
**HOUSE COMMITTEE ON DEFENSE AFFAIRS & STATE-FEDERAL RELATIONS
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2008**

**A REPORT TO THE
HOUSE OF REPRESENTATIVES
81ST TEXAS LEGISLATURE**

**FRANK J. CORTE, JR.
CHAIRMAN**

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Committee On
Defense Affairs & State-Federal Relations

January 9, 2009

Frank J. Corte, Jr.
Chairman

P.O. Box 2910
Austin, Texas 78768-2910

The Honorable Tom Craddick
Speaker, Texas House of Representatives
Members of the Texas House of Representatives
Texas State Capitol, Rm. 2W.13
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Committee on Defense Affairs & State-Federal Relations of the Eightieth Legislature hereby submits its interim report including recommendations and drafted legislation for consideration by the Eighty-first Legislature.

Respectfully submitted,

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Frank J. Corte, Jr.

A handwritten signature in black ink, appearing to read "Juan Escobar", written over a horizontal line.

Juan Escobar

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Abel Herrero

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Tommy Merritt

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Rick Noriega

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Juan Garcia

A handwritten signature in black ink, appearing to read "Terri Hodge", written over a horizontal line.

Terri Hodge

Paul Moreno

Richard Raymond

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INTRODUCTION

At the beginning of the 80th Legislature, the Honorable Tom Craddick, Speaker of the Texas House of Representatives, appointed nine members to the House Committee on Defense Affairs & State-Federal Relations. The committee membership includes Frank J. Corte, Jr., Chairman; Juan Escobar, Vice-Chairman; Rick Noriega, CBO; Juan Garcia; Abel Herrero; Terri Hodge; Tommy Merritt; Paul Moreno; and Richard Raymond.

During the interim, the Committee was assigned six charges by the Speaker: 1) Study and make recommendations to address the need to identify essential personnel necessary to enter a disaster area to restore critical infrastructure; 2) Monitor the United States Congress for the enactment and rules regarding the Veteran's Mental Health Outreach and Access Act of 2007. Explore coordination with the community based clinics in Texas that would be able to provide the prescribed services to veterans; 3) Review and monitor the Veterans Disability Benefits Commission's Inspector General Disability ratings report. Make recommendations for what the state can do to implement the findings of the report and to assist our veterans; 4) Examine Chapter 431, Government Code, to determine the feasibility of the Texas State Guard and Texas National Guard, while designated on state active duty, to assist in interagency planning and operational coordination under the Governor's Division of Emergency Management and the Texas Secretary of State; 5) Examine the State of Texas' preparedness level to handle a public health emergency. (Joint Interim Charge with the House Committee on Public Health); and 6) Review the current requirements for driver's license and identification card holders in Texas in order to recommend legislative measures to prevent these documents from being used to further criminal activities and recommend ways to enhance homeland security. (Joint Interim Charge with the House Committee on Transportation).

Chairman Corte appointed subcommittees for the two joint charges. Hearings were held on each of the charges. The committee, and its subcommittees, have completed their hearings. The House Committee on Defense Affairs & State-Federal Relations has adopted and approved all sections of the final report.

The Committee wishes to extend its gratitude to the agencies, associations and individuals who contributed their time and effort on behalf of this report.

HOUSE COMMITTEE ON DEFENSE AFFAIRS & STATE-FEDERAL RELATIONS

INTERIM STUDY CHARGES AND SUBCOMMITTEE ASSIGNMENTS

- CHARGE ONE Study and make recommendations to address the need to identify essential personnel necessary to enter a disaster area to restore critical infrastructure.
- CHARGE TWO Monitor the United States Congress for the enactment and rules regarding the Veteran's Mental Health Outreach and Access Act of 2007. Explore coordination with the community based clinics in Texas that would be able to provide the prescribed services to veterans.
- CHARGE THREE Review and monitor the Veterans Disability Benefits Commission's Inspector General Disability ratings report. Make recommendations for what the state can do to implement the findings of the report and to assist our veterans.
- CHARGE FOUR Examine Chapter 431, Government Code, Chapter 431, to determine the feasibility of the Texas State Guard and Texas National Guard, while designated on state active duty, to assist in interagency planning and operational coordination under the Governor's Division of Emergency Management and the Texas Secretary of State.
- CHARGE FIVE Examine the State of Texas' preparedness level to handle a public health emergency. (Joint Interim Charge with the House Committee on Public Health)
- CHARGE SIX Review the current requirements for driver's license and identification card holders in Texas in order to recommend legislative measures to prevent these documents from being used to further criminal activities and recommend ways to enhance homeland security. (Joint Interim Charge with the House Committee on Transportation)

CHARGE ONE:

Study and make recommendations to address the need to identify essential personnel necessary to enter a disaster area to restore critical infrastructure

INTERIM STUDY AND BACKGROUND

The Governor's Division of Emergency Management (GDEM) is charged with developing and carrying out a comprehensive, coordinated all-hazard emergency management program for the State to safeguard its citizens and infrastructure.¹ Further, it is charged with assisting cities, counties, and state agencies in planning and implementing their emergency management programs. A comprehensive emergency management program includes pre and post-disaster mitigation of known hazards to reduce their impact; preparedness activities, such as emergency planning, training, and exercises; provisions for effective response to emergency situations; and recovery programs for major disasters. Chapter 418 of the Texas Government Code lays out an extensive set of specific responsibilities assigned to the Division.²

GDEM is also responsible for supporting development of the Governor's Homeland Security Strategy and implementing programs and projects to achieve state homeland security goals and objectives. The Governor has designated the Division to serve as the State Administrative Agency (SAA) for US Department of Homeland Security homeland security grant programs in Texas.³ By Texas Executive Order RP57, the Governor's Division of Emergency Management shall develop and implement a statewide hurricane evacuation and shelter plan.⁴

Hurricane Rita hit the Texas Gulf Coast on the morning of September 24, 2005 - less than one month after Hurricane Katrina hit Louisiana. The Governor's Task Force on Evacuation, Transportation and Logistics was appointed to document the lessons learned from the Hurricane Rita evacuation, identify key challenges of urban area mass evacuations in Texas, and recommend improvements to state, regional, and local evacuation planning and execution.⁵

One problem that was exposed in the aftermath of the storm was the lack of a comprehensive system in place to identify the personnel essential to infrastructure repair. At the time, many local authorities and companies had systems in place to identify essential personnel, but the procedures varied widely. Local jurisdictions developed their own re-entry criteria. Some critical infrastructure workers had to pass through multiple local jurisdictions, each with a different set of re-entry criteria, which made it very difficult for critical infrastructure workers to gain access to the affected area in a timely manner. It is important that there be a uniform re-entry criteria for essential personnel entering a closed emergency area post disaster event. The system needs to be effective, efficient, responsive and flexible.

On June 17, 2008, the committee met in Austin to take testimony on the charge. The committee heard testimony from private sector representatives of the Oil and Gas Association, the Chemical Council, the American Radio Relay League and Valero Energy. Additionally, representatives of the Governor's Division of Emergency Management and the Governor's Office of Homeland Security addressed the committee. Written testimony was delivered to the committee from L-1 Identity Solutions, Inc., a private business that provides a myriad of identification services.

In testimony presented to the committee, representatives of the Texas Chemical Council, Texas Oil and Gas Association and Valero agreed that the key components of a re-entry plan include open communication and flexibility. Any system put in place for a state credentialing program should ensure that our state's critical infrastructure is operational as quickly as possible following a mass evacuation.

Currently, representatives of critical infrastructure entities, such as refineries and terminals, are successfully working with their local jurisdictions where credentialing is required.

It is impossible to foretell what skilled personnel will be essential before any specific disaster situation. Who is essential is dependent on the specific situation after it has been assessed. It is quite likely that personnel from other areas of the state, other states and even countries will be essential. Because these essential personnel will have to travel across several impacted local jurisdictional boundaries to their final destination, the plans need to be flexible enough to handle the varied and unpredictable situations.

Those offering testimony at the hearing stated that they have positive, open communications with the Governor's Office of Homeland Security and the Governor's Division of Emergency Management. They also have a presence at the State Operation Center and through participation in the Critical Infrastructure/Key Resources Council. All of those addressing the committee support the concept of letters from the state and companies identifying essential personnel and contractors, along with proper identification, to facilitate their access back into critical infrastructure facilities after a mandatory evacuation. It was also agreed that the credentialing system must be simple, flexible, effective, and independent of technology, which will likely be unavailable.

