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Cardboard to Concrete: 
Reconstructing the Texas Colonias Threshold

by
RODERICK R. WILLIAMS*

Introduction

The Spanish word *colonia* simply means *neighborhood*, but in the context of the United States-Mexico border region, it looms as “a bizarre hybrid of the 19th and 21st centuries,” where “[a] $150-billion economy is fueled by 11 million people, many living below the poverty line in communities that cannot afford modern sewers, water mains or sanitary landfills.” Colonias have also been referred to as “rural slums.” Existing outside city limits, colonias are unincorporated subdivisions, usually characterized by substandard housing, including a lack of drinking water, no sewage disposal systems, chronic disease, and high levels of poverty. While this may be surprising to most people who have no contact with these border states (or even those who live within these states), the rampant spread of colonias has become a major concern in Texas, New Mexico and Arizona, and it has garnered attention in California.

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4. In fiscal year 1998, Texas, Arizona, and New Mexico set aside 10% of their state Community Development Block Grant (CDBG) funds to use toward improving colonias.
The highest concentration of colonias occurs in Texas, where over 1400 colonias house an estimated 360,000 people.Colonias have existed around El Paso, Texas for at least three decades. Publicized health and safety issues associated with the colonias, including the ever-looming specter of annexation of one or more of these "dreadful" neighborhoods, lack solutions.

This note examines colonias. Focusing on Texas, it examines the environment that has allowed their continued proliferation and the everyday plight of their residents. Part I presents a history and overview of Texas colonias. Part II discusses how Texas law allowed their surprising growth, then examines recent legislature aimed at curbing this growth and helping those that still lack water, sewer, and other basic infrastructure. It also presents an overview of federal and state programs currently addressing the problems that persist. Part III will examine Mexico's successful attempt to solve a very similar...
situation around Mexico City. Part IV reviews failed bills in the Texas Legislature in 2001, and considers the future for Texas colonias.

I. History Of Colonias and Overview of Their Problems Today

In order to comprehend the existence of the colonias today, it is helpful to briefly review the history of the migrant farmworker in the United States. Mexicans were a prominent part of the migrant farm labor force as early as the 1920s. The Mexican Civil War drove a surplus of jobseekers north of the border illegally, creating a glut of workers that subverted attempts to organize existing workers and improve conditions through reforms. By 1942, the Second World War saw the advent of the Bracero Program, under which Mexican farm workers could enter the United States legally as guest workers. While the Bracero program had problems of its own, it provided many jobs and remained effective until 1964. These work opportunities attracted throngs of Mexicans to the border area, where they settled on the southern side of Texas border cities such as El Paso and Laredo.

In 1963, a new phenomenon arose that would draw even more workers to these border areas: maquiladoras. Maquiladoras are Mexican manufacturing or assembly plants owned or sponsored by foreign companies. Under the program, United States companies were able to ship parts or products to these Mexican plants for manufacture or assembly. Parts and components entered Mexico duty-free, provided that the parts would be re-exported. When the parts returned from the maquiladoras, the company paid a small value-added tariff equivalent to the computed value of the work performed in the maquiladora. Considering the nominal wages required in Mexican factories, this proved to be quite profitable for United States companies. This system was also advantageous to

9. Id.
10. Id.
11. Id.
12. Id.
13. Id.
15. Id.
17. Id.
Mexico and its citizens because it created thousands, and eventually millions, of jobs. As of December 1999, Mexican federal statistics reported that the maquiladora industry had created 1.2 million jobs in Mexico. The 600 maquiladoras in the Texas-Mexico border region produced goods worth $49 billion in 2000.

This new economy eventually drew a significant contingency of United States citizens to both sides of the border towns. While maquiladoras thrived, the populations in the border cities on both sides continued to swell. For example, by 1993, an estimated 1,500 engineers and managers from El Paso worked by day in over 300 maquiladoras south of the border in El Paso's "twin city," Ciudad Juarez.

The devaluation of the peso in 1992 caused a small explosion in maquiladoras, luring even more workers to the borders. While NAFTA's elimination of tariffs between the United States and Mexico have abrogated maquiladoras' legal status, the plants themselves have not closed down. United States companies will continue to utilize the relatively inexpensive labor south of the border and now are penetrating deeper in Mexico.

The opportunities in these boomtowns have attracted large groups of workers, a considerable portion of whom are Mexican. Over three-fourths of colonia residents (colonians) are United States citizens and two-thirds are born in the United States. COLONIA

18. Id. at 49.
19. Id.
20. Nancy Sue Martin, Border Growing in Clout; Economy an Issue in Perry's Mexico Summit, DALLAS MORNING NEWS, Mar. 7, 2001, at 1A (citing figures supplied by the state comptroller).
21. United States-Mexico border cities, when contiguous along the border, are usually referred to collectively as twin cities. Other examples of twin cities with numerous colonias are Brownsville and Matamoras, and Laredo and Nueva Laredo. What Policies Led to Texas' Colonias, at http://itc.ollusa.edu/faculty/pemphilosophy/cur/cur/poldem.htm (last visited Sept. 18, 2001).
24. Clement, supra note 16, at 48. The effect of NAFTA is that in the absence of trade tariffs between the U.S. and Mexico, Mexico will no longer retain the benefits of a value-added tariff on products going back to the U.S. This will not render the manufacturing and assembly plants redundant and useless; it will merely change the structure of the arrangement. U.S. companies will still benefit from the reduced labor and operating expenses, and for the time being, perhaps, the relatively lax environmental enforcement.
25. Id.
residents typically work in agriculture, the maquiladoras, or service-oriented businesses. These low-wage jobs exclude the workers from most segments of the housing market. In 1997 in El Paso, for example, nearly 40,000 residents earning less than $13,300 per year contended for approximately 17,000 dwellings. Developers took advantage of lax land use regulations in Texas counties, where real estate subdivision and development occurred free from zoning, growth, safety, environmental, infrastructure, or building controls or restrictions. These developers, in turn, offered plots of land at affordable rates, but with no amenities, and often with empty promises that water, a sewage system, and electricity were coming soon. Residents in a colonia typically purchase lots ranging in size from 50 by 100 feet to half an acre for as little as $5 down and $5 a week. Dwellings rise piecemeal—wall by wall, as scarce money permits.

