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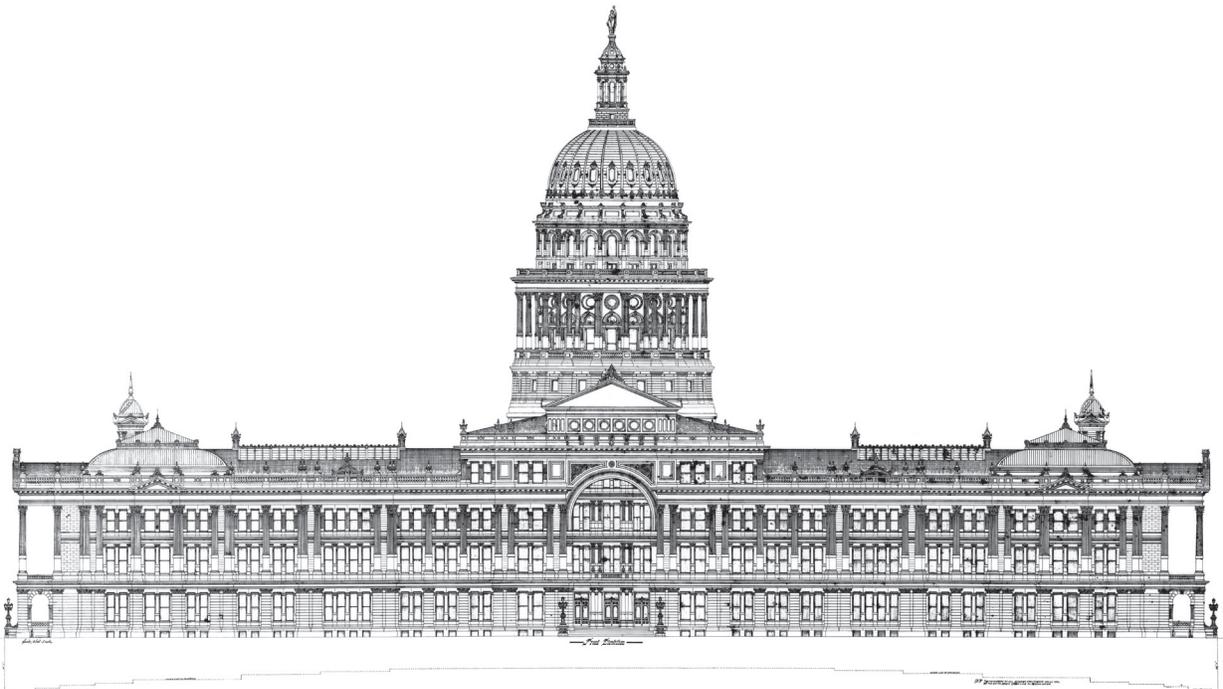
# INTERIM REPORT

TO THE

## 82ND TEXAS LEGISLATURE

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*House Committee on*  
DEFENSE & VETERANS' AFFAIRS  
December 2010



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**HOUSE COMMITTEE ON DEFENSE & VETERANS' AFFAIRS  
TEXAS HOUSE OF REPRESENTATIVES  
INTERIM REPORT 2010**

**A REPORT TO THE  
HOUSE OF REPRESENTATIVES  
82ND TEXAS LEGISLATURE**

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

**COMMITTEE CLERK  
TERI AVERY**

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Committee On  
Defense & Veterans' Affairs

December 1, 2010

Frank J. Corte, Jr.  
Chairman

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

The Honorable Joe Straus  
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 & Veterans' Affairs of the Eighty-first Legislature hereby submits its interim report including recommendations and drafted legislation for consideration by the Eighty-second Legislature.

Respectfully submitted,

Frank J. Corte, Jr.

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Norma Chavez

Joe Farias

Solomon Ortiz, Jr.

Chris Turner

Al Edwards

Diana Maldonado

Joe Pickett

Allen Vaught

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## INTRODUCTION

At the beginning of the 81st Legislature, the Honorable Joe Straus, Speaker of the Texas House of Representatives, appointed nine members to the renamed House Committee on Defense & Veterans' Affairs. The committee membership includes Frank J. Corte, Jr., Chairman; Allen Vaught, Vice-Chairman; Norma Chavez; Al Edwards; Joe Farias; Diana Maldonado; Solomon Ortiz, Jr.; Joe Pickett; and Chris Turner.

During the interim, the Committee was assigned five charges by the Speaker: 1) Investigate strategies to address incompatible land use surrounding Texas military installations. Study approaches that minimize conflict with neighboring landowners; 2) Evaluate the advantages, including potential cost savings, of centralizing call center activities for referral to benefits providers for veterans; 3) Monitor and review the disbursement and use of border and homeland security funds. Evaluate the effectiveness in meeting the state's border and homeland security program goals and objectives. (*Joint Interim Charge with House Committee on Appropriations*); 4) Study ways the state can enhance military and overseas voters' ability to obtain and return balloting materials and reduce burdens on those voters' exercise of their right to vote. (*Joint Interim Charge with House Committee on Elections*); and 5) Monitor the implementation of SB 1940 (81R), which established veterans court programs in Texas, and examine the link between combat stress disorders of war veterans, including post-traumatic stress disorder and traumatic brain injury, and the onset of criminal behavior. (*Joint Interim Charge with House Committee on Criminal Jurisprudence*)

Chairman Corte appointed subcommittees for the three joint charges. Hearings were held on each of the charges. The committee, and its subcommittees, have completed their hearings. The House Committee on Defense & Veterans' Affairs 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, appearing before the committee in public hearings, and offering background information and testimony. Special appreciation is extended to Ms. Loretta Class who served as Assistant Committee Clerk throughout the regular session and worked diligently on Interim Charge #1.

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**HOUSE COMMITTEE ON DEFENSE & VETERANS' AFFAIRS**

**INTERIM STUDY CHARGES AND SUBCOMMITTEE ASSIGNMENTS**

- CHARGE ONE      Investigate strategies to address incompatible land use surrounding Texas military installations. Study approaches that minimize conflict with neighboring landowners.
- CHARGE TWO      Evaluate the advantages, including potential cost savings, of centralizing call center activities for referral to benefits providers for veterans.
- CHARGE THREE    Monitor and review the disbursement and use of border and homeland security funds. Evaluate the effectiveness in meeting the state's border and homeland security program goals and objectives. *Joint Interim Charge with House Committee on Appropriations*  
*Subcommittee Members: Edwards, Chair; Chavez, Farias and Vaught*
- CHARGE FOUR     Study ways the state can enhance military and overseas voters' ability to obtain and return balloting materials and reduce burdens on those voters' exercise of their right to vote. *Joint Interim Charge with House Committee on Elections*  
*Subcommittee Members: Chavez, Chair; Turner and Maldonado*
- CHARGE FIVE     Monitor the implementation of SB 1940 (81R), which established veterans court programs in Texas, and examine the link between combat stress disorders of war veterans, including post-traumatic stress disorder and traumatic brain injury, and the onset of criminal behavior. *Joint Interim Charge with House Committee on Criminal Jurisprudence*  
*Subcommittee Members: Vaught, Chair; Farias and Ortiz, Jr.*

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**CHARGE ONE**

Investigate strategies to address incompatible land use surrounding Texas military installations.  
Study approaches that minimize conflict with neighboring landowners.

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## **BACKGROUND AND INTERIM STUDY**

In Texas, there are currently fifteen active military installations. Among them are: Fort Sam Houston, Fort Bliss, Fort Hood, Randolph Air Force Base and Naval Air Station Corpus Christi. In comparison with other states, Texas is home to the most active duty military personnel in the nation and ranks only second in the Department of Defense (DoD) workforce.<sup>1</sup> Texas is unique in its size and ability to house numerous installations and provide abundant employment opportunities across the state.

In San Antonio alone, the Department of Defense provides jobs to more than 68,000 individuals, a third of them civilians. According to the DoD, the economic effect of the military presence for the year 2006 in San Antonio surpassed \$13.3 billion.<sup>2</sup> Although Texas benefits significantly from a strong military presence, there are several threats posed to this mutually advantageous relationship. Encroachment continually challenges the proper functionality of the installations.

Encroachment, as defined by the Department of Defense, the incompatible use of land, air, water, and other resources - is the cumulative impact of urban development that hampers the military's ability to carry out its testing and training missions.<sup>3</sup> The encroachment around Texas military bases has caused concern of mission sustainability and consequentially private property rights. The most apparent types of encroachment currently facing our installations are those of development, sound attenuation, light and wind turbines. Therefore, the Texas Legislature has made various efforts to address the needs of our military in order to protect the integrity of training and seek effective sustainable land use standards, while simultaneously guarding the individual rights of property owners.

During the 81st Legislature, numerous pieces of legislation were filed which sought to mitigate encroachment and ensure a strong military presence in Texas. Among the various bills filed, the House passed HB 2919, authored by Representatives King and Vaught relating to the regulation of land use and the creation of regional military sustainability commissions to ensure compatible development with military installations in certain areas. HB 2919 has since been used as starting point for the investigation of other strategies and approaches to encroachment. According to testimony given on this charge, HB 2919 has been beneficial and appreciated by military installations and private groups alike. However, the general consensus is that although it eliminates problems for developments within an eight mile radius of the installation, more work needs to be done to address troubles found within the eight miles.

Among the assorted methods to studying and approaching the problem of encroachment are programs such as the Joint Use Land Study (JLUS), Army Compatible Use Buffer program (ACUB), Readiness and Environmental Protection Initiative (REPI) and others. Each has produced base and/or branch specific information and forms of effectiveness throughout Texas. These have all been considered in the committee's study and findings.

On April 27, 2010 the committee met in Austin to take invited and public testimony to investigate different strategies to address encroachment. Represented in the invited testimony was the Office of the Secretary of Defense, The United States Navy, The United States Air

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Force, The United States Army, Texas General Land Office, Texas National Guard, Private Consultants, City of San Antonio, Office of Military Affairs, Texas Association of Builders and San Antonio Builders Association, San Antonio Builders Association and private developers.

## COMMITTEE FINDINGS AND RECOMMENDATIONS

### Real Estate Disclosure

Frequently suggested during the committee hearing was mandatory real estate disclosure. Texas is one of several states that does not mandate the seller of a property to disclose to potential buyers its geographical proximity to a military installation, flight paths, bombing ranges, or of noises habitually generated by the installation. According to a majority of the invited testimony, mandatory real estate disclosure would be one form of preventing encroachment as incompatible land development is adverted. As stated in the hearing, noise is the main issue, thus JLUS identified noise contours would be a likely area where real estate disclosure would apply.<sup>4</sup> This highly recommended strategy is backed by the Department of Defense as it states that "[r]eal estate disclosure is one of the most practical and cost-effective encroachment prevention tools available"<sup>5</sup>

States such as Arizona and Maryland have made legislative efforts to curb encroachment by creating laws defining real estate disclosure. For example, Arizona law requires proper and timely notice of noise-sensitive uses to prospective purchasers of land in several defined areas of the state...the state identifies specific land as Airport Influence Areas; this designation requires that owners of the property in the High Noise and Accident Potential Zones to notify potential buyers, lessees, or renters that the property is located in the zones, is subject to the requirements of military airport compatibility, and may be subject to aircraft noise and overflights. The state also mandates that type of disclosure on land under the military training routes that crisscross the skies of the state. The State Department of Real Estate is required to post a military training route map on its web site for public reference.<sup>6</sup>

Maryland followed this lead and in 2006 passed legislation for mandatory disclosure which affected most Maryland counties. The language briefly, yet specifically states "Buyer is advised that the property may be located near a military installation that conducts flight operations, munitions testing, or military operations that may result in high noise levels."<sup>7</sup>

### Wind Turbine and Tax Exemptions

The rising development of wind farms in Texas has expanded the scope of encroachment as they interfere with radars on the military installations. During the hearing, the committee learned of the negative impacts of wind farms and turbines near installations and their threat to flight safety. Wind turbines erected inside 30 miles from airport surveillance radar (ASR) systems and electronic aids to navigation (NAVAIDS) have a variety of deleterious effects on the air traffic control (ATC) mission and flight safety. These degradations include: false weather depiction, actual weather masking, target masking, false target generation, scintillation and the spontaneous appearance or disappearance of aircraft targets. For more detailed information of the potential hazards see the NOAA Radar Operation Center website

[http://www.roc.noaa.gov/WSR88D/windfarm/mitigate\\_operators.aspx?wid=usr](http://www.roc.noaa.gov/WSR88D/windfarm/mitigate_operators.aspx?wid=usr)

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Currently, there is no effective federal, state or local regulation to prevent the safety of flight and negative effects posed by wind turbine "farm" location and construction.<sup>8</sup> A state example of this concern is at Naval Air Station Kingsville and Naval Air Station Corpus Christi where nearly half of all naval aviators for the entire country are trained. There are over 200 operating turbines in the Kingsville area and another 700-900 in the planning stages. NAS Kingsville and Corpus Christi are anticipating the problems and seeking ways to address them.

The Committee recommends that the legislature amend certain tax exemptions that are now available to all developers with interest in wind energy. It advises that the codes which apply contain geographic boundaries which would exclude wind farms with turbines in or near the deleterious zones of nearby military installations. Currently under Texas tax code, Section 171.056, wind turbines fall under the category of "solar energy devices". As such, a corporation with business interest in solar energy devices is eligible for a franchise tax exemption. <http://www.statutes.legis.state.tx.us/Docs/TX/htm/TX.171.htm#171.056> Furthermore, corporations engaged in such business are also eligible for a tax exemption on the turbines themselves. Under Section 151.318, the wind turbines are property by which a product being sold to the public is manufactured. <http://www.statutes.legis.state.tx.us/Docs/TX/htm/TX.151.htm#151.318>

#### Further Cooperation

Among the strategies discussed to strengthen air space security and keep air encroachment at a minimum, another committee recommendation is that each military installation better cooperate with the FAA and other stakeholders.

The FAA has minimal regulation over the placement of wind turbines although they have tools for the use of developers and planners. Federal Aviation Regulation (FAR) Part 77 is a means by which the FAA protects the nation's airspace and airports from obstructions-- thus ensuring continued access for all users. Earlier this year, an amendment was made which allows for more time in the assessment process of all tall structures and provide for protection of instrument approaches into private-use airports. The new rule which will take effect on January 18, 2011 will give the FAA more time to evaluate the material submitted by builders prior to construction. Currently, the FAA has 30 days to produce feedback on the anticipated height of wind turbines, in 2011 it will change to 45 days.<sup>9</sup>

For all structures 200 feet high or more, the builder is required to submit a Notice of Proposed Construction or Alteration (Form 7460-1) <https://oeaaa.faa.gov/oeaaa/external/content/7460-1.pdf> However, a problem arises when wind turbines are erected just a few feet below 200 ft. For example, a wind turbine standing 197 feet tall can still affect mission safety and produce false radar readings. This committee suggests that the legislature create a method by which all builders and developers must submit a Notice of Proposed Construction or Alteration for turbines of *any* height. This would ensure that all turbines, regardless of height are properly evaluated.

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In conjunction with tighter requirements for the Notice of Proposed Construction to the FAA, the committee suggests that the FAA and military installations be required to go one step further in their collaboration with each other. Dyess Air Force Base is an ideal example of successful interaction between the developers, the FAA and the Encroachment Team at Dyess. In 2005 the Encroachment Team at Dyess AFB received construction notices from the FAA about a project beginning nearby. After evaluating the turbine location, the Encroachment Team began dialog with the FAA and the developer proponent named in the Obstacle Evaluation/Airport, Airspace Analysis (OE/AAA). The problems with some of the turbines in the project were discussed in a few formal meetings and it was explained that these turbines would affect weather radar returns that could impact nearly 200,000 people in West Texas, including Dyess Air Force Base. By utilizing the proper channels of communication between the installation, the FAA and the Developer, all potential threats were avoided by altering the location of 14 turbines and the realignment of others. In this instance, creating good working relationships between the developer and federal agencies culminated in beneficial results to all stakeholders.

As of now, it is not standard procedure for the FAA to relay the Notice of Proposed Construction (Form 7460-1) they receive to the respective installation unless deemed necessary by the FAA personnel to which it was assigned. Although the FAA aims to be a proper thoroughfare of this information, their Obstacle Evaluation/Airport, Airspace Analysis (OE/AAA) does not always recognize potential problems that military installations may have. It has been estimated that roughly 50,000 Notices are sent to the FAA each year. The lack of regulation combined with the high volume of Notices provides too much room for oversight. It would be advantageous if each installation was provided the opportunity to comment on each proposal that may pose a security threat.<sup>10</sup>

#### Statewide Commission

Although the legislature established the Texas Military Preparedness Commission in 2003, there is still a lack of state wide coordination in addressing encroachment issues. The primary functions of the TMPC revolves around economic development and preservation of military installations. However, based on the testimony during the hearing there is a need for a more narrow vehicle of coordination. The committee recommends a method which to bring installations, projects, potential partners and policy makers together in order to develop regional specific solutions. This could be achieved by either broadening the statutory powers of the Texas Military Preparedness Commission or by creating a supplementary body which operates as a communication channel for the distribution of statewide information. It has been stated by consultants that such coordination at the state level would increase the competitiveness among installations as they apply for REPI funds.

In response to a similar need, Arizona passed Senate Bill 1120 in 2001 that appropriated funds to develop comprehensive land use plans in the noise and accident potential zones surrounding active military airports. As a direct response to this legislation the Arizona Military Regional Compatibility Project was created. The Compatibility Project is a means to convene the interested and affected parties, function as a clearinghouse for data collection to ensure consistency, and develop strong implementation strategies in collaborative effort. As in Arizona, Texas could form a entity whose focus is to facilitate the coordination and collaboration among jurisdictions since there is not a universal approach to each installations' needs. In such a way,

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the local jurisdictions maintain the planning authority to regulate land use and play a vital role in implementation strategies.<sup>11</sup> Like Arizona, numerous other states have addressed this issue by creating commissions which facilitate discussions among stakeholders, such as the executive branch, the state legislature, congressional representatives, local and county governments, military base commanders, business interests and landowners. Such a creation in Texas would provide a forum and unified voice for all stakeholders.<sup>12</sup>

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**CHARGE TWO**

Evaluate the advantages, including potential cost savings, of centralizing call center activities for referral to benefits providers for veterans.

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## BACKGROUND AND INTERIM STUDY

The state of Texas offers tremendous services and benefits to its well-deserving veterans. The Department of State Health Services (DSHS), the Health & Human Services Commission (HHSC), the Higher Education Coordinating Board (THECB), the Veterans' Commission, the Veterans Land Board, and the Workforce Commission each provide services to Texas' veterans. There is a great deal of complexity associated with varying federal and state veteran benefits. The services and benefits provided by these agencies are numerous; some overlap agencies; some require highly qualified, specialized staff.

On May 4, the Defense & Veterans' Affairs committee met in a public hearing in Austin to hear testimony on evaluating the advantages, including potential cost savings, of centralizing call center activities for referral to benefits providers for veterans. Staff from the following agencies presented testimony: Texas Department of State Health Services, The Texas Higher Education Coordinating Board, the Texas Workforce Commission, the Texas Veterans Land Board, the Texas Veterans' Commission, and 2-1-1, Texas Information Network, which is within the Health & Human Services Commission. The agencies provided testimony that included the following background information on the veteran services they provide.

The Department of State Health Services (DSHS) testified that in 2008 the Texas Mental Health Transformation Working Group formed a subcommittee to examine the behavioral health needs of returning veterans and their family members. A report identifying those needs was published in January 2009, entitled Behavioral Health Services for Returning Veterans and Their Families: Services, Gaps, and Recommendations. (The full report can be found at: [www.mhtransformation.org](http://www.mhtransformation.org).) Based on the report, DSHS requested and received exceptional item funding from the 81st Legislature, Regular Session, 2009, to implement some of the recommendations. The exceptional item included funds for training, technology to match veterans' needs with available resources, and increasing coordination of services. Technology is being developed to help veterans and family members navigate the TexVet Web site ([www.texvet.com](http://www.texvet.com)). TexVet: Partners Across Texas will be used to enhance coordination of service delivery.

In November of 2009, Governor Perry asked the Health and Human Services Commission (HHSC) and DSHS to develop plans to enhance services to veterans and their family members, and announced that \$5 million would be directed toward those efforts. All 38 local mental health authorities were encouraged to submit proposals for incentive projects (up to \$70,000 each) for veteran peer support and services that they or their subcontractors could deliver to veterans and their family members. All local mental health authorities responded with proposals. In addition to incentive projects, the plan included funds for ten competitive projects of up to \$175,000 each. Awards were made to the following entities: the Center for Health Care Services (Bexar County); Central Texas Collaborative (20 counties); East Texas North Collaborative (41 counties); East Texas South Collaborative (16 counties); El Paso MHMR Center: Harris County MHMR Authority; Hill Country MHMR Center (17 counties); Lubbock Regional Center (5 counties); North Texas Behavioral Health Authority (7 counties); and Tarrant County MHMR services.

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DSHS has developed a contract with Texas A&M Health Science Center to develop a resource database for veterans and their families. The focus of these efforts is to drive all veterans and family members to this website for information and resources. The resource information will be veteran-specific. There will be staff to provide outreach to individuals and organizations that have an interest in assisting and serving veterans and to train them to use the website and load their data to the database. There will also be marketing to veterans and family members to use the web-based service.

The Texas Higher Education Coordinating Board (THECB) oversees numerous tuition exemptions and waivers for military service members and their families. Although THECB does not administer these programs directly, the office is responsible for writing rules, determining program guidelines, monitoring reporting activities, conducting training, and acting as a resource for the institutions of higher education on all matters related to these programs. THECB disseminates program information to the colleges and universities, students, legislative committee members, and the general public through its participation in financial aid workshops throughout the state. In addition, informational materials are distributed via financial aid and veterans' education office distribution lists, email announcements, memorandums, and postings on the Coordinating Board's College for All Texans website. ([www.collegeforalltexans.com](http://www.collegeforalltexans.com))

THECB staff members collaborate frequently with the Veterans' education and financial aid officers at the Texas public institutions of higher education, Texas Veterans' Commission, and the U.S. Department of Veterans Affairs. Frequent communication between entities is typically focused on updates to Veterans' educational benefits. Staff members make presentations to high school counselors and students. In an effort to be as efficient as possible and to make use of technology while providing the most up-to-date information, THECB staff offer a series of webinars focused on Veterans' benefits. Additionally, staff members respond to inquiries from Veterans or interested individuals regarding higher education benefits. From September 1, 2009 thru April 1, 2010, THECB staff members answered over 1,900 calls relating to the Hazlewood Exemption. Public inquiries are sometimes directed to the College for All Texans website for detailed information. As of September 1, 2009, the website had received over 4,700 visits on the Hazlewood Act and over 5,800 on the Combat Exemption.

The Texas Veterans Commission (TVC) was created in 1927. Its purpose is to assist Texas veterans, their families and their survivors in obtaining all the benefits they have earned through their service to our country. The Commission's counselors, located in 27 cities across the state, work to help veterans successfully navigate the complexities of Veterans Administration claims, to receive job placement assistance and to secure financial grants for continuing education.

The Claims Representation and Counseling Services program provides veterans, their dependents and survivors assistance in obtaining all earned benefits and entitlements from the U.S. Department of Veterans Affairs. Counseling is conducted in field offices throughout the State. It includes educating veterans about the benefits for which they qualify, the initial filing of a claim, compiling additional evidence or documentation required by VA, appealing a VA decision, and if necessary, providing representation at a VA hearing.

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Employment services offered by the TVC assist employers in finding qualified veteran job applicants. The goal of these services is to match veteran job seekers with the best career opportunities available. Texas leads the nation in veterans' employment with Texas Veterans Commission employment representatives helping more than 47,500 veterans find employment in 2009. Additionally, the Texas Veterans Commission staff has filled over 500 training slots at the prestigious National Veterans' Training Institute since 2006 and won 12 national employment awards from both veteran and workforce organizations in 2008 and 2009. Over 90 TVC employment representatives provide a full range of career services. They are located in more than 75 cities throughout Texas and offer one-on-one assistance to veterans with job applications, resume preparation, job matching and searches, as well as other intensive services.

The TVC provides Transition Assistance Program (TAP) briefings to National Guard, Reserve and regular military personnel preparing to leave military service. The TAP workshops provide information on VA benefits, job search techniques, interviewing skills, translation of military duties into civilian job skills, resume preparation and labor market information. The TAP workshops are conducted an average of 17 times per month at 13 military installations statewide. In September 2009, TVC began providing employment services to spouses and caregivers of active duty servicemembers. Family Career Assistance Counselors are placed at Fort Hood, Fort Bliss and Brooke Army Medical Center in San Antonio and provide the same services to those spouses and caregivers as they do to veterans. TVC assigns staff to designated VA facilities to assist disabled veterans with intensive employment assistance. These services are provided to veterans completing their VR&E training or education program and are within 90 days of graduation. The Veterans Education program staff assists Texas veterans and dependents with questions and concerns regarding their eligibility for or difficulties obtaining any of the federal G.I. Bill benefits or the Texas Hazelwood Act benefit.

The Veterans Land Board (VLB) offers low-interest loans for the purchase of land and homes and to make home improvements, state-of-the-art long-term care facilities for veterans in our state veterans homes, and dignified places of rest for deceased veterans in our state veterans cemeteries. Since 1983, the Veterans Land Board (VLB) has offered Texas veterans a toll-free call center to provide information on veterans' benefits offered by the Board. Over the ensuing years, the VLB Call Center has expanded that role by providing information on other benefits provided by the federal government, veterans' organizations and other state agencies and veteran service providers. The VLB Call Center also maintains the VLB Web site as an adjunct to call services. ([www.glo.state.tx.us/vlb/](http://www.glo.state.tx.us/vlb/)) In January 2008, the VLB Call Center initiated a combined call center with that of the Texas Veterans Commission (TVC) in response to suggestions from the Sunset Advisory Board to provide a more efficient, centralized service to veterans.

The Texas Workforce Commission (TWC) operates a service delivery model comprised of 28 Local Workforce Development Boards and a network of 240 workforce centers that work cooperatively with numerous public and private partners to provide employment, training, and job placement services to all customers, including veterans. Services are available to all customers, however, veterans are afforded priority in receipt of services. The Jobs for Veterans Act of 2002 established a federal priority for veterans in the receipt of any services funded, in whole or in part, by the U.S. Department of Labor (DOL). In addition, state law (Texas Labor

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Code §302.152) establishes priority of service for veterans for any services funded in whole or in part by state funds. Based on these laws, veterans receive priority in the receipt of all workforce services. Job placement services are largely provided via the labor exchange/job matching system ([www.WorkInTexas.com](http://www.WorkInTexas.com)). WorkInTexas.com is available to all customers free of charge. Work In Texas provides special features to/for veterans including flags to identify veterans to employers and staff; a two-day hold on all newly created job postings, to ensure veterans get first review; ability for employers to designate job postings as Veteran Applicants Only; numerous job search options for veterans, including viewing only Veteran Applicant Only and Federal Contractor job postings; and priority of Service definition and notification to all veterans upon entry into the system and at certain subsequent reentry points.

The Texas Veterans Leadership Program (TVLP) is a TWC resource and referral network to connect returning veterans of Iraq and Afghanistan with resources and tools they need to lead productive lives and enjoy the full benefits of the society they have willingly served. Veterans Resource and Referral Specialists (VRRSs) work to find ancillary services in local communities, some of which will be community service organizations, veterans' service organizations, and faith-based programs. The VRRSs also link to federal, state, and local governmental agencies and programs as well as community leaders and employers. The Program Director and the VRRS are all veterans of Iraq and/or Afghanistan. This network of returning veterans play an integral role in addressing the needs of other returning veterans, including referrals to address employment, training, medical, educational, and other needs of veterans. One VRRS is assigned to each of the 28 local workforce development areas. Located in a Texas Workforce Center, each VRRS works closely with Texas workforce center staff and some Texas Veterans Commission staff that are co-located in Texas Workforce Centers. Through the TVLP, TWC sends letters to veterans returning from Iraq and Afghanistan explaining the services that are available to help these men and women transition back to civilian life. Veterans that work with the TVLP are provided information based on individual needs, and provided referrals to local resources to address employment, and other challenges.

TWC provides outreach and assistance to hard-to-serve veterans in Texas. Specifically, the initiative targets veterans that are homeless; ex-offenders; have a history of substance abuse; experiencing post-traumatic stress disorder; physical, mental or learning disabilities; and recently discharged from military duty. Services are intended to compliment the employment services offered by the Texas Veterans Commission.

The TWC approved the Comprehensive Veterans Initiative to address the needs of veterans and their families. Funds from the initiative will be used to assist in placing returning veterans in adjunct professor positions at community colleges to provide training in allied health fields; to support a demonstration project to ascertain college credits that can be accredited to veterans who have experience in the health care field based on their military training; to meet the employment needs of military families with services provided to military family members that need job search assistance (i.e., labor market information, assessment, résumé development, and interviewing) and training; and to support after-school youth robotics programs, and recommends prioritizing applications that will serve military children in order to support youth in military families.

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2-1-1 Texas Information and Referral Texas Network is a telephone dialing code assigned by the federal government for access to health and human services information and referral. Since 2004, 100% of the population in Texas has had access to 2-1-1. Senate Bill 1058 (80th Session, 2007) required 2-1-1 Texas to provide referrals for reintegration services to service members and their families, to identify available resources and include in database, to train area information center staff, to disseminate resource information and to maintain relationships with local, state and national private and government organizations providing resources.

Over the past two years, 2-1-1 Texas has worked closely with the TexVet Coