of wine from winery tasting rooms to consumers.

Recommendation 4.7 - Amend Section 102.07, Alcoholic Beverage Code, to allow wineries to post or otherwise publicize where their products can be purchased in the retail sector.

Recommendation 4.8 - Amend the Alcoholic Beverage Code to expand the hours for receipt and delivery of wine between permit holders.

Recommendation 4.9 - Amend the Alcoholic Beverage Code to authorize the creation of multi-winery co-ops.

Recommendation 4.10 - Amend Section 109.53, Alcoholic Beverage Code, to exempt winery permits from the 51 percent ownership requirement to allow for out-of-state investment in Texas wineries.

Recommendation 4.11 - Amend the Alcoholic Beverage Code to allow the holder of a winery permit to establish and directly provide the winery's product through a full-service restaurant on the winery premises and serve other alcoholic beverages for the sole purpose of providing an alternative beverage selection for the customers of that restaurant.

Recommendation 4.12 - Amend the Alcoholic Beverage Code to eliminate label approval and testing for wine and, instead, authorize TABC to register federal certificates of approval for these products.

Recommendation 4.13 - Amend the Alcoholic Beverage Code to update TABC's mission and the Alcoholic Beverage Code to better reflect today's alcoholic beverage regulatory environment and its role in public safety issues.

Recommendation 4.14 - Request, by concurrent resolution, a study of the use of the herbicide 2, 4-D in Texas for the purpose of developing a plan to minimize or eliminate the negative

impact of that chemical and increase the use of less harmful herbicides in Texas agriculture.

Recommendation 4.16 - Create a Texas Wine and Grape Growers' board, commission, task force, departmental division, or other appropriate entity to:

- ***develop a long-term vision and marketable identity (Brand Texas) for the Texas wine industry;***
- ***plan and coordinate future industry development, funding, research, educational***
- ***programming, risk-management; and marketing; and***
- ***make recommendations to future legislatures regarding funding, statutory changes, and state policies to benefit Texas grape and wine production.***

The membership of this entity shall be appointed to provide equal representation from the various grape growing regions of the state, weighted to empower Texas vintners and grape-growers and, at a minimum, include representation from:

- ***wineries and vineyards located in both wet and dry areas;***
- ***wineries selling through the distribution network;***
- ***wineries not represented by a distributor;***
- ***viticulture and enology faculty from Texas Colleges and Universities;***
- ***Texas wine advocacy and support organizations;***
- ***the distribution tier;***
- ***the retail tier;***?
- ***the Governor's Office;***
- ***the Texas House and Senate;***
- ***the Texas Department of Agriculture;***
- ***the Texas Alcoholic Beverage Commission;***
- ***the Texas Economic Development Commission;***
- ***the State Comptrollers Office;***
- ***the Texas Commission on Environmental Quality; and***
- ***other individuals, agencies, political subdivisions, chambers of commerce, and organizations as deemed appropriate.***

Recommendation 4.17 - Enact legislation that will, for not less than ten years, dedicate, for development of the Texas wine-producing industry, no less than 90 percent of all new sales and excise tax revenues generated by the Texas wine and grape industries after August 31, 2005.

Recommendation 4.18 - Consider legislation to authorize collection of a voluntary fee or tax on every bottle or gallon of Texas wine sold, to be used for the sole purpose of developing the Texas grape and wine industries.

Recommendation 4.19 - Enact legislation that will, for not less than five years, dedicate, for use towards the elimination and eradication of Pierce's Disease and its vector, the Glassy-winged Sharpshooter and other pests, parasites, diseases and other factors that impact the viability of grape and wine production in Texas and other states, no less than 75 percent of all new sales and excise tax revenues generated by the sale of non-Texas wine after August 31, 2005.

Recommendation 4.20 - Direct the Texas A&M and Texas Tech University Systems, by concurrent resolution or statutory provision, to develop a long-term strategy for expanding our current wine-related educational resources, including the T.V. Munson Viticulture and Enology Center at Grayson Community College, into a comprehensive system of education, training, research, and degree programs to facilitate the development of the Texas wine industry into a world-class competitor. A report on the strategy should be submitted for review and action by the 80th Legislature.