Attachment 12 to the Texas Hurricane Evacuation and Shelter Plan establishes re-entry operations for the state of Texas. (See Appendix A)

COMMITTEE FINDINGS AND RECOMMENDATIONS

The House Committee on Defense Affairs & State-Federal Relations has found that a key component of preparedness planning includes deliberate plans to ensure the continuation of essential functions through a wide range of incidents. Due to the potential devastation of a catastrophic hurricane event and impact on local coastal and inland communities, the state must be prepared to assist with re-entry operations. Re-entry operations must include provisions for federal, state, local, private, public and volunteer organizations and agencies that provide critical services to first responders. Essential functions must be restored quickly and efficiently, while maintaining public safety and security.

The committee has found that the State of Texas is taking a comprehensive and coordinated approach to statewide preparedness for all disasters. State officials continue to update their processes and have made improvements as a result of previous successful operations. Because of ever changing needs and the importance of flexibility, the committee finds that the Governor's Division of Emergency Management and the Governor's Director of Homeland Security should continue to have the authority and flexibility to adopt standard operating procedures for re-entry of essential personnel.

CHARGE TWO

Monitor the United States Congress for the enactment and rules regarding the Veteran's Mental Health Outreach and Access Act of 2007. Explore coordination with the community based clinics in Texas that would be able to provide the prescribed services to veterans.

INTERIM STUDY AND BACKGROUND

In May, 2007, S.38, The Veterans' Mental Health Outreach and Access Act of 2007, was introduced in the US Senate. It would require the Secretary of Veterans Affairs (Secretary) to establish a program to provide readjustment and mental health services to veterans of Operations Iraqi Freedom and Enduring Freedom, particularly those who served in such Operations while in the National Guard and Reserves. The program requirements included in S.38 were: (1) peer outreach and support services; (2) readjustment counseling and related services; and (3) mental health services. It further required the Secretary to provide to immediate family members of veterans, during the three-year period following their return from deployment, education, support, counseling, and mental health services to assist in: (1) readjustment to civilian life; (2) recovery from an injury or illness incurred during such deployment; and (3) readjustment of the family following the veteran's return.⁶

It authorized the Secretary to contract with community health centers to provide services in areas not adequately served by health care facilities of the Department of Veterans Affairs (VA). It required the Secretary of Veterans Affairs to: (1) contract for a program to train veterans to provide the peer outreach and support services; and (2) conduct a training program for clinicians of community health centers and entities contracted to provide such services.⁷

Finally, it extended, from two years to five years after their discharge or release from duty, eligibility for hospital care, medical services, and nursing home care for veterans who served on active duty in a theater of combat operations.⁸

S. 38 was referred to the Committee on Veterans Affairs and hearings were held on October 24, 2007. No other action has been taken on this bill. However, similar bills were introduced in the US House and Senate.

On June 27, 2007, H.R. 2874 was introduced in the US House of Representatives and referred to the Committee on Veterans Affairs. It was reported out of that committee on July 27, 2007. On July 30, 2007, H.R.2874 passed the US House and was received in the Senate on August 3, 2007. H.R. 2874 directs the Secretary to carry out a program to provide peer outreach services, peer support services, and readjustment and mental health services to covered veterans, through contracts with community mental health centers. It requires training for covered veterans and clinicians providing services under the program.⁹

In October, 2007, S. 2162 was introduced in the US Senate. In June, 2008, S. 2162 passed the US Senate and was sent to the US House.¹⁰

As engrossed by the US Senate, S. 2162 directs the Secretary of Veterans Affairs (Secretary) to provide each veteran enrolled in the VA health care system and in need of substance abuse treatment or services: (1) short-term motivational counseling; (2) intensive outpatient or residential care; (3) relapse prevention; (4) ongoing aftercare and outpatient counseling; (5) opiate substitution therapy; (6) pharmacological treatments to reduce cravings for drugs and alcohol; and (7) detoxification and stabilization. It further requires that treatment for a substance abuse disorder and a comorbid mental health disorder is provided concurrently through separate services for each disorder or by a team of experienced clinicians.¹¹

S. 2162 directs the Secretary to establish at least six national centers of excellence on post-traumatic stress disorder (PTSD) and substance abuse disorders to provide comprehensive inpatient or residential treatment and recovery services for veterans diagnosed with both PTSD and a substance abuse disorder.¹²

S.2162, The Veterans Mental Health and other Care Improvements Act finally passed the Congress on October 3, 2008. S.2162 calls for pilot programs to be established in two VISNs that would provide readjustment counseling and other mental health services through contracts with community mental health centers. Secretary of the VA, Peake, is directed to select locations in rural areas where the VA services aren't available.

There are two very important provisions in the various veterans mental health bills which would positively affect the delivery of mental health benefits to veterans. One provision is requiring the VA to use or contract with community mental health centers to provide services. Many veterans are not geographically near a VA facility. These veterans would need to travel long distances to receive mental health treatment. By contracting with community mental health centers, veterans would be able to receive services in their own communities. The other provision is to implement a new program to offer readjustment counseling and mental health care, to include peer outreach and support services. These are expanded services to assist not only the veteran, but the veteran's families as well. These services would help in the readjustment of the returning veteran.

On February 12, 2008, the committee met at the University of Texas Health Science Center, Regional Academic Health Center in Harlingen to hear testimony on the charge. Representatives of the Texas Council of Community Mental Health & Mental Retardation Centers, Inc., Tropical Texas Behavioral Health and Andrews Center Behavioral Healthcare System provided testimony. All agreed and informed the committee of the great need to develop increased capacity for mental health services for veterans of the Global War on Terror (GWOT), including the Guard and Reserves and their families, in the communities in which they live. According to testimony, Reserve forces have made up to 40% of US Forces in the GWOT. A Department of Defense assessment showed that more than 42% of Guard and Reserve Soldiers returning from the GWOT needed mental health treatment. These "citizen soldiers" often live in areas far from a VA medical facility. Travel to a facility is a formidable barrier to receiving needed treatment. The Department of Defense's Special Committee on Post-Traumatic Stress Disorder reported that the VA needs to create a progressive system of engagement and care that meets veterans and their families where they live.

The Texas Council of Community Mental Health & Mental Retardation Centers, Inc. represents 39 community MHMR Centers in Texas and serves over 140,000 low income children and adults with mental disorders every year. Community Centers have initiated contact with the VA to pursue a partnership to improve veterans' access to needed mental health services. If the VA contracted with the Centers, there would immediately be an increase in the mental health capacity of the VA System. Such initiatives would fulfill the spirit of the bills brought forth in Congress. Several examples of such partnerships have occurred in other areas of the country.

In Montana, the VA system has contracted with all four community mental health centers in the state with excellent results. The VA pays to the Center the identical rate that would be paid for

care in the VA. The VA has total control over all referrals. In 2006, in Montana, community health centers served over 2,100 veterans. In South Dakota, the VA has contracted with all 12 community-based behavioral health agencies in the state.

Community Centers stand ready to offer their services in Texas. In Tarrant County, the MHMR of Tarrant County is providing mental health services to veterans of military service. The clients cannot make the trip to Dallas VA to access these services, so they come to the public mental health system in Tarrant County. These centers provide these services without contract or reimbursement from the VA. The services provided to these veterans are paid for out of General Revenue support programs from the State of Texas.

COMMITTEE FINDINGS AND RECOMMENDATIONS

The House Defense Affairs & State Federal Relations Committee has found the Texas community centers to be willing and capable of delivering much needed mental health services to veterans. Further, with the passage of the 2009 VA budget, \$3.8 billion, \$900 million more than in 2008, was allocated to specialty mental health services for veterans with mental illness, PTSD, and for suicide prevention programs.

The committee has found that Community Centers have been communicating with the VA in Texas to explore coordinating their services with the VA to provide the needed mental health services to veterans in all areas of the state. The VA is receiving significant funding from Congress to improve and expand mental health services. A part of the increased mental health funding is a federal requirement to ensure that all enrolled veterans have access to needed mental health services in their communities. Any gaps between needed services and those that are currently available at the VA must be reported. The expectation is that any gaps in service will be filled by referrals to community providers under contract. Certain rural areas of Texas will most likely require contract services which the Community Centers can deliver. Further meetings are being coordinated in Dallas, Waco and San Antonio to allow the VA and Community Center representatives the opportunity to become better acquainted with the needs of Veterans and the services both systems provide.

