



THE JAMES A. BAKER III INSTITUTE FOR PUBLIC POLICY
RICE UNIVERSITY

TESTIMONY BEFORE THE TEXAS SENATE COMMITTEE ON
TRANSPORTATION AND HOMELAND SECURITY

THE TEXAS STATE SENATE HEARING ON HOUSE BILL 13

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BY

JOAN NEUHAUS SCHAAN
FELLOW IN HOMELAND SECURITY AND TERRORISM
JAMES A. BAKER III INSTITUTE FOR PUBLIC POLICY
RICE UNIVERSITY

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This is an unpublished op-ed written May 11, 2007, with opinions in regard to Texas HB 13 that Joan Neuhaus Schaan presented to the Texas Senate Transportation and Homeland Security Committee in testimony on May 22, 2007. Schaan's testimony resulted in the removal of grant forfeiture provisions from the bill that jeopardized all homeland security grant funding for the Houston-Harris county region. The remaining portion of HB13 was incorporated into Texas SB 11 which passed in the Senate, effective September 1, 2007.

The greatest threat to Houston's security has been flying under the radar in Austin. House Bill 13 has passed the House and is now under consideration in the Senate. The bill's provision for homeland security grants could have dire consequences for Houston by depriving the Houston-Harris County region of funds dedicated to its safety.

Houston is on the front lines of the war on terror and is one of the most strategically significant metropolitan areas in the nation, given its role in energy and chemical manufacturing. Although conventional wisdom would emphasize the importance of the United States as a safe haven for fund raising and recruiting, we must recognize the fact that extremists are known to have lived in and traveled through our region, and their organizations have shown the means, knowledge, capabilities, and motivation to carry out terrorist operations. In recognition of this, the entire community has worked in unison to support a wide range of security initiatives, many of which have been funded with federal grants. Persistent and tireless efforts of all elected officials, first responders, private industry and independent advisory councils over a period of years have been the cornerstones of the success in grant awards.

Our community counts on protection funded by grants. In a period of tight local budgets, especially after the strains of Hurricanes Katrina and Rita, homeland security grants are vital to regional preparedness. In 2006 alone Houston and Harris County received approximately \$20 million in grant funding for first responder training and equipment, as well as public preparedness. In the last two years, the region has received approximately \$25 million to secure the Houston Ship Channel. House Bill 13 puts these and all homeland security grants at risk of forfeiture.

Generally speaking, federally funded homeland security grants can only be forfeited for gross misconduct in the administration of the grant funds given the guidelines and provisions of the grant. House Bill 13, however, stipulates additional conditions for federal grant ‘compliance’ tied to local enforcement of federal immigration laws. Federal agencies are responsible for enforcing of federal law, while state agencies are responsible for enforcing state law. Each should not be responsible for enforcing the others’ laws and subject to extreme penalties for not doing so.

The cost for not enforcing the federal laws could be very high for communities such as Houston that have spent years obtaining federal grants for homeland security. As stated in the bill, *“the state governmental entity or political subdivision shall promptly forfeit and repay to the appropriate entity all funds granted to the state governmental entity or political subdivision for purposes related to homeland security, including border security.”* “The mere existence of the forfeiture provision could cause grantors to shy away from granting funds to our region.

Federal funding received from the Department of Homeland Security is determined by established formulae and directed toward DHS priorities in its national strategy. In addition, jurisdictions also may have received grants from nongovernmental entities and the citizenry. There would appear to be no basis for which the State Government can mandate these funds be returned, as long as the governmental entity has met the guidelines set out by the grantor. House Bill 13 places the Governor’s Office of Homeland Security in a position of preempting federal strategy. One can only assume the homeland security grant provision was incorporated into the bill to provide the Governor’s Office with a mechanism of “creative financing” for unfunded mandates at the expense of local communities, such as Houston.

Of further note, the Texas Attorney General’s Office, being placed in the position of interpretation the substance of the proposed law, will be passing a legal opinion on violations of federal statutes.

What also remains to be seen is if this law will serve as a precedent to require state peace officers to enforce other federal laws. The mandate to enforce federal laws entails an enormous

expenditure of resources in time, manpower and money. This burden will be carried by the local citizenry without specific approval of the U.S. Congress, without full reimbursement to communities of expenses, and without requirements that federal agencies remove illegal aliens from local custody and facilities in an expedited fashion. As the bill comes before the Texas Senate, homeland security grants should not be tied to state enforcement of federal immigration law.