Many colonias currently offer electricity, but it often takes considerable time for residents to tap into sources, which may involve splicing wires on the local power pole. The ramifications of a non-existent sewage disposal system are manifested in dangerous health and environmental conditions. It is not uncommon for residents to dig pits for sewage disposal. Waste leaches into the soil and contaminates the water table. Thus, in many colonias, well water is not potable. One privately funded 1988 study of wells in an area southeast of El Paso found that 98 of 100 wells tested “contained water too contaminated by sewage to be fit for any home use, either

30. Id.
31. Larson, supra note 6, at 185. Texas legislature has recently granted border counties with increased regulatory authority. See infra notes 96-97 and accompanying text.
32. Hanna, supra note 27, at 883-84. See also Larson, supra note 6, at 193-94 (describing a study in which two of seven Rio Grande Valley developers examined misled buyers at the time of purchase to believe that water “would soon be available”).
33. Zeitgeist, supra note 28, at 74; Guadalupe T. Luna, “Agricultural Underdogs” and International Agreements: The Legal Context of Agricultural Workers Within the Rural Economy, 26 N.M. L. Rev. 9, 32 (1996). Other figures place typical costs of a colonia lot between $3,000 and $12,000. James Garcia, Invisible Homeless, AUSTIN AMERICAN STATESMAN, Jan. 30, 1996, at A1, available at 1996 WL 3416542, at *5; see also Atkinson, supra note 5 at 70 (stating that after putting “a few dollars down,” residents pay an average of $225 per month, with or without water or sewer hookups).
34. Zeitgeist, supra note 28, at 74.
35. Larson, supra note 6, at 192-93.
36. Id. at 188.
37. Id.
[for] drinking or simply bathing." Most residents obtain water from nearby cities, from polluted wells, or from irrigation canals that are "contaminated with sewage and agricultural chemicals." As if this is not harmful enough, many colonians store their water in salvaged uncoated metal or plastic drums that were formerly used to store hazardous or toxic waste.

Further, many colonias are built on floodplains. When these lands inevitably flood, raw sewage mixes with trash piles and creates pools around houses, constituting "a soup of organic and fecal waste." The result of conditions such as these is often the outbreak of diseases, many of which are considered eradicated in the United States. The list of exotic diseases occurring in colonias includes tuberculosis, hepatitis, cholera, gastroenteritis, lead poisoning, dysentery, leprosy, dengue fever, encephalitis, typhoid, *Helicobacter pylori*, and shigellosis.

The rate of tuberculosis in the colonias is twice that in the rest of Texas, and many are alarmed at the growth of drug-resistant tuberculosis. One 1994 Dallas newspaper article stated that by age thirty-five, a staggering 95% of West Texas' native colonians will

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38. Id.
40. Id.
41. True, supra note 7; see also Larson, supra note 6, at 191 (noting that in regulated communities, zoning would not permit development on a floodplain).
42. Larson, supra note 6, at 191; see also Hanna, supra note 27, at 909-10 (noting that during floods, fecal matter flows into the streets and houses of the colonias, creating a hotbed for diseases).
43. Luna, supra note 33, at 33.
44. Hanna, supra note 27, at 885; see also Debra Beachy, *Today's Texas; The Border: Where Worlds Collide*, HOUSTON CHRON., Aug. 16, 1992, Special, at 4 (summarizing an interview with the director of the Brownsville Community Health Center, who claimed that Brownsville had the nation's highest rate of new leprosy cases as well as the highest rate of tuberculosis).
45. Larson, supra note 6, at 190.
47. *Helicobacter pylori* is a bug closely associated with stomach ulcers. Atkinson, supra note 5, at 70.
48. Shigellosis is a bacterial infection that causes diarrhea, fever and stomach cramps. Allison Klein, *Down but not out in Texas colonias; Shantytown: On the U.S. side of the Rio Grande, impoverished Mexican families seek to build the American Dream from scratch*, THE BALTIMORE SUN, Feb. 21, 2001, Telegraph (section), at 1A. It is spread the same way as hepatitis A—through contact with infected feces. Id; see also Adam Clymer, *Bush and Texas Have Not Set High Priority on Health Care*, N.Y. TIMES, Apr. 11, 2000, at A26 (discussing the troubling health conditions of various areas along the Texas-Mexico border). Some of these diseases may be caused at least in part by contact with or proximity to industrial and hazardous wastes from polluting maquiladoras across the border. Id.
49. Matthiesen, supra note 46, at 6; see also Larson, supra note 6, at 190.
have experienced Hepatitis A. According to 1998 Texas Department of Health statistics, 71.5% of the population of Hidalgo County, near the Gulf of Mexico, had a case of hepatitis A, compared with just 18% across the state. The statistics also showed marked disparities in the relative incidence of shigellosis: about 43% of the population in Hidalgo County had a case of shigellosis in 1998, compared with 20% across the state.

Contact with human waste also produces hypertension and severe skin rashes. In addition, residents of colonias experience abnormally high rates of birth defects such as anencephaly—"a birth defect in which babies are born with either incomplete or missing brains and skulls"—and also such diseases as lupus, leukemia, and breast cancer.

Perhaps the most unsettling implication of this situation is the relative ease with which these diseases could spread to any part of the nation. In 2001, Jose Manuel de la Rosa, Regional Dean for Texas Tech University's Health Science Center in the El Paso/Juarez area, told Time Magazine, "[t]he truck driver with TB who sits in our restaurants today will be in Denver or Chicago tomorrow.... Our problems will be dispersed throughout the country."

A colonia is typically created by the conversion of farmland into an unregulated subdivision. Avoided is the farmer's burden to plant, harvest, and market the crops, subject to the mercy of floods, droughts, freezes, insect and disease infestations, and fluctuations in the market. The developer only needs to worry about surveying and platting the land, providing drainage and unpaved roads, and then selling the divided properties. Providing further incentive toward

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50. See Las Colonias; What Can We do About the Growing Health Threat?, DALLAS MORNING NEWS, Oct. 16, 1994, Editorials, at 2J.
51. Klein, supra note 48.
52. Luna, supra note 33, at 33.
53. See Hanna, supra note 27, at 885.
54. Id. at n.53 (quoting ROBIN ALEXANDER, LOWER RIO GRANDE VALLEY: NEURAL TUBE DEFECTS IN TEXAS RURAL LEGAL AID, ECONOMIC AND ENVIRONMENTAL CONDITION IN THE LOWER RIO GRANDE VALLEY ALONG THE TEXAS-MEXICO BORDER (1993)); see also Clifford & Sheridan, supra note 1, at A9 (characterizing neural tube defects—which were occurring in unusually high rates outside of Brownsville, and of which anencephaly is an extreme form—as sometimes fatal malformations of the spine and brain).
55. Hanna, supra note 27, at 885.
58. Hanna, supra note 27, at 883.
59. Id.
development, landowners, or developers selling the land usually do so under a contract for deed arrangement, which prevents the buyer from acquiring actual title to the land until the final payment is received. In doing so, some colonia developers have taken advantage of a language barrier and their stronger bargaining position, and allegedly have charged an illegally high rate of interest. This has had the effect of prolonging payments on a lease for years.

II. Texas Law's Allowance of Colonias and Recent Attempts to Stop the Bleeding

A. Texas Law and Colonias-related Legislature

One factor that has allowed the continued proliferation of colonias is the Texas tradition of inactive county government and deep-rooted resistance to property regulation. The spirit of Texas' preservation of private property owners' rights is appropriately illustrated by an extremely "aggressive" takings bill, allowing a landowner to sue the government for compensation if a regulation reduces the value of his property by 25% or more.

The implementation of a new subdivision instantly creates a need for expansion of a local government's services, including, inter alia, streets, water and sewer lines, and educational facilities. One method local governments employ to accommodate such increased demands is in subdivision exactions, wherein developers provide certain capital improvements as a condition of subdivision approval. Accordingly, municipal or county regulations may require developers to provide roads, drainage, and access to public services, such as water, sewage disposal, and trash collection in order to gain approval for a project. The infrastructure's capacity to accommodate growth

60. Id. See infra notes 91-95 and accompanying text for an outline of recent Texas legislation to regulate contract for deed arrangements.
61. Among the many charges that the Attorney General alleged against developer Cecil McDonald (see infra notes 147-48 and accompanying text), in bankruptcy court were violations of the Texas Debt Collection Act, of the Texas Business and Commerce Code Deceptive Trade Practices Act, as well as common law usury, unreasonable debt collection efforts, and fraud. See In re D & A Realty, Inc., 179 B.R. 831, 835 (1994).
62. See Larson, supra note 6, at 203 (discussing the 'Texas tradition of inactive county government and "fierce self-reliance"').
64. JULIAN JUERGENSMEYER & THOMAS ROBERTS, LAND USE PLANNING AND CONTROL LAW 314 (West 1998).
65. Id. at 314-17 (providing a brief history of subdivision exactions).
usually controls or limits such growth. In addition, basic health, safety, and habitability guidelines and standards set parameters within which residences must be constructed.\footnote{66. Larson, \textit{supra} note 6, at 197.}

In Texas, no such requirements exist. In fact, the situation has been characterized as a "regulatory vacuum."\footnote{67. \textit{See, e.g.}, \textit{id.}} Unlike most states, Texas does not allow its counties the usual general ordinance-making power.\footnote{68. \textit{Id.} at 198-99 (citing article 9, section 1 of the Texas Constitution).} By strictly limiting its counties' regulatory powers, Texas preserves the rights of property owners to a greater degree than most states.


House Bill 1001 was originally to apply to every colonia lot in the state, including those already sold and occupied. Developers were successful, however, in constraining its application to select border counties.\footnote{72. Larson, \textit{supra} note 6, at 202 (citing telephone interview with Javier P. Guajardo, Special Assistant Attorney General, Texas Attorney General and Director, Colonias Strike Force (Sept. 14, 1995)). Developers also limited the State's delegation of county regulatory authority to counties on the border only. \textit{Id.} at 203 (citing telephone interview with Amy Johnson, Texas Low-Income Housing Information Service (Sept. 10, 1995)). The original House Bill 1001 was weakened by developers to the point that it gained their endorsement. Larson, \textit{supra} note 6 at 202.} In 1997, the Texas legislature amended LGC Chapter 232, which initially applied only to the seventeen most afflicted counties, to cover nineteen counties, and to all twenty-eight counties within fifty miles of the border by 1999.\footnote{73. Colonias Workshop Materials, \textit{supra} note 69, at 4-5.}
"reasonable effort" to provide access to utilities.\textsuperscript{74} The law was criticized in its early days because of its disappointing effect in practice.\textsuperscript{75} For one, the law did not apply to occupied lots. Thus, all current residents of colonias were no better off as a result. The bill's purpose was limited to restrict the spread of colonias, and thus current residents would need help in other legislation.

A major shortcoming of House Bill 1001 has been that it turns on the term "occupied," in relation to the lots.\textsuperscript{76} A developer may gain an extension on the time within which she must provide water and sewer service as long as lots are not occupied. Thus, the developer may still sell lots and simply restrict their occupation.\textsuperscript{77} Delay in the provisions of water and sewer service does not inhibit the sale of more lots.\textsuperscript{78} Once a developer sells a substantial number of the lots, he may remove any occupancy restrictions and allow lot owners to occupy their land.\textsuperscript{79} Meanwhile, no water or sewer service has been provided.

In addition, LCG section 232.042—created by House Bill 1001—allows variances from Subchapter B platting requirements.\textsuperscript{80} Provided that the developer conforms to a basic protocol, she may receive a variance if, inter alia, the developer can show that compliance with the House Bill 1001 requirements would prove "impractical."\textsuperscript{81} It would appear that, considering the difficulty finding potable well water and the distance of most colonias from the cities (and consequent expense of constructing a water main, sewer line, and power line), any developer would be able to establish a case of impracticability fairly easily.

Finally, LCG section 232.027, requires a developer to post a bond if he has not completed the installation of water and sewer service facilities on the date the developer applies for final approval of a plat.\textsuperscript{82} Such a bond would presumably insure the developer's eventual compliance with LGC Chapter 232. However, the commissioner's court enjoys discretion to determine the amount of the bond.\textsuperscript{83} Some commentators have asserted that this may allow

\begin{itemize}
\item \textsuperscript{74} Id. at 201 (citing TEX. LOC. GOV'T CODE ANN. §§ 232.032, 232.040(B) (Vernon 1995)).
\item \textsuperscript{75} See, e.g., Hanna, supra note 27, at 917-20.
\item \textsuperscript{76} Id. at 918. (citing Satterfield v. Satterfield, 448 S.W.2d 456, 459 (Tex. 1969)).
\item \textsuperscript{77} Id. at 919.
\item \textsuperscript{78} Id.
\item \textsuperscript{79} Id.
\item \textsuperscript{80} Id.
\item \textsuperscript{81} Id. (citing TEX. LOC. GOV'T CODE ANN. § 232.042(c) (Vernon Supp. 1996)).
\item \textsuperscript{82} Hanna, supra note 27, at 920.
\item \textsuperscript{83} Id. at 920-21.
\end{itemize}
developers to post a minimal amount, further undercuts the efficacy of House Bill 1001.  

Subsequent legislative sessions have buttressed the improved subdivision constraints introduced by 1995 House Bill 1001, and closed in on some developer loopholes. For instance, Senate Bill 1421, introduced in 1999, provided that House Bill 1001’s Subchapter B platting requirements apply to any subdivision of two or more lots that are intended primarily for residential use and that are located anywhere outside city limits in any of the twenty-eight counties within fifty miles of the Mexican border. Before this, Subchapter B only applied to areas within a city’s extraterritorial jurisdiction (ETJ). The ETJ of a city of 5,000 or more residents was five miles from the city’s borders. This left a great deal of rural land to be exploited by prospective and established colonias developers.

The most recent legislative session continued to implement laws to prevent more colonias. Following are highlights of some bills enacted in the 77th Legislative Sessions in 2001 and their potential effects.

House Bill 2033 modifies state water code Subchapter G to require sellers in most instances to notify the buyer, in either the sales contract or in a separate document, if and when there might be a delay in the responsible utility’s ability to provide water or sewer services to the lot to be purchased. Under this new law, if a seller does not comply with the procedure House Bill 2033 details to make a purchaser aware of possible delays or extra costs associated with water and sewer service, a buyer may file suit to recover all costs related to the purchase of the property plus interest and attorney’s

84. Id. Hanna cites, inter alia, a Dallas newspaper article (Colonia Profiteering: It’s Time to Toughen the Laws Again, DALLAS MORNING NEWS, Mar. 22, 1995, at A24) that asserts that relationships between elected officials and colonias developers undermine efforts by the state to stop colonias development. Id. at 921 n.213.