Recommendation 4.21 - Provide funding sufficient to fully support and enhance existing programs within the state to facilitate growth of the Texas wine-producing industry, to include the following new monies:

- ***$50,000 per year for new part-time (0.5 FTE) Extension faculty position in enology (to be paired with Research Enologist);***
- ***$50,000 per year for Extension viticulture operations;***
- ***$50,000 per year for Extension enology operations;***

- ***$50,000 per year for viticulture research program operations;***
- ***$65,000 (additional) per year to restore full-funding to the Texas Wine Marketing Research Institute;***
- ***$50,000 per year to fund a new part-time faculty position (0.5 FTE) in enology research to be paired with Extension enologist above;***
- ***$30,000 per year for technical support personnel for enology research;***
- ***$50,000 per year to fund enology research program operations;***
- ***$50,000 per year to fund two Graduate Internships; and***
- ***$50,000 per year to fund the associate degree program at T.V. Munson Viticulture and Enology Center at Grayson Community College.***

Recommendation 4.22 - Encourage, by concurrent resolution, continuing research through the Texas Wine Marketing Research Institute, to include, as funding and information resources allow, a basic comparison of the economic impacts of the Texas, California, New York, North Carolina, Oregon, Virginia, Washington State and other closely competitive wine industries. The data to be compared should be published annually and include for each state:

- ***the number of wineries permitted by the U.S. Alcohol and Tobacco Tax and Trade Bureaus (TTB);***
- ***the amount of wine produced, as reported to the TTB;***
- ***total wine sales;***
- ***excise, sales and franchise taxes paid;***
- ***the number of wine grape-growers;***
- ***total wine grape acreage;***
- ***grape production as reported by the USDA;***
- ***the value of the wine grapes grown;***
- ***the number of Full-time Equivalent wine industry jobs;***
- ***total wages paid;***
- ***revenues from wine-related tourism;***
- ***the estimated number of visitors;***
- ***charitable contributions made;***

- ***total economic impact; and***
- ***any other information that would prove valuable to the Texas wine industry.***

Recommendation 4.23 - Recognize, by concurrent resolution, the importance of the emerging Texas wine industry and request of all relevant agencies of the state and institutions of higher education their best effort to secure, from the federal government or other appropriate resource, any funding or other assistance that might be available to support the protection and growth of the Texas wine industry and to serve Texas wines at all state dinners, meetings, conferences and other events and in all state or university facilities where wine or other alcoholic beverages are served.

Recommendation 4.24 - Memorialize, by concurrent resolution, a request to the members of the Texas Congressional Delegation to recognize the importance of the emerging Texas wine industry and work to secure funding and other assistance available at the federal level to support its protection and growth.

Recommendation 4.25 - Memorialize, by concurrent resolution, a request to the members of the Texas Congressional Delegation to seek amounts of $2 million for a five-year period for grant funding through the United States Department of Agriculture (USDA) and the Animal Plant and Health Inspection Service (APHIS) for Pierce's Disease research.

Late Requests and Recommendations for Legislative Action

The following requests for action were received too late to be considered for adoption in the list of committee recommendations, but are worthy for note in this report as factors which could have an economic impact on the state's economy.

***Additional Request*:** Remove the prohibition against employees working on more than one tier.

Most wineries are small operations in rural communities. Often, they need only part-time employees. Currently, individuals are prohibited from being employed in more than one of the alcoholic beverage tiers. The expertise gained by winery employees could prove useful to a package store or other retail outlet where wine is sold and insure full-time employment for the employee.

Additional Request: Expand the ability of charitable organizations to utilize wine received through donations.

The donation of alcoholic beverages to charities is permissible under Texas law. However, the subsequent sale of that alcoholic beverage to raise monies is not allowed. The term "sale" has been so broadly interpreted by TABC as to include the service of a donated wine at a fundraising dinner or an appreciation party for individuals who have previously donated funds to a charitable organization. This provision was codified to prevent large manufacturers from gaining exclusivity agreements with organizations and undercutting retailers through donations. Because of the Texas wine industry's designation as a member of the manufacturing tier, this prohibition applies.

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