The House Defense Affairs & State-Federal Relations Committee recommends that the 81st State Legislature encourage the coordination of the provision of mental health services by the VA and Community Centers. To close the gap in low service communities, the committee recommends an expanded role for community centers to provide necessary mental health services in the local communities where veterans of military service reside.

CHARGE THREE

Review and monitor the Veterans Disability Benefits Commission's Inspector General Disability ratings report. Make recommendations for what the state can do to implement the findings of the report and to assist our veterans.

INTERIM STUDY AND BACKGROUND

The General Accounting Office (GAO) was directed by the US House Committee on Armed Services in 2005 to assess the military disability evaluation system. In making their assessment, the GAO identified three areas to be evaluated: 1) how Department of Defense (DoD) policies for determining disability ratings compare to those of the Army, Air Force and Navy and what policies are specific to reservists; 2) what quality assurances the Department of Defense has to ensure that disability decisions are consistent among the separate services and between reservists and active duty personnel; and 3) how disability processing times compare for active and reserve members of the Army and why differences exist. The GAO completed their report in Spring of 2006. The GAO found that although the DoD has established policies and guidelines for consistent disability ratings, they are not adequately monitoring the consistency of disability ratings among the branches of service or between active duty and reserve members of each branch of the service. The GAO recommended, and the DoD agreed to implement, an improved oversight system to ensure consistent, timely military disability evaluations. Additionally, it was recommended that the DoD collect more reliable data so as to facilitate an evaluation of the disability rating system.¹³

In April 2006, the Secretary of the Army directed The Inspector General to assess the Army Physical Disability Evaluation System (APDES). The APDES is used by the Army to determine the fitness of soldiers to continue to serve in the Army and to assess disability ratings for those found not to be physically fit for continued service. When, after receiving appropriate medical care for an injury or illness, a soldier continues to have physical limitations, a physician refers the soldier to APDES. The Medical Evaluation Board (MEB) evaluates the soldier's medical condition to determine if the soldier meets the medical retention standards of the Army. If the MEB finds that a soldier meets the Army retention standard, that soldier is returned to duty. If, however, the soldier does not meet the Army retention standard, the MEB's evaluation stating a Soldier's medical status and duty limitations is referred to the Physical Evaluation Board (PEB). The PEB determines whether the soldier's disability prohibits continued service in the Army.¹⁴

In March 2007, the Inspector General completed his report and provided it to the appropriate US House and Senate Congressional committees. The Inspector General, in his evaluation, found inconsistencies between the DoD policies and Army regulations. He also found a lack of adequate personnel training in all aspects of the APDES process. Further, the number of cases has skyrocketed. In 2002, there were 6,560 Medical Evaluation Board (MEB) cases, that number grew to 11,000 in both 2005 and 2006. The number of Physical Evaluation Board (PEB) cases increased from 9,000 in 2001 to more than 15,000 in 2005. The Inspector General found that Army policy is not consistent, nor does it completely integrate the policies of the DoD. The Inspector General recommended a comprehensive analysis of the APDES Inspection Report to identify best practices to be included in future plans.¹⁵

From May 2005 to October 2007, the Veterans' Disability Benefits Commission conducted an in-depth analysis of the benefits and services available to veterans, service members, their survivors, and their families to compensate and provide assistance for the effects of disabilities and deaths attributable to military service.

Each of these groups called for changes in the Disability Evaluation System. There are two common recommendations to each of these groups. The first common recommendation is that each service member should undergo only one examination, or series of examinations, to be used by both the DoD and the VA to determine entitlements. The other common recommendation is that the VA should assign the disability evaluation percentages.

Based on the recommendations of these groups, the President directed the VA and DoD to implement a pilot program to institute the new streamlined process for the way disabilities are evaluated and compensation is awarded, beginning in October 2007. The focus of the pilot program is a single comprehensive medical examination and a single disability evaluation provided by the VA. The goals of the pilot program are to simplify the Disability Evaluation System process, conduct one examination, make one disability evaluation, and reduce the overall time it takes a service member to progress from referral to Medical Evaluation Board (MEB) to receipt of VA benefits.¹⁶

On February 12, 2008, the committee met at the University of Texas Health Science Center, Regional Academic Health Center in Harlingen to hear testimony on the charge. Mr. Jim Richman and Mr. James Sampson from the Texas Veterans Commission (TVC) offered testimony.

The TVC gave an overview of the Disability Evaluation System, including the Medical Evaluation Boards and Physical Evaluation Boards, briefed the committee on the various disability evaluation studies and updated the committee on the TVC's efforts to assist veterans in Texas.

The disability ratings are a federal government responsibility. An important factor to remember is the percent disability assigned. If an MEB finds a rating of 20% or less, the veteran is separated with severance pay. If the disability rating is 30% or more, the veteran is permanently retired with full benefits. The DoD rating and compensation is done using the same diagnostic criteria as the VA. The rating schedule has not been updated since its inception in the 1940's. Mr. Richman summarized the various federal studies regarding the disability evaluation system.

The Texas Veterans Commission continues to increase and improve services to veterans. It has developed a statewide program to prepare VA disability claims for active duty members within 180 days of discharge. The program is called Benefits Before Discharge. The result is a more rapid VA rating decision to procure benefits for veterans and their family members. Hundreds of fast track claims are prepared and executed by the TVC each year. The accuracy and completeness of the claims is of great importance. The TVC assists the veterans with reviews and challenges. Because of this assistance, hundreds of disability claims are corrected each year. Because of concerns recently raised with the disability ratings system, coupled with the number of veterans separating from service with a disability, all veterans with a rating of 20% or less are to have their ratings reviewed. Again, a veteran receiving a 20% or less evaluation is separated with severance pay. A veteran receiving a 30% or higher disability rating is given medical retirements. For this reason the 20% disability rating is being used as a reference for the veterans whose evaluations will be reviewed.

COMMITTEE FINDINGS AND RECOMMENDATIONS

The House Committee on Defense Affairs & State-Federal relations has found the Texas Veterans Commission (TVC) has taken a proactive approach to serving our veterans. The committee received the following information from the Texas Veterans Commission. Although the responsibility to execute the findings of the physical disability rating system reports rest with Congress, the DoD, and the VA, the Texas Veterans Commission (TVC) has been proactive in identifying and addressing problem areas in the process. The TVC has begun to survey its veterans, if the veteran had been discharged through the previous process, and offered to review the veteran's individual disability ratings to determine the possibility of upgrading their discharge to a medical retirement. Since the TVC began this process in the Spring of 2008, a Physical Evaluation Board (PEB) has been created within the Office of the Secretary of Defense for the specific purpose of reviewing all service members who were or will be separated from the military with a 20% disability evaluation or less beginning on September 11, 2001 and ending on December 31, 2009. A veteran receiving a 20% or less evaluation is separated with severance pay. A veteran receiving a 30% or higher disability rating is given medical retirements. For this reason the 20% disability rating is being used as a reference for the veterans whose evaluations will be reviewed. The PEB has the authority to do four things:

1. Recommend that there be no change in the previous Physical Evaluation Board (PEB) determination.
2. Recommend retirement of the individual for disability.
3. Recommend modification of the disability evaluation assigned but only if the modification would result in an increased percentage.
4. Recommend the issuance of a new disability rating for the veteran.

The recommendations are made to the Secretary of the Service Department.

The TVC has begun offering services to active duty Army members as "counsel of choice" in the PEB process. The TVC hired a counselor who was a member of the Navy PEB and has already attended the Army training. The counselor is stationed at Ft Sam Houston. Ft. Sam Houston is the only location in Texas where Army PEB Hearings are held.

The TVC is requesting increased funding from the Legislature to provide this same service to Air Force Members being separated through the Air Force PEB process at Lackland in San Antonio. Lackland is the only location worldwide where this process is undertaken for Air Force personnel. The TVC does not have the ability to represent any Navy personnel or Marines in their PEB process because they are all conducted at the Navy Yard in Washington D.C.