86. Id. at 1.

87. House Bill 2033 applies to areas located outside the “corporate limits of a municipality. H.B. 2033, 2001 Leg., 77th Sess. (Tex. 2001). While municipalities ordinarily provide water and sewer services within a city’s jurisdiction, areas outside such jurisdictions are typically served by private utilities, non-profit water supply and sewer service corporations, and special utility districts. Purchasers in these rural areas—particularly colonias—were usually unaware of extra expenses and/or delays involved in the installation of water and sewer service. STATE BAR OF TEXAS, LEGISLATIVE COMMITTEE, REAL ESTATE DIVISION, LEGISLATIVE UPDATE—SIGNIFICANT BILLS OF THE 77TH TEXAS LEGISLATURE AFFECTING REAL ESTATE, LENDING AND OTHER COMMERCIAL TRANSACTIONS, at 3 (Aug. 13, 2001) [hereinafter 2001 LEGISLATIVE UPDATE] (on file with the author).

fees. The effect of this is to prevent unscrupulous developers from deceiving buyers to believe that utilities will be provided "soon." This bill took effect September 1, 2001, and only applies to contracts entered into after that date.

Senate Bill 198, relating to contracts for deed, makes it much more difficult for a developer to quickly foreclose on property when a struggling colonian misses or is late on one payment. In essence, the bill implements a number of safeguards for the buyer. For instance, the seller must deliver default notices by certified or registered mail with a return receipt requested; purchasers now have sixty days from receipt of the default letter to try to cure their default; and the seller must provide an annual accounting statement to each purchaser by January 31 of each year (for the previous calendar year) or face a stiff $250 per day penalty. If effective, this bill should disable developers from canceling a colonian's lease upon one late or missed payment. Such immediate cancellation of one's lease is particularly unfair because timely payments under contract for deed produce no equity in the property, a resident's failure on one payment would trigger the forfeiture of the property. This bill took effect September 1, 2001, and affects all property purchased before or after that date, with small exceptions.

Finally, Senate Bill 873, applying to large border counties, among others, authorizes those counties to adopt more rigorous subdivision regulations for unincorporated areas. This amendment to LGC Chapter 232 effective September 1, 2001, also allows counties to contract with developers for public improvements.

Thus, while Texas legislation initially limped toward stopping the multiplication of colonias that lack basic infrastructure, it appears that legislation is currently implementing measures that may actually have a palpable preventative effect. Developers may continue to attempt to profit from creating subdivisions that provide no water, sewage, and paved roads, but the stakes are higher and recent legislation has made this brand of profiteering more difficult.

89. Id. at 4. Purchasers also may opt to sue for up to $5,000 plus reasonable attorney fees. H.B. 2033, 2001 Leg., 77th Sess. (Tex. 2001).
90. For a brief description of developers' empty promises of phantom future utilities, see supra note 32 and accompanying text.
91. 2001 LEGISLATIVE UPDATE, supra note 87, at 5.
92. Id.
93. See infra note 109.
94. See Larson, supra note 6, at 209.
95. 2001 LEGISLATIVE UPDATE, supra note 87, at 5.
96. Id. at 22.
97. Id. at 23. The county may pay up to 30% for public improvements. S.B. 873, 2001 Leg., 77th Sess. (Tex. 2001).
On the other hand, developers often create such colonias on "isolated rural roads, on abandoned farmland or desert scrub."\(^9\) Jane Scheidler, Border Colonias Coordinator for the Texas Natural Resource Conservation Commission, recently told a reporter, "[a] lot of colonias, you'd never find them unless you go with someone who knows where they are. . . . They're unpaved, have no signs."\(^9\) A developer may be able to sell all or most of the lots, then either "disappear" or dispose of her profits, possibly evading the penalties that would eventually follow. Many developers have successfully hidden their assets despite settlement agreements or court orders to pay.\(^10\)

In the meantime, colonians, many still without water or sewer systems, struggle to live a normal life. Various organizations have implemented funding sources in an attempt to provide assistance to current residents of colonias. Each will be examined in turn.

B. HUD and the Community Development Block Grant Program

The United States Department of Housing and Urban Development (HUD) provides Texas, New Mexico, Arizona, and California—the four U.S.-Mexico border states containing colonias—funding through its colonias set-aside provision:

The colonias set-aside is part of the State CDBG (Community Development Block Grant) program. In the State CDBG program, HUD makes annual grants to States, which then use the funds to make grants to units of local government. States must use their colonias set-aside to make grants to local governments to address conditions in colonias within 150 miles of the U.S.-Mexico border.\(^1^0\)

HUD reports that the funds that colonias receive from the CDBG program are generally allocated to water systems, sewers, and "housing assistance."\(^1^0\) This program is undoubtedly helpful, though the grants alleviate only part of the problem.\(^1^0\) While the set-asides topped $11 million in 1999, installing a local water supply system and waste treatment plant often costs this much or more.\(^1^6\) While HUD's

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98. Allan R. Myerson, *This is the House that Greed Built*, N.Y. TIMES, Apr. 2, 1995, §3 (Money and Business/Financial Desk), at 1 col.1.
100. See infra note 152 and accompanying text.
102. Id.
103. See Hughes, *supra* note 7 (reporting that Michael Lyttle, Governmental Relations Director at the Texas Department of Housing and Community Affairs' stated that the CDBG funds used for the colonias was $116,683 while the actual operating budget of $618,500 required redirection of funds from other agency resources).
program has been successful, the current conditions in Texas’ colonias require more attention and more funding.\textsuperscript{105}

C. **The Farmers Home Administration**

With funding from the U.S. Department of Agriculture, the Farmers Home Administration (FmHA) offers home loans to buyers who do not qualify for private loans.\textsuperscript{106} However, while funding housing for the United States rural population is a “nationally identified goal,”\textsuperscript{107} colonians are rarely eligible for this form of financial relief.\textsuperscript{108} Colonians’ general ineligibility is attributable to three chief factors: they lack clear title, they lack established credit, and the FmHA will not loan to buyers who purchase property under contract for deed arrangements.\textsuperscript{109}

D. **NAFTA’s Provisions: NADBank and BECC**

In addition to the environmental side agreement that the Clinton Administration attached onto the North American Free Trade Agreement (NAFTA),\textsuperscript{110} there exists a separate agreement concerning the border areas between the United States and Mexico. The North American Development Bank (NADB or NADBank) Agreement (funded equally by the United States and Mexico) aims to protect and preserve the environment in the border area. NADBank has focused primarily on projects related to potable water supply, wastewater treatment, or solid waste management on both sides of the border.\textsuperscript{111} The program initially received some criticism due to the

/news_frame.htm (last visited Jan. 11, 2002). A water supply and wastewater collection and treatment system that would benefit approximately 15,000 colonia residents in Mercedes, Texas, cost $11,159,154. \textit{Id.} at 12. Improvements and expansion to an existing water supply and wastewater systems in Roma Texas, benefiting 21,000 residents, will cost over $34 million. \textit{Id.} at 17.

105. Officials estimate the costs of needed infrastructure construction and improvements in Texas colonias exceeds $1 billion. \textit{See supra} notes 175-76 and accompanying text.

106. Luna, \textit{supra} note 33, at 34.

107. \textit{Id.} at 34 n.141 (citing U.S. Gen. Accounting Office, GAO/RCED-93-57, \textit{FmHA's Home Loan Program Not Meeting The Needs of All Rural Residents} 1 (1993)).

108. \textit{Id.}

109. \textit{Id.} Under a contract for deed, the buyer does not gain title to the land until the seller receives the final payment. FmHA's reluctance to offer loans to property purchased under contract for deed is likely due to the fact that developers occasionally lose title to the land while their buyers are making payments, and the buyers lose not only the payments they have expended, but also the property they thought they had purchased. This almost makes it appear to be a gamble with federal money; it is not surprising that contract for deed sales do not merit loans.

110. Matthiesen, \textit{supra} note 46, at 18.

fact that while it proposed a number of ostensibly helpful programs, it
did not implement the programs and was thus suspected of being a
political ruse.112

However, by August, 1996, the Border Environment
Cooperation Commission (BECC), the implementation arm of the
NADBank Agreement, had certified eight projects, and was
considering an additional sixty-nine projects for certification.113 Only
projects certified by BECC received financial assistance from
NADBank.114 The BECC’s reach has traditionally been within the
100-kilometer border area.115

Environmental groups had further criticized the BECC, claiming
that it only certified projects that were “financially feasible,” and that
NADBank approved loans only to creditworthy applicants, thereby
excluding colonials.116 NADBank, however, eventually got moving. In
1997, it established the Institutional Development Cooperation
Program (IDP) “to assist local utilities enhance [sic] their
performance and administrative capabilities.”117 The IDP Quarterly
Status report from June, 2001 boasts of having completed thirty-three
projects, as well as having sixty-six additional projects in progress as
of December 31, 2000.118

2001). Note on the name: the organization’s original acronym was NADBank; however,
the organization’s World Wide Web site currently employs both NADBank and NADB.
See http://www.nadbank.org/english/News_Updates/news_frame.htm (last visited Sept. 18,
2001). This note will use the original, more familiar acronym, NADBank.

112. Hanna, supra note 27, at 877 n.20 (citing Telephone Interview with Annie
Alvarado, Community & Government Affairs Officer, North American Development
Bank (Sept. 13, 1995)). While infrastructure improvement projects are being planned, no
projects had begun as of September 13, 1995 due to delays. Id.

113. Matthiesen, supra note 46, at 20-21 (citing Telephone Interview with Lisa Roberts,
General Counsel for North American Development Bank (June 27, 1996)).

114. Matthiesen, supra note 46, at 20.

115. See NADBank Overview, supra note 111. The sponsor of the proposed project is
required to submit an environmental assessment to allow the BECC to determine whether
the project meets the BECC’s criteria as necessitating a “high level of environmental
protection” for the area. Matthiesen, supra note 46, at 20 (quoting Border Env’t
Cooperation Comm’n, Guidelines for Project Submission and Criteria for Project
Certification 1, 9 (Sept. 1995)).

116. Matthiesen, supra note 46, at 21 (citing Public Citizen, NAFTA’s Broken Promises:
The Border Betrayed 3, 70 (Jan. 1996)).

117. Institutional Development Cooperation Program, Quarterly Status Report, June
news_frame.htm (last visited Jan. 11, 2002).

118. Id. The report also states that it has $8.06 million in funds for community projects.
Id. Among activities listed in Texas are a “water and wastewater rate study” in Del Rio,
Eagle Pass, Lower Valley, Mercedes, Roma, and San Benito, “management studies” in
various locations, and contract extensions in various areas. Id. at 8-9. IDP performed
many studies in Mercedes (in Hidalgo County, between Brownsville and McAllen, near
the Gulf of Mexico), including a solid waste financial model, infiltration/inflow analysis of
While the degree to which these studies will help alleviate the problems facing colonians remains to be seen, NADBank's recent activities inspire more confidence.\textsuperscript{119} With a total of forty-nine reported projects representing a $1.01 billion investment, NADBank appears to be proving its initial detractors wrong.\textsuperscript{120} Of the twenty-nine projects in the United States, four had been completed as of September 30, 2001, including part one of a three-part $98,350,600 wastewater plant in El Paso, Texas. In addition, builders had commenced construction on eleven projects in Texas, New Mexico, Arizona, and California.\textsuperscript{121}

Thus, it appears that NADBank has become effective in assisting colonias in need. In addition to providing funding from its resources, NADBank claims to have been instrumental in procuring private loans from alternate lenders and funds.\textsuperscript{122} The Texas Department of Health reports that as of late March, 2001, with the help of a total of $600 million in state and federal expenditures, 85\% to 90\% of colonias had potable drinking water, while the remainder were able to buy "suitable water."\textsuperscript{123} While this may be cause for optimism, the same Department of Health overestimates that "almost all residents" have either a direct connection to sewage or a septic tank.\textsuperscript{124}

At the same time, an Arizona newspaper noted that in February, 2001, only a staggering 12\% of homes in Texas' colonias had adequate sewer systems.\textsuperscript{125} While this 12\% represents an improvement over 1\% in 1992, officials in Texas realize there is still a long way to go.\textsuperscript{126} Scott Storment, director of the Colonia Initiative for the Texas Secretary of State, noted that Texas retains $200 million of the $600 million received from state and federal funds, and with this resource hopes to bring the percentage of homes with sewer systems up to 70\% to 80\%.\textsuperscript{127} Clearly, a problem persists today.

For example, Lydia Camarillo, a resident of a colonia called Donna, Texas, in the Rio Grande Valley, explained in 2000 that raw

\begin{thebibliography}{99}
\item[120] Id.
\item[121] Id. at 1-21.
\item[122] Id.
\item[123] Atkinson, supra note 5.
\item[124] Id.
\item[125] Allison Klein, "Colonias House the Poorest of the Poor," ARIZ. REPUBLIC, Feb. 25, 2001, A16. An expanded version of this article appeared several days earlier in a Baltimore newspaper. See Klein, supra note 48.
\item[126] Id.
\item[127] Id.
\end{thebibliography}
sewage seeps up into her house when it rains. Additionally, in El Flaco, a colonia twenty miles outside McAllen (near the Gulf of Mexico), heavy rains cause septic tanks to back up into the streets until the roads become impassable. This is one town where the school buses refuse to drive down the streets when it rains.

E. United States EPA

The United States Environmental Protection Agency (EPA) has also formulated a program to "identify and address, in a binational framework, environmental factors that pose the highest risk to human health so that exposure to such factors may be reduced." The EPA lists the nonexistent infrastructure and lack of basic services in colonias, including lack of safe drinking water and sewage disposal, in its list of binational objectives. The current Border XXI Environmental Health Workgroup (XXI Workgroup) was preceded by an oft-maligned 1992 Border Plan. With a new name and purportedly renewed resolve, the XXI Workgroup has begun to investigate health-related problems, particularly among children. As drinking water problems appear to be mostly under control among existing colonias, attention has shifted to colonias' sanitation problems, such as inadequate sewage disposal and the resultant third world diseases and lack of healthcare facilities. Among the EPA's 1998 and 1999 projects are a Texas Neural Tube Defect Project, an El Paso Children's Respiratory Health Study, a Texas Border Health Survey, and an Investigation of Systemic Lupus Erythematosus in


130. Id.


132. Id.

133. See, e.g., Hanna, supra note 27, at 897-99 (noting that the Border Plan allocated hundreds of millions of dollars from the United States and Mexico, but lacked "identifiable commitments," and was criticized as being a political "tool to promote free trade").


135. Atkinson, supra note 5.
F. Texas Programs

Before the $600 million state and federal funding package arrived, Texas endeavored to solve the problems in the colonias in a 1989 program entitled the Economically Distressed Areas Program (EDAP). The EDAP seems ideal on paper. Under the program, counties are required to adopt a set of "model rules," which were amended in 1991, 1995, and 2000. Under these rules, counties must first supply sewage facilities and water to the communities in need in the county, and second, prohibit subdivision of land into lots smaller than five acres unless there is an adequate water supply. Upon compliance with the EDAP, both the county and its colonia residents become eligible to receive state funds for environmental infrastructure improvements.

The vast funds that were available, yet were not spent, reflect the EDAP's shortcomings in practice. Less than half of nearly $700 million in available funds had been spent or allocated to projects by 1993. Further, even when funds were spent or allocated, the relief only applied to entire subdivisions; individual residents had to finance their homes' personal water and wastewater hookups themselves.


138. Hanna, supra note 27, at 906.

139. Id. at 907-08; see also TEX. WATER CODE § 16.343 (Vernon 2000) (outlining the year 2000 version of the model rules)

140. Hanna, supra note 27, at 907.

141. Id.

142. Id. at 908.

143. Id. The exact figures were $696 million in available funds, $400 million of which were designated for use. Id. Less than half of that $400 million was actually spent. Id.

144. Id. at 908-09. There were some public funds for individual households; however, the $80 million demand by far outweighed the $17 million supply. Id. Texas Local Government Code section 232.0085, entitled Cancellation of Certain Subdivisions if Land Remains Undeveloped, provides that the commissioners court of a county along the border may, after notice and hearing, cancel any subdivision on which improvements have not begun (as of the date of enactment of the bill), which appear likely to be developed as a colonia. TEX. LOC. GOV'T. CODE Ann § 232.0085 (Vernon 1999).
A developer may avoid cancellation of his subdivision per Texas Local Government Code section 232.0085 if she can prove inability to comply with the model rules or if she had begun construction by the time that this law was enacted in 1994. As with House Bill 1001, this statute allows the developer a loophole: if the developer can demonstrate that she is able to comply with the model rules, the court may not cancel the approved subdivision under this section.

The Texas Attorney General also created a Colonias Strike Force, under which the state was to sue developers and counties that did not adopt the model rules. While this program did achieve moderate success, recovering millions of dollars in a number of victories, many developers actually avoided paying the millions that they owed.

For example, Blas Chapa, a developer, settled the case against himself, his wife, and another couple, agreeing to pay $21.6 million to a non-profit organization to benefit his colonias, but then somehow evaded the Attorney General. Chapa, a former judge in Starr County, had approved subdivisions as a judge, allegedly unaware of actual existing regulations regarding paving, sanitation, or sewage. Probably realizing the lucrative potential, Chapa later became a developer himself, admitting in a deposition that he had sold plots of land in a former dump, which, by some indications, was still in use. Attorney General Dan Morales, who established the Colonias Strike Force, commented, “[t]he existence of those developments owes to two factors... [t]he first is greed... [t]he second is corruption.” Chapa is only one of many developers who have managed to hide their assets when (or before) ordered by the court to pay.

The case of Cecil McDonald likely became a model for what the Attorney General wished to attain in every Colonias Strike Force suit. A bankruptcy judge directed that McDonald's $19 million in civil penalties be converted into funds for improving McDonald's two

145. Hanna, supra note 27, at 908-09.
146. See supra notes 70-84 and accompanying text.
147. Hanna, supra note 27, at 911.
148. Id. at 912-13.
149. Id.
150. Myerson, supra note 98.
151. Id.
152. Id. While Morales' Colonias Strike Force has brought some corrupt and opportunistic developers to justice, it is difficult to imagine how someone as prominent in the community as Blas Chapa, a former judge with an ostentatious three-story mansion (in a county that had the lowest median family income in the entire United States at the time), can evade a $21.6 million settlement agreement. Id.
153. See Robert Elder Jr., Cleaning up the Colonias: AG Uses Bankruptcy to Help Residents, TEX. LAW., Jan. 30, 1995, at 1 (discussing developers' frequent success in hiding their assets); True, supra note 7.
McDonald's case involved, inter alia, a waste facility that pumped raw sewage directly into the Rio Grande, and an incident in which one of his employees was lowered into a collapsed waste treatment plant without a mask, and hauled up dead. Overall, while the Colonias Strike Force managed to tally a number of victories, it appears to have been considered ultimately unsuccessful.

Finally, Texas attempted to implement its own self-help plan. Under the plan, financial assistance was made available to low-income residents, including those of the colonias, but with one remarkable requirement: the applicants must have already obtained water service and wastewater disposal. This requirement put most potential candidates in a sort of catch-22, which ultimately defeated the purpose of the program. Thus, while Texas physically engaged in ostensible attempts to curb the growth of colonias, and to help the current residents, it appears that its programs were a thinly veiled act of semantics to placate concerned citizens and colonians. Additionally, some commentators assert that part of the reason Texas has been so slow to aid the plight of the colonians is because of an underlying racial bias.

III. Mexico's Approach to Handling Its Colonias

While colonians may not be able to trust some developers, a condition similar to today's colonias on the United States side of the border has existed outside Mexico City since at least the 1950s. Unincorporated areas surrounding the city became inundated by explosions of illegal, spontaneous, self-built houses inhabited by poor working families. These unplanned, makeshift subdivisions lacked infrastructure and access to basic services, not dissimilar from the United States colonias. A key difference, however, was that the

155. Myerson, supra note 98.
156. Hanna, supra note 27, at 913-14.
157. Id. at 914.
158. Id. at 915.
159. Id. At the time, almost no colonians had access to such water—they sought the loans to obtain water and/or sewage disposal. Id.
160. See Larson, supra note 6, at 204-05, 222-28 (discussing the roots of Texas' racial bias and the pervasive anti-Mexican prejudice in Texas); see also Linda Gomez, On the Outskirts of El Paso, 20,000 Survive Without Water, LIFE, Nov. 1987, at 152 (relating a now-infamous quote by John Hickerson, general manager of El Paso's water utility, as he argued against a bond initiative that would provide water to El Paso area colonias: "You can bring those people water, but you can't make them bathe").
161. Hanna, supra note 27, at 883-84
162. Larson, supra note 6, at 194-95.
163. Id.
colonias in Mexico, termed *fraccionamientos* (subdivisions), consisted of squatters and were illegal.  

While the police originally attempted immediate eviction of squatters from the land, by the 1960s, Mexico’s attitude began to shift toward tolerance and/or implied encouragement of squatter communities.  

The following self-help approach gained favor in Mexico, and both the national and state governments now actually offer residents of these makeshift homes assistance in legalizing their new homes.  

The government purchases the land on which the squatters have installed a shelter and sells it to the resident at a below-market price over a term of many years, during which the squatter-come-title-holder may repay.  

Once the resident’s dwelling is legitimized, the government continues to help by providing electricity, paved roads, street lights, water and sewage systems, and sidewalks.  

Residents are charged for the improvements, but through tax and fee assessments.  

Perhaps a key aspect to this system, residents are also asked to help pay for these improvements by performing the manual labor required to install the necessary services.  

This system works to an entirely mutual benefit, providing every party with that which it seeks. The squatters gain a legal home to which they hold title, with services and infrastructure; the government gains from the increased tax base and implements low-cost housing by tapping into an otherwise unavailable labor market.  

It is not surprising that *colonias populares* were the most favored form of low-income settlement in the Mexico City region in the mid 1970s.  

Because of the notoriety of this system in Mexico, many residents in United States colonias may patiently anticipate the eventual implementation or importation of a similar system for services and basic infrastructure.  

In fact, some groups have taken this idea a step further, and established community organizations, only to be rebuffed by the local government when attempting to display their vigor and

164. *Id.* at 195. By contrast, a legal alternative also existed in the form of *colonias populares*, or *people’s neighborhoods* (rough translation). *Id.* Because residents purchased the land in these legitimate neighborhoods, the Mexican government mandated basic infrastructure and services. *Id.* Despite this option, many poor Mexicans chose to become squatters because enforcement was notoriously weak. *Id.*

165. *Id.*

166. *Id.*

167. *Id.* at 195-96.

168. *Id.* at 196.

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.* The term *colonias populares* is presumably granted upon *fraccionamientos* after they are legitimized.

173. *Id.*
enthusiasm toward self-help and improvements to their neighborhoods.\textsuperscript{174}

IV. Future Outlook and Failed Bills

While the quality of life has improved for colonians during the last ten years, the battle is far from over. In 1995, Texas state officials estimated that the ultimate cost of providing only sewer and water to the colonias would approach $1 billion.\textsuperscript{175} Estimates concerning more comprehensive infrastructure place the total cost close to $2 billion.\textsuperscript{176} At the end of 2001, a majority of colonians did not yet have what any regulated area would expect as the minimal basic infrastructure. Most residents were still without proper sewage disposal and garbage removal services.

The population in the border areas continues to swell as industry in this region thrives.\textsuperscript{177} Although proliferation of new colonias appears to have slowed somewhat,\textsuperscript{178} it has not ceased entirely. New colonias, though more difficult to develop in open view, are hard to trace; their founders—the developers—have no annual reports or traded shares, and most, if not all, transactions are in cash.\textsuperscript{179} Colonias are often located on isolated, difficult to find roads.\textsuperscript{180} New colonias may continue despite new legislation that tightens regulations.

Mexico’s model appears to have worked well for years. As will be detailed below, some members of Texas legislature likely realized that a similar symbiosis is possible in the United States as well. It is important, however, to consider the chief differences between the Mexican system and the situation in Texas. First, in Texas, the residents are actually paying for their land, and they believe under contract for deed that they have or are working toward legitimate title to a defined plot of land. In Mexico, the residents are illegitimate squatters.

\begin{itemize}
  \item \textsuperscript{174} Id. at 197.
  \item \textsuperscript{175} Allen Myerson, \textit{Sewers and Clean Water a Must at Border Housing, Texas Says}, N.Y. TIMES, June 20, 1995, at D8.
  \item \textsuperscript{176} Hanna, \textit{supra} note 27, at 924.
  \item \textsuperscript{177} Klein, \textit{supra} note 48 (stating that South Texas is, as of February 21, 2001, the third-fastest growing region in the country); Martin, \textit{supra} note 20 (noting that “the combined population within the largest of Texas’ border counties and its Mexican counterparts has increased to more than 13 million people”).
  \item \textsuperscript{178} The number of Texas colonias jumped from 1,193 in 1992 to 1,436 in 1995. Matthiesen, \textit{supra} note 46, at 3. By contrast, many estimate that the number in 2001 is approximately 1,500. \textit{See} Atkinson, \textit{supra} note 5. Other sources, however, have estimated that there were as many as 1,600 colonias in Texas in late 1999, and approximately 1,800 in 2001. \textit{See}, e.g., \textit{supra} note 5.
  \item \textsuperscript{179} Myerson, \textit{supra} note 98.
  \item \textsuperscript{180} \textit{See supra} notes 98-99 and accompanying text.
\end{itemize}
Second, a Mexican-type system in Texas may even encourage developers to establish more colonias. It could create the appearance that the government is systematically legitimizing outlaw subdivisions, and thereby sanctioning them, implicitly condoning their perpetuation.

Third, in Mexico, the *fraccionamientos* were clustered around Mexico City, likely closer to facilities than many of Texas' colonias. Many Texas colonias are tucked away on a rural road, in a wash or former dump, or on isolated farmland. Thus, the cost of installing the infrastructure would be substantially more than it would be in Mexico. The cost actually may be so great that years and years of taxes and fees would not make up the expense of creating the facilities. For example, a single project that entails the construction of a wastewater collection and treatment plant to service 6000 residents in Alton, Texas, will cost $14,466,865, according to NADBank figures.\(^{181}\) If every citizen were to pay $5 per month in a tax to cover the cost of just the Alton, Texas wastewater plant, repayment would take forty years. The cost seems even more prohibitive when adding the funds required to provide drinking water, electricity, and paved roads to this total.

In addition, the residents of these colonias may not have adequate income to pay the taxes that would cover the expense, however minimal the installments may be.

While a direct copy of Mexico's solution appears an improper fit in Texas, one critical element of the Mexican program nearly made its way into Texas in 2001. House Bill 2776 would have added to Texas' Water Code the Colonia Self-help Program.\(^{182}\) The bill passed the House, but the Senate promptly referred it to its Business and Commerce Committee, where it quietly died.\(^{183}\) If enacted, House Bill 2776 would have created an account from which funds could be drawn to reimburse non-profit organizations engaged in self-help water, wastewater and platting projects. Reimbursable expenses included construction, facility planning, platting, surveying, engineering, and those for the purchase of necessary equipment, provided that the organization applied for a reimbursement grant.

Although House Bill 2776 did not pass in 2001, the fact that a self-help program was proposed illustrates that this is the most attractive and applicable aspect of the Mexican system. The bill

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183. Id. The Senate's companion bill, S.B. 1501 (virtually identical) suffered a similar fate in the Business and Commerce Committee.
noted that "many residents of colonias are motivated to improve their situation and have worked with nonprofit organizations on self-help projects to build their own infrastructure, ultimately saving on the total cost of water and wastewater projects . . . ." To the degree that residents can perform the work, this will defray the costs of installing the basic infrastructure, and preserve the supplementary government funds for other colonias in need or for other projects. Because it appears that water and wastewater facilities will eventually be implemented (as they are, one by one as NADBank-related projects), it seems sensible to take advantage of this resource.

As the Texas Legislature affirms, most articles and descriptive pieces written about the people inhabiting colonias characterize the residents as hard-working and honest, striving for a better life. This non-Levantine society, if true, implies a ready willingness to perform labor. Because many of these residents are agricultural workers, their seasonal occupation may provide them with extended periods of time during which they should be available to work on developing their infrastructure.

While House Bill 2776 would have facilitated building the lacking infrastructure in existing colonias, the failed House Bill 2768 would have approached from a different angle. House Bill 2768 would have amended Title 7 of the Local Government Code by adding a Chapter 246, entitled "Responsibility for Provision of Sewage Drainage and Water Supply Services to Colonias." This bill, which died without fanfare in the House's Land and Resource Management Committee, assigned responsibility to municipalities and counties to provide an adequate sewage drainage and water supply system to colonias that lacked them.

Pursuant to the proposed act, an existing colonia that lacked adequate sewage drainage or water supply systems was to provide notice of its condition to the nearest municipality. The municipality was then required to pay the county 50% of the cost necessary to implement the appropriate system. The county was to pay the other half, and the municipality then had the option of assuming control of

185. One study tracking the monthly payments of a small group of colonias residents found that colonians are exceedingly diligent in making timely payments on their contracts for deed. Larson, supra note 6, at 211.
187. Id.
188. Id.
189. Id.
the new infrastructure. If the municipality opted to do so, it would be required to reimburse the county for its expenses related to the project. If the municipality refused to assume control, the county would be solely responsible for providing service to the colonia, though the municipality would not be reimbursed for its 50% donation.

House Bill 2768 also applied new developments. The bill, which distinguished between subdivisions within one mile of a municipality and those that were beyond, would have transferred some of the costs of providing water and wastewater systems to the developer. For developments within one mile of a municipality in which a lot was subdivided into three or more parcels, the owner of the property would have been required to contribute 50% of the cost of installing water and wastewater systems. Because colonias generally exist some distance away from city limits, the provision addressing properties developed beyond one mile of any municipality is of primary interest. In any border county, a developer who subdivided this category of property would have been required to apply to the nearest municipality for the provision of sewer and water service, and to insure that adequate services were provided to each parcel proposed for the subdivision. The owner would also be required to contribute 100% of the costs for the installation and provision of these services.

This bill, if enacted, apparently would have prevented the creation of any new subdivisions without basic infrastructure: the end of new colonias. However, a final provision, reminiscent of the potentially porous colonias-related legislation such as House Bill 1001 from 1995, rendered House Bill 2768 virtually ineffective. This provision exempted owners from the requirement to fund the installation and provision of water and sewer systems if the cost of doing so exceeded 25% of the value of the property. When most projects appear to cost millions or tens of millions of dollars to service a small cluster of colonias, there appears a substantial likelihood that a developer would often qualify for the exemption here.

190. Id.
191. Id.
192. Id.
193. Id.
194. Id.
195. Id.
196. Id.
197. Id.
198. Id.
House Bills 2776 and 2768, if passed, would have apparently solved the problem facing existing colonias, and while H.B. 2768 fell short of checking the spread of new infrastructure-less colonias, Senate Bill 517\textsuperscript{200} may have helped. Senate Bill 517 added a new chapter to Title 7 of the Local Government Code entitled "Regulation of Land Development in Certain Counties."\textsuperscript{201} The bill, which failed, would have granted the commissioner's court more regulatory authority in border counties.\textsuperscript{202} The commissioner's court would have had the ability to regulate development by creating standards relating to maximum densities (including the size of lots) and specific dimensions of buildings on lots, and by adopting building codes to promote safe and uniform building, plumbing, and electrical standards.\textsuperscript{203}

While the authority that would have been granted in Senate Bill 517 would have proven useful, the pressing problems of existing colonias appear to have been completely ignored. That is, the commissioner's court would likely be much more effective in controlling the creation of more subdivisions lacking basic infrastructure if it was granted the regulatory authority to insure that each new lot has adequate water and wastewater.

Thus, while recent legislation appears to increase the court's power in preventing the creation of a colonia lacking basic infrastructure, the bills that would have cut to the heart of the problem failed. Meanwhile, the population on the border continues to grow, and the demand for affordable housing remains high.\textsuperscript{204} Incentive remains to attempt the cultivation of sizable profits from developing colonias without basic infrastructure. It is as important as ever to control their growth.

Federal and state funding programs supply vital funds that slowly meliorate the disheartening situation in today's Texas colonias, yet the definitive moves to stop their spread and end the current conditions have not yet been made. With hope, state and federal programs will continue to chip away at each problem today's colonias face. Texas' next legislative session will likely address colonias once again, and perhaps step further toward eliminating the need for the term to carry any bad connotation.

\textsuperscript{201} Id.
\textsuperscript{202} Id.
\textsuperscript{203} Id.
Conclusion

Texas colonias illustrate a shocking extreme in United States living conditions. Most citizens would find it unsettling to know that fellow citizens live among squalor and third-world diseases. This is partly due to the particular conditions of the times and places in which these events have occurred. With the Mexican border area a protracted boomtown, drawing hordes of willing workers and opportunistic developers in a regulatory climate that has allowed substandard housing, we witness an extreme in the land use framework. The situation appears to have passed its nadir, and today, many federal and state sources contribute to helping correct the problems that many residents of Texas border counties face. Still, all the attention devoted to mending this unfortunate situation falls well short of solving the problem definitively.

The Texas Legislature has addressed colonias and taken some laudable steps, however it has failed thus far to deliver a knock-out blow. There are plenty of political reasons to stall the cessation of both the tolerance of the current conditions in many colonias and the allowance of more unregulated subdivisions, however there are two basic reasons that scream to address this problem once and for all, definitively: people do not deserve this and we can prevent it.