The House Committee on Defense Affairs & State-Federal Relations encourages the 81st Texas Legislature to include the counselor funding for the TVC in their upcoming budget.

CHARGE FOUR

Examine Chapter 431, Government Code, to determine the feasibility of the Texas State Guard and Texas National Guard, while designated on state active duty, to assist in interagency planning and operational coordination under the Governor's Division of Emergency Management and the Texas Secretary of State.

INTERIM STUDY AND BACKGROUND

In 1916, Congress authorized states to establish a state guard when National Guard Troops were federalized. These were not permanent troops; states were only allowed this ability when their National Guard troops were called to service. In 1940, when it became apparent that National Guard troops would be federalized, Congress approved an Act which allowed States to raise and maintain troops. During World War II, state defense forces secured facilities and guarded installations within their state. The state guard members were not authorized for combat. The 1940 statute was repealed in 1947.¹⁷ Congress authorized states to provide and maintain their own defense force, in addition to its National Guard, in 1956. A defense force established under this act may only be used within the state that organizes it, as its governor considers necessary, and may not be ordered into the armed forces.¹⁸

The Texas state military forces consists of the Texas Army National Guard, the Texas Air National Guard and the Texas State Guard. The Texas Army National Guard and Air National Guard can be federalized.¹⁹ The State Guard provides on-going support of National Guard units and assists both military and civil authorities during state emergencies. It assists state and local authorities in homeland security and community service. Although it is a volunteer organization with 13,000 members, members do receive duty pay when activated by the Governor and placed on paid state active duty. Beginning in 2008, members receive compensation for some mandatory training days. With the number of National Guard troops being deployed for the Global War on Terrorism, the state guard is stepping in to fulfill duties previously held by the National Guard. Among its recent activations are hurricane and flood responses, Operation Border Star Initiatives and oral rabies vaccination program.

On June 17, 2008, the committee met at the state capitol in Austin to take testimony on the charge. Col. Daniel R. Steiner and Mr. Ruben Alonzo presented testimony on behalf of the Texas Military Forces and Mr. Jack Colley presented testimony on behalf of the Governor's Division of Emergency Management. Col. Steiner stated that the Guard's relationship with the state's operation center is and has been tremendous. The Guard joins in conversations and has open communications with the Emergency Management Division. They are involved in both planning and execution and consider themselves a partner with the Governor's Division of Emergency Management. He stressed that smarter planning leads to increased efficiency. If planning is done well, estimates of needed resources, labor and troop strength are more accurate, therefore more efficient with less waste. The Adjutant General's Department is on the Governor's Emergency Management Council and, therefore, is involved with emergency planning. Mr. Ruben Alonzo testified that the Guard used to be reactive, now it is proactive. They are involved in all aspects of emergency preparedness and response, as well as border security. He stated that they needed funding for training, in order to work effectively. It is his understanding that funds can be used for emergency response, not for emergency preparedness. Without proper training, execution will not be efficient. Mr. Colley testified that the Governor's Division of Emergency Management (GDEM) uses the State Military Forces, and the State Guard, extensively. Especially with the number of National Guard members from Texas being called to serve in the Global War on Terror, the state guard is being used more extensively. GDEM has the authority to employ and contract with them through Chapter 418 of the Texas Government Code. As examples, Mr. Colley stated that the six intelligence units are staffed by guardsmen. The State Guard members provide both the skill set and security clearances needed to staff the intelligence

units. The State Guard is used for catastrophic event planning. They are a premier organization and the state of Texas is blessed to have them. GDEM does provide some training for the Guard. As an example, the Texas Task Force 1 team must be trained and certified to provide rescue and recovery missions. The helicopter pilots used by the Task Force are Texas State Guard pilots. Although the charge specifically directs the committee to study Chapter 431, Government Code, it is in Chapter 418, Government Code that GDEM has the authority to employ and contract with the State Guard, to use them extensively in emergency preparation, planning and training. There were no conflicts between Chapter 431 and 418 of the Government Code that would preclude this. Mr. Colley stated that appropriating more dollars into the Disaster Contingency Fund would be useful to increase the amount of training GDEM is able to provide.

COMMITTEE FINDINGS AND RECOMMENDATIONS

The House Defense Affairs & State-Federal Relations Committee finds that the Texas State Guard and Texas National Guard assist in interagency planning and operational coordination under the Governor's Division of Emergency Management, extensively. The Committee further finds that there are no conflicts between Chapters 418 and 431 of the Texas Government Code which would impede the planning role of the State Guard and Texas National Guard. The Committee finds that increasing appropriations into the Disaster Contingency Fund would be beneficial to the state. These funds could be used, among others, for increased training and emergency preparedness.

The House Committee on Defense Affairs & State-Federal Relations recommends and encourages the 81st Texas Legislature to include increased appropriations to the Disaster Contingency Fund in their upcoming budget.

CHARGE FIVE

Examine the State of Texas' preparedness level to handle a public health emergency. (Joint Interim Charge with the House Committee on Public Health)

BACKGROUND AND INTERIM STUDY

During the 80th Regular Session, the Texas Legislature passed the following legislation to bolster the State of Texas' preparedness to respond to a public health emergency:

- **SB 11 (80R)** by Carona/Corte codified the state's emergency management structure by dividing the state into disaster districts for homeland security preparedness, and established the Texas Statewide Mutual Aid System to facilitate mutual aid responses between local governments.
- **HB 15 (80R)** by Chisum/Ogden authorized \$11 million to the Texas Department of State Health Services (DSHS) for the purchase of antiviral drugs.
- **HB 1493 (80R)** by Bonnen/Janek creates a severe storm research and planning center to develop storm surge tracking ability, flood warning systems, and public education for evacuation programs.

On February 5th, 2008, a joint subcommittee hearing was held between the Defense Affairs and State-Federal Relations and Public Health committees. At the hearing, public testimony was given by representatives of the State of Texas and other individuals with experience with emergency preparedness issues.

Panel 1 provided an overview of Texas' preparedness and was comprised of Department of State Health Services Commissioner, David Lakey, MD; Director of Homeland Security for the Office of the Governor, Steve McCraw; and Chief of the Governor's Division of Emergency Management, Jack Colley. The following six topics were highlighted during the panel discussion:

- 1) **Integration at All Levels:** Commissioner Lakey described the Health and Medical Disaster Response Structure, and discussed how it folds into the general emergency response plan for the State of Texas. An organizing principle of the Disaster Response Structure, the Commissioner noted, is that "things are coordinated state-wide to try to meet needs at the local level." If, during an emergency, the local level is unable to provide the resources needed a request for assistance is made to the Disaster District Committee (DDC) and Regional Liaison Officers (RLOs). A request may be made directly to the State Operations Center (SOC) if the DDC is unable to provide necessary materials to address the disaster.
- 2) **All-Hazards Planning:** All three panelists stressed the importance of the all-hazards approach to disaster planning. The *State of Texas Emergency Management Plan* states:

"State and local emergency planning in Texas uses an all-hazard approach,... All-hazard planning is based on the fact that most of the functions performed during emergency situations are not hazard specific. For example, evacuation may be required because of flooding, a chemical spill, or a terrorist threat. Hence, the most efficient approach to planning is to plan in some detail for the tasks required to carry out basic emergency functions, such as warning or evacuation, that may have to be executed whether an incident is caused by a natural, technological, or man-made hazard. All-hazards plans are

supplemented by some hazard specific plans for unique threats."²⁰²¹

- 3) **Training and Exercises:** Commissioner Lakey and Mr. McCraw articulated the importance of practice and training. Additionally, McCraw stressed the need for training in the use of equipment and cross-agency coordination for emergencies. Each panelist pointed to recent events, including Hurricane Dean and wildfire responses, which have provided practice to public health workers.
- 4) **Community and Family Preparedness:** Commissioner Lakey described the importance of helping families prepare for scenarios that include diminished or interrupted governmental services. The Commissioner described the "Ready or Not" media campaign, which encourages families to prepare for and be aware of potential public health emergencies. The "Ready or Not" program targets the population through a number of mediums in three waves. Each wave stresses readiness for a different type of disaster.
- 5) **Equipment and Infrastructure:** All three panelists portrayed infrastructure as a critical part of preparedness. Mr. McCraw emphasized that "there's no substitute for equipment." Commissioner Lakey described steps taken by DSHS to increase capacity of emergency medical services (EMS), including partnerships with neighboring states and national contracts for ambulances. The Commissioner detailed attempts by DSHS to acquire shelters, "jump bags," and "push packs" for medical special needs evacuees in the event of a disaster.
- 6) **Human Resources:** Commissioner Lakey spoke about the lessons learned about volunteer help since Hurricane Katrina in 2005. In particular, the Commissioner spoke of the need to "have the right person with the right skill-set at the right place," and about the web-based system introduced to coordinate volunteers and meet these needs. Commissioner Lakey went on to describe the Medical Reserve Corps (MRC) which, as a national network of doctors and nurses, will allow people to "train together, practice together and to be able to respond to a disaster."

The MRC was elaborated on during the second panel by Dr. John T. Carlo. Dr. Carlo described the functioning of the Dallas-based MRC. This MRC holds weekly training sessions, keeps a database of over 1,000 volunteers, and has responded successfully to past evacuations. However, along with Commissioner Lakey, Dr. Carlo noted the threats posed by potential and past federal funding reductions. Dr. Carlo observed that these funding reductions could result in cutbacks to all of these programs.

Panel 2 was comprised of Dan Stultz, MD, President and CEO of the Texas Hospital Association, and John T. Carlo, MD, representing the Texas Medical Association. In addition to the topic discussed by the first panel, Drs. Stutz and Carlo elaborated on two additional issues:

- 1) **Trauma Infrastructure Capacity:** Dr. Stultz described the shortage in treatment capacity in Texas hospitals. Dr. Stultz reported that designated trauma hospitals are often on diversion status, that emergency treatment room capacity is strained, and he detailed hospital's struggle to maintain adequate intensive care capability.

Dr. Stultz pointed to several factors he concluded that contribute to this problem. The first factor noted was the tendency of uninsured and Medicaid patients to inappropriately use hospitals for primary care. Secondly, he noted the failure of Medicaid and Medicare to reimburse hospitals at a rate which would enable them to invest in infrastructure or capacity for emergency preparedness. Lastly, Dr. Stultz described the shortage of healthcare professionals in Texas, particularly nurses, which restrains intensive care capacity.

- 2) **Liability:** Dr. Carlo discussed concerns within the medical community regarding a perception of exposure to personal liability in volunteering to respond to a disaster. Dr. Carlo stated that the Texas Medical Association has researched potential problems with liability and found statutes protecting health professionals. However, Dr. Carlo added that many healthcare professionals are unaware of these protections.

In response to a question from Representative Dianne White Delisi about "good Samaritan" provisions included in HB 4 (78R) by Nixon/Ratliff, Commissioner Lakey testified earlier in the hearing that "certain things would fall under good Samaritan," but added that "in some physician's minds... they wouldn't [be protected]." Commissioner Lakey went on to conclude that "our opinion is that they would [be protected], but convincing the practitioners...has sometimes been difficult." Commissioner Lakey noted that protections are scattered across multiple statutes in a way which impairs their ability to reassure doctors. The Commissioner suggested that combining these protections under one statute could improve the confidence of medical volunteers.

Panel 3 was comprised of John Herbold, PhD, Director of The University of Texas Health Science Center and Scott Lillibridge, MD, of the Texas A&M University Health Science Center.

Dr. Herbold's testimony emphasized the importance of laboratory testing infrastructure. Herbold noted that many potential bio-terrorism agents, including anthrax and plague, are naturally occurring in Texas. Dr. Herbold recommended surveillance for microbes to distinguish between natural and un-natural, intentional and unintentional, human and animal exposure to diseases. To make this determination, Dr. Herbold explained that an "etiologic" diagnosis is required. Such a diagnosis can only be obtained in a laboratory, and there is not currently enough capacity to quickly conduct large numbers of these tests.

Dr. Herbold identified the Texas Veterinary Medical Diagnostic Laboratory and the DSHS laboratory services as areas needing legislative attention. Dr. Herbold recommended that the legislature encourage specimen submissions by healthcare providers, citizens, and ranchers. Lastly, Dr. Herbold advised continued support for regional human and veterinary diagnostic laboratories.

Following Dr. Herbold, Dr. Scott Lillibridge testified to emerging challenges effecting preparedness in Texas. Additionally, Dr. Lillibridge identified the following two as areas in need of change and improvement:

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- 1) The implementation of a statewide exercise and evaluation program. Dr. Lillibridge recommended such a statewide program to include the testing of patient surge capacities be led by the health community, and that federal preparedness grants be redirected to support these efforts.
 - 2) Health preparedness in areas of high risk, such as the Texas-Mexico border and populated coastal regions of the state. Dr. Lillibridge testified that strict adherence to per-capita expenditures should be discouraged in support of a risk assessment model.

COMMITTEE FINDINGS AND RECOMMENDATIONS

The House Committee on Defense Affairs & State-Federal Relations has found the State of Texas to be taking a comprehensive and coordinated approach to statewide preparedness for a public health emergency. State officials continue to improve their processes and have made improvements as a result of previous successful operations, including the aftermath of the Katrina and Rita hurricanes.

The medical community has identified concerns to the committee about medical liability in offering professional services, and about licensure reciprocity issues, during a public health emergency. During a joint hearing with the House Committee on Defense Affairs and State-Federal Relations, the Texas Department of State Health Services and the Texas Medical Association testified that medical liability protections, chiefly codified in the Texas Civil Practice and Remedies Code as the result of HB 4 (78R) by Nixon/Ratliff, and other statutory language, are in place. However, DSHS and TMA reported that providers are not convinced that there is satisfactory protection from liability.

The House Committee on Defense Affairs & State-Federal Relations recommends that the 81st Texas Legislature direct the Texas Department of State Health Services to initiate a professional awareness program to inform medical providers of the protections in place when providing *pro bono* professional medical services during a public health emergency.

The House Committee on Defense Affairs & State-Federal Relations recommends that the 81st Texas Legislature direct state healthcare-associated regulatory agencies to establish a process for expedited approval of a temporary license to practice during a state of emergency involving a risk to the public health. The temporary license should not be contingent upon sponsorship of a Texas licensed practitioner, and should be available to licensed medical professionals from other states, as well as retired Texas practitioners. A provision should be in place for an applicant licensed in another state to have their licensure file electronically transferred and maintained with the Texas temporary license file.

CHARGE SIX

Review the current requirements for driver's license and identification card holders in Texas in order to recommend legislative measures to prevent these documents from being used to further criminal activities and recommend ways to enhance homeland security. (Joint Interim Charge with the House Committee on Transportation)

BACKGROUND AND INTERIM STUDY:

When the Texas Driver's License Program was first implemented in 1935, its sole purpose was to ensure that an individual had been instructed on the traffic laws and regulations and thus had the capability to operate a motor vehicle safely. It was never intended to be used as a credentialing document, a primary identifier. Over the years it has taken on an ever-increasing role as a form of identification for the purposes of travel and economic transactions, thus making the necessity of a sound process for obtaining a license more crucial.

On May 21st, 2008 the House Committee on Defense Affairs & State-Federal Relations met with the House Committee on Law Enforcement and the House Committee on Transportation to study current licensing practices and create potential legislative remedies that could be implemented to strengthen and enhance homeland security. Chief Judy Brown of The Department of Public Safety Driver's License Division and Director Steve McCraw of the Governor's Office of Homeland Security provided the following information to the committees:

The investigation into the terrorist attacks on the United States in 2001 revealed that all but one of the hijackers acquired some form of identification document, through fraudulent means, and used these "legitimate" forms of ID to assist them in boarding commercial flights and other necessary activities which lead up to the attacks. In response to these findings, many states began to re-examine their policies for issuing driver's licenses (DLs) and identification (ID) cards. Measures to strengthen homeland security and maintain highway safety were adopted including: fraudulent document recognition training, strengthening applicant identity requirements, and limiting the validity period of DLs and ID cards to the period of lawful presence for non-citizens.

REAL ID ACT

The REAL ID Act of 2005 Final Rule can be viewed online on the Federal Register site, which can be found at: <http://www.gpoaccess.gov/fr/>

The REAL ID Act of 2005 is a nationwide effort intended to prevent terrorism, reduce fraud, and improve the reliability and accuracy of identification documents that states issue. The Act requires that a REAL ID be used for official purposes, as defined by Congress, such as accessing a federal facility, boarding federally-regulated commercial aircraft, entering nuclear power plants, and such other purposes as established by the Secretary of Homeland Security.

Provisions contained in the REAL ID Act of 2005 require certain state standards and procedures for issuing DLs and ID cards if they are to be accepted as identification documents by the federal government.

The Final Rule provided the Secretary of Homeland Security with the authority to grant states an extension of the Act's May 11, 2008 compliance date. A state's failure to issue Real ID compliant DLs or ID cards by this date, or obtain an approved extension, will result in a state's DL or ID cards not being accepted to access federal facilities, board federally regulated commercial aircraft, enter into nuclear plants and for any other purpose that the Secretary of Homeland Security has determined.

Under the Final Rule, Texas requested, and has been granted, an extension for implementation of

the Real ID Act to December 31, 2009. This extension allows the Texas Department of Public Safety (DPS) to adequately review the final Real ID regulations and assess its fiscal impact to the DL program. In addition, the extension would provide necessary time for the Texas Legislature to consider approval and funding for the Act in 2009.

The Final Rule takes into consideration the operational burdens on states. If the state can certify a certain level of compliance, DHS will extend the enrollment time period to replace all DLs or ID cards to December 1, 2017. After December 1, 2017, federal agencies will not accept any state-issued DL or ID card for official federal purposes unless such cards have been issued by states that have certified to DHS their full compliance with this rule.

A mandatory re-verification period will require all applicants for a renewal or duplicate DL or ID card to appear in-person at the DL office and to provide acceptable identification documents prior to issuance of a Real ID DL or ID card. States will be required to re-verify identification documents at each renewal period, resulting in continued costs to the state.

Current staffing levels and hours of operation will not be sufficient to process the increased number of applicants. In addition, wait-times in the DL office will be significantly impacted as a result of the increase in issuance requirements, specifically to review ID documents and perform online verification queries.

All DL or ID card applicants will be required to provide evidence that they are either a citizen of the U.S. or lawfully residing in the U.S. Non-U.S. citizens legally residing in the U.S. may be issued a "Temporary DL or ID card" and the card must clearly indicate that it is "temporary" and include an expiration date that coincides with the authorized period of stay in the U.S., not to exceed one year.

The Final Rule requires states to include a DHS-approved security marking on each Real ID card and non-conforming DL or ID card issued which reflects the card's level of compliance with the Rule.

Staffing and facilities will be challenged to manage Real ID, as the regulations will increase visits to DL offices during the initial re-verification period as alternate issuance methods (Internet, mail and telephone renewals) will be discontinued. Consequently, the Driver's License Division will require additional staff, facilities, training and equipment to implement Real ID. This will include extended work hours and/or additional workdays to effectively manage the regulations without significantly inconveniencing the public. System enhancements will be necessary, including development, expansion and deployment of several online verification systems as well as modifications to numerous business processes to meet the requirements of the Act. Texas will see a significant impact to DL office operations and budget constraints due to higher volumes of online queries to verification systems.

Accordingly, costs associated with Real ID will be significant. DPS estimates that over \$129 million will be needed during the implementation biennium.

THE BANAI CASE

In 2006, the Texas Department of Public Safety discovered incidents of fraudulent activity that involved immigrants falsifying documentation to obtain a Texas DL in an attempt to avoid immigration laws. This particular incident has since been referred to as "The Banai Case."

A man by the name of Isaac Banai utilized DPS' DL system to market a DL "vacation". He advertised in foreign newspapers to foreign residents of the United States, primarily in New York and New Jersey. For a small fee, he would bring them to the state of Texas. Once in Texas, Banai educated them on the necessary requirements to pass the Texas DL test and take them to a DL office. These individuals would apply for a DL and exploit a loophole in a DPS rule. The applicants would bring a foreign passport with a visa and would pull off the immigration document, the I-94, that indicated they were in expired status, and would present the now "valid" immigration document to DPS. The DPS rule only indicated that they had to have a valid immigration document; there was no mention of verifying the I-94 or any other supporting documentation. Further, each of these applicants used a hotel as their residence address.

The Driver's License Division processed some 398 of those individuals. The foreign residents immediately returned to New York or New Jersey with a valid Texas DL to either use, or exchange for their current state DL.

CURRENT EFFORTS BY THE DEPARTMENT OF PUBLIC SAFETY

In response to the Banai case, DPS has changed the DL process to close the exposed loophole, tightened the administrative rules, and processed an administrative rule that indicated that the applicant must have had at least one year on their immigration status application, and have at least six months remaining in order to obtain a Texas DL.

The Department cancelled all of the licenses connected with the Banai case. The Department coordinated with Immigration and Customs Enforcement (ICE) to prohibit the utilization of these DLs as identification. ICE has taken measures that will cause notification when and if any of these individuals request a change to their immigration status.

The Department has tightened the rule to request a Texas residence address. In the Banai case, the applicants had given the address of a hotel as their residence address. The new rule eliminates the opportunity to use a hotel address, and allows DPS to assign a more severe penalty to the applicant if they try to use a hotel as their residence.

Texas has a more severe identification policy than other states. There have been incidents in the past where individuals were able to obtain a license from another state, bring the license to Texas and utilize the rule by using the out-of-state license as a secondary document to obtain a Texas form of ID. In an effort to close all the loopholes administratively, DPS has taken the out-of-state license down a notch. Instead of using the out-of-state license as a secondary document when applying, DPS has moved it down to a supporting document. This puts a little more validity with regards to what an applicant has to provide to DPS in order to obtain a document in the state of Texas.

In late July 2008, there were several changes to the Driver's License Division (DLD) and the DL itself. In addition to the addition/clarification of the I-94 requirement, DPS is considering hiring additional FTEs for the DLD to facilitate address searches and verifications as well as processing DL applications.

As of September 2008, the DLD believed that the new DL system would be ready near the beginning of 2009 and that the current technology and equipment, employed by the department for DL production, would be capable of printing the additional field containing the supplemental expiration date on the DL through a work-around. There was no word as to whether DPS has solved the issue of the new DL program being cost prohibitive. However, the reengineering project is being built so that the new architecture and application foundation will allow for a much quicker and easier transition to REAL ID specifications, if it is indeed passed.

To reduce the potential for fraudulent activity related to the DL issuance process, the Department has programmed the following safeguards into the New DL System (DLS), which is scheduled for implementation during the fall of 2008.

- User authentication (password) is required to log into the new DLS and includes role-based authorization based for specific functions.
- A log/audit trail of all system activity that occurs within the DLS will be stored and archived. The log will include user identification and date and time of the activity.
- Automatic DLS log-off after a specified period of time.
- Rules will systematically validate data prior to submission rather than allowing invalid entries that are found through manual edit verification after transaction is logged.
- DL employees will use one-to-one photo comparison feature at the time of issuance to compare the newly collected photograph to the previous photo on file.
- Photographs of original applicants for a DL and ID will be compared each night against the entire file of 21 million photographs. Suspicious issuance activity will be reported for further investigation and cause licenses to be held until resolution.
- The thumbprint collection procedure has been enhanced to include quality checking software that ensures a quality print is collected.
- Imaging identification and application documents and the use of electronic forms will provide valuable documentation to identify and reduce potential fraud.
- The DLS will update most data in near real-time. Within seconds of entering information, records will be updated.
- The DLS will be a Web-based system; therefore, computers will replace the current mainframe terminals (CRTs) and a new image capture system will be utilized in the DLD. This state-of-the-art equipment will provide enhanced reliability and software to ensure quality images.
- The DLS will display all information related to a person's record. If a person has both a DL and ID, both numbers will be displayed under the person's name, which will eliminate the possibility drivers having a license with a clear status and an identification card with adverse driver history and will prevent maintaining different addresses on DL and ID cards.
- All DL and ID card issuances, including temporary receipts, will contain a photograph.
- Supervisor reports will be generated based on transactions that may indicate suspicious activity.

In addition, facial recognition technology will be introduced to the issuance process with the development of the Image Verification System which will provide the ability to perform one-to-one comparisons of facial images collected at the time of issuance in the DL office to the most recent image on file in order to prevent identity theft.

Further, a new DL and ID card format, which will include state-of-the-art security features that will make alteration and counterfeiting of the card extremely difficult, will be introduced in the fall of 2008.

SUNSET ADVISORY COMMISSION SUGGESTED CHANGES

Currently, commissioned officers are performing business functions instead of filling positions elsewhere where they are better suited. A budgetary increase would allow DPS to hire individuals to fulfill the numerous business functions that the department has been assigned over the years. In addition, the Public Safety Commission wants to utilize the recommendation of the Sunset Advisory Commission staff, which is to civilianize the DLD and make it more consumer oriented. As a result, this would include removing commissioned officers from the administration side only, not from the various office locations for reasons of security.

COMMITTEE RECOMMENDATIONS

The committees have determined that the current requirements for receiving a Texas DL or ID card should be more stringent and loopholes of known issues should be closed using appropriate rule-making abilities through DPS, as well as suggested legislation during the upcoming 81st Legislative session.

The committees recommend that the legislature and DPS examine the possibility of closing the gap with regards to citizens being able to hold a DL and an ID card. It would be more efficient from a law enforcement and security aspect to only allow one card to be issued.

The Act and the Final Rule published by the Department of Homeland Security (DHS) on January 29, 2008 will have significant implementation challenges with legislative, operational, technological and fiscal limitations. It is recommended that the committee continue to closely monitor these challenges.

The Department of Public Safety has developed, and the committees support, the following list of legislative initiatives for safeguarding DLs and ID cards in Texas:

- Require lawful presence in the United States to obtain a Texas Driver License (DL) or Identification Card (ID).
- Limit the validity of the issuance to the period of lawful presence or for one year for those without a fixed term of stay.
- Prohibit alternate renewal methods for licenses issued with an immigration status.

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- Define residency and amend the definition of domicile to enhance residency requirement. Utilize the residency and domicile definitions for all applicants for any type of issuance – driver license, commercial driver license or identification card.
 - Amend Transportation Code to allow operation of a motor vehicle in this state for up to 90 days and create an affirmation by a new resident that the person has been in the state for a minimum period of 60 days and intends to remain a resident of this state.
 - Require that application for an original CDL, DL or ID must be made in the county of the applicant’s residence. If there is no DL office in the county of residence, original application may be processed in a contiguous county.
 - Authorize denial of issuance for inability to verify address.
 - Delete requirement to accept an offender identification card or similar form of identification issued to an inmate by Texas Department of Criminal Justice (TDCJ) as satisfactory proof of identity.
 - Create a new section in the Texas Transportation Code that will enable the State to more easily prosecute individuals, under §7.02 of the Texas Penal Code, who aid and abet those who violate Chapters 521 and/or 522 of the Texas Transportation Code.
 - Enhance penalties for providing inaccurate address information on an application for a DL, CDL or ID and penalties for failure to update address information with the intent to fraudulently retain a Texas DL, CDL or ID.
 - Create an affirmative duty for operators and owners of mail box sites, motels, other temporary housing/lodging locations, and other businesses of a similar nature to report driver licenses and commercial driver licenses being mailed to their place of business to persons who do not actually reside at those locations.

ENDNOTES

¹ <http://www.txdps.state.tx.us/dem/pages/index.htm>

² http://www.governor.state.tx.us/divisions/press/exorders/index_html/rp32

³ *ibid*

⁴ <http://www.governor.state.tx.us/divisions/press/exorders/rp57>

⁵ *ibid*

⁶ <http://www.thomas.gov>

⁷ *ibid*

⁸ *ibid*

⁹ *ibid*

¹⁰ *ibid*

¹¹ *ibid*

¹² *ibid*

¹³ <http://www.gao.gov/new.items/d06362.pdf>

¹⁴ <http://www.army.mil/institution/operations/reports/IGReport-APDESI/IG>

¹⁵ <http://www.army.mil/newsreleases/2007/03/12/2217-army-inspector-general-details-findings-on-soldier-disability-system/>

¹⁶ Department of Veterans Affairs, Veterans Benefits Administration, Fast Letter 8-01

¹⁷ <http://www.vtguard.com/VSG/history.htm>

¹⁸ Title 32 USC Section 109(c).

¹⁹ Texas Government Code, Chapter 431

²⁰ *State of Texas Emergency Management Plan*, Texas Homeland Security Strategic Plan, Governor's Division of Emergency Management, <ftp://ftp.txdps.state.tx.us/dem/plan_state/state_plan_20040211.pdf>, February 2004.

APPENDIX A

Attachment 12

To

Texas Hurricane Evacuation and Shelter Plan

Re-entry Operations

I. *PURPOSE*

The purpose of this attachment is to establish re-entry procedures in the event of a catastrophic hurricane event when an official Emergency Declaration and Mandatory Evacuation Order has been issued and remains in effect. It outlines operational concepts, organizational assignments, roles and procedures for first responders, state agencies, private sector groups, Voluntary Agencies Active in Disaster, and the public sector concerning re-entry operations post-disaster. The Governor’s Division of Emergency Management, State Operations Center in coordination with the Texas Department of Public Safety, Highway Patrol Division (THP), will oversee the implementation of this function. Texas Highway Patrol will serve as the lead state agency to oversee the operational component.

II. **EXPLANATION OF TERMS**

A. ACRONYMS

C2	Coordination and Control
CI/KR	Critical Infrastructure/Key Resources
DDC	Disaster District Chairperson
FEMA	Federal Emergency Management Agency
PWST	Public Works Assessment Team
PWRT	Public Works Resource Team
SAR	Search and Rescue
THP	Texas Highway Patrol
VOAD	Voluntary Agencies Active in Disaster

B. DEFINITIONS

1. Re-entry: The process of allowing appropriate agencies and vendors access to damaged areas affected by hurricane-related hazards. Re-entry marks the transition from the response phase through landfall and prior to the recovery phase of the disaster. It includes the effort to restore

continuity of government and critical infrastructure/key resources to support the community.

2. Public Works Assessment Team: A team of technical experts in one or more Public Works disciplines that will deploy to a disaster stricken area to assist local jurisdictions with critical infrastructure assessment and essential functions of government.
3. Public Works Resource Team: Personnel, tools and equipment required to build a specific response capability in one of several Public Works disciplines such as certified water/wastewater personnel, inspectors, or road maintenance crew.
4. Public Works Response Team: Public Works resources and expertise to support assessment and damage repair in the planning for, and recovery from, a catastrophic event. This includes liaison and planning support in the State Operations Center and on-scene assessment and operational support.

III. *SITUATION & ASSUMPTIONS*

A. SITUATION

1. A key component of Continuity of Operations and Continuity of Government preparedness planning includes deliberate plans to ensure the continuation of essential functions through a wide range of incidents.
2. Due to the potential devastation of a catastrophic hurricane event and impact on local coastal and inland communities, the State of Texas must be prepared to augment and assist with re-entry operations, when warranted, and the restoration of essential functions of government.
3. Re-entry operations must include provisions for federal, state, private sector, public sector, and VOAD organizations and agencies that provide critical services to assist First Responders in the execution of their duties and those in direct support of critical infrastructure/key resources (CI/KR).
4. If essential functions are not restored quickly and efficiently, the cascading impacts on life and property may include negative impacts on local, state, and national interests.
5. Public safety and security in a disaster area must remain paramount in re-entry planning and operations.
6. The re-entry plan must be flexible and scalable to ensure an appropriate operational response to the disaster and provide coordinated access to

various agencies and organizations that perform essential mission tasks in the area of operations.

B. ASSUMPTIONS

1. As this is a catastrophic event plan designed to compliment a rapid and safe evacuation of people out of harms way during a crisis, some rules and legal requirements impeding operations may require waiver by state or federal agencies.
2. Local governments will likely have in place re-entry plans and Mutual Aid and assistance agreements between agencies/organizations and/or jurisdictions that provide a mechanism to quickly obtain emergency assistance in the form of personnel, equipment, materials, and other associated services.
3. Local governments and emergency responders will likely be engaged in disaster response operations that require state assistance to provide perimeter security and entry and exit control operations.
4. Federal assistance may be necessary to restore CI/KR. In instances where national interests are in jeopardy, the Department of Homeland Security may exercise authority to reach outside provisions of the Stafford Act.

IV. CONCEPT OF OPERATIONS

A. HURRICANE RESPONSE COMPONENTS

1. The State strategy for hurricane response includes five operational response components. They briefly include:
 - a. Coordination and Control (C2). The C2 response component ensures timely warning, dissemination of public information, operability and inter-operability, and a coordinated joint response involving local, state, federal, private sector, and VOAD agencies and organizations.
 - b. Evacuation. The evacuation component ensures mission success—no people or their pets are left behind or remain in the surge zone of a hurricane by H-0. The goal is to evacuate special needs citizens by H-36, prior to the general population evacuation order.

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- c. Search and Rescue (SAR). This component is comprised of a multi-agency effort between Texas Task Force I, Texas Task Force II, Texas Military Forces, Texas Parks and Wildlife Division, and the U.S. Coast Guard to ensure search and rescue resources are in place and prepared to commence emergency life-saving operations at H-24. SAR operation must conclude prior to H-0 to ensure the safety of first responders.
 - d. Sheltering. The shelter component relies on the vast statewide shelter network. Key elements of the network include cities across the entire state, point-to-point shelters, and shelters for special needs, special medical needs, and general population citizens to include pet-friendly shelters.
 - e. Re-entry Operations. The primary elements of re-entry include C2, Public Works Response Teams, safety and security enforcement activities, credentialing/access, and prioritized assessment and service restoration.
2. In combination, the state must manage several thousand of checklist tasks between H-120 and H-0 to ensure success of the five operational components during a catastrophic hurricane response.

B. RE-ENTRY OPERATIONAL ELEMENTS

1. Coordination and Control (C2).
 - a. The State Operations Center (SOC) operates as the primary C2 element for state response activities.
 - b. The second level of state C2 resides with the regional Disaster District Chairpersons (DDC).
 - c. Operations will also include an option to forward deploy a Mobile Command Center to the area of operations.
 - d. Response elements supporting C2 include the Task Force Lone Star, Texas Military Forces, Texas Task Force I and II.
2. Safety and Security.
 - a. The Texas Highway Patrol (THP) will coordinate with local jurisdictions and augment, when necessary, law enforcement assistance in the disaster area of operations.

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- b. Entry into the cordoned area will be coordinated through the SOC as necessary to ensure access to federal, state, private sector, public sector, VOAD agencies and organizations that perform essential functions.
 3. Communication.
 - a. The SOC will serve as the hub of the state communication plan and establishes daily priorities for response operations. The SOC, as part of the Texas Department of Public Safety, employs a full-spectrum telecommunications network to maintain continuous communications throughout the state.
 - b. The DDC, through the THP Districts, provides a secondary line of communication in the local regions.
 4. Immediate Mass Care.
 - a. Search operations will commence when it safe for first responders to enter and operate in the disaster area.
 - b. Once located, victims will be provided immediate first aid, if required, and taken to a place of safe refuge until other accommodations can be made.
 - c. The provision of food and water will be made available as quickly as possible.
 5. Continuity of Government.
 - a. A primary objective of re-entry is the restoration of the essential functions of government to include priority restoration of water, wastewater, and power systems.
 - b. The Public Works Assessment and Resource Teams will provide technical assistance and assist local officials in developing prioritized restoration plans.
 - c. Where necessary, the PWRT will work with FEMA and the U.S, Army Corps of Engineers to deploy generators to provide temporary power for critical operations based on priority of need.
 6. Critical Power Restoration.
 - a. The Public Utility Commission will coordinate with power companies serving in the SOC to prioritize power restoration in the disaster area.

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- b. A priority restoration plan will be developed in the SOC and adjusted as priorities change.
7. Critical Infrastructure/Key Resources Assessment/Restoration.
- a. The SOC in coordination with the Department of Homeland Security will develop plans to prioritize restoration of CI/KR based upon local, state, and national significance.
 - b. Priorities are based upon potential for loss of life and cascading impacts on industry, the community and the nation.
 - c. CI/KR includes water, wastewater, and electric utilities as mentioned above.
 - d. Other considerations include feedstock transport such as:
 - 1) Pumping stations supporting critical pipelines.
 - 2) Debris removal for rail and key transportation lines.
 - 3) Restoration of Port operations to ensure ship movement.
 - e. Primary communication node restoration.
 - f. Vital records protection and restoration.
 - g. Onsite security to reduce vulnerability of CI/KR.
8. Credentialing/Access.
- a. The process for entry/access into a Mandatory Evacuation area must be coordinated to ensure the safety of the public, protection of property, and effective response by the numerous organizations and jurisdictions involved.
 - b. The entry decision and traffic management will be a carefully managed process coordinated by the SOC in coordination with local jurisdictions. Additional coordination may be required with agency representatives of the Emergency Management Council, as warranted.
 - c. The SOC will facilitate coordination calls with state and local officials, law enforcement and transportation agencies to include all counties with restricted access.

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- d. The SOC will establish credentialing/access criteria, based upon safety and operational priorities, to use in determining access to the disaster area.
 - e. Infrastructure, Public Works, and Utility Repair Personnel: These agencies must be permitted immediate access to ensure that essential services are restored and infrastructure intact. Personnel should be in marked company vehicles and possess company credentials.
 - f. Official Damage Assessment Teams: These may include FEMA, State, and local officials may also be permitted into the area. Personnel will be required to possess agency identification credentials.
 - g. Other federal officials requiring entry may be granted access based on mission and safety considerations.
 - h. Agencies, organizations, and companies with a priority need to enter the area to perform essential services or restoration should coordinate the request with the SOC.
 - i. Letters may be verified through the DDC or SOC. Any false or inaccurate information provided for this justification may be grounds for automatic refusal. Letters may be verified through the DDC or SOC.
 - j. Agencies, organizations, and companies whose request is determined to meet the criteria for entry will be provided a signed and dated letter to display in the vehicle for entry at checkpoints. The letter will specify the name of the declared disaster and indicate an expiration date. Extensions will not be granted. Instead, a new letter will need to be requested through the SOC.
 - k. A copy of the letter will be provided to the THP representative in the SOC. The company name and purpose of entry will be forwarded to the respective DDC for the establishment of an entry authority list at designated entry points.
 - l. Vehicles bearing the letter and appearing on the entry authority listing may be admitted into the area provided the area is safe for entry. The vehicle operator must also possess a valid State Driver's License.
 - m. Except in an emergency evacuation of the area, vehicles should depart through the same entry point to ensure accountability and safety of personnel in the evacuated area.

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- n. In the event information indicates an entry letter is misused, the letter will be immediately confiscated by law enforcement authorities and destroyed.

C. RE-ENTRY PROTOCOL

1. It is anticipated re-entry will occur in a tiered approach based on key roles in restoring normal operations after a disaster. Events that occur within specific jurisdictions will dictate, based on local needs and factors, what personnel will need access into the affected area(s). Safety with regard to public health, travel accessibility and rescue operations will be paramount and of crucial importance in determining access.
2. Immediate and unrestricted access will be granted to SAR agents, including local fire/EMS, law enforcement, Texas Military Forces, and emergency response agencies in support of efforts in the affected area.
3. Tier 1:
 - a. Infrastructure and Utilities Repair Personnel. These agencies must be permitted immediate access to ensure essential services such as water, power, and communications are restored and infrastructure is intact. Municipal utilities and public works personnel also are included.
 - b. Official Damage Assessment Teams. These may include FEMA, State, and local officials.
 - c. Other personnel at the discretion of the local Emergency Management Director.
4. Tier 2:
 - a. Relief workers. These groups will be needed to provide food and other supplies for people in impacted areas who did not evacuate.
 - b. Healthcare agencies. These include hospitals, nursing homes, assisted living facilities, and dialysis centers. It may also include Volunteer health professionals with valid identification documentation.
 - c. Insurance agents.
 - d. Banking organizations.
 - e. Business operators considered critical to the recovery effort. The local Emergency Management Director will make the decision to permit business operators in impacted areas based on an overall evaluation

of the situation. Re-entry of key business operators to the impact area may be delayed until major routes are open and the threat to public safety subsides.

5. Tier 3: Business operators not allowed in under Tier 2 and residents at the discretion of the local Emergency Management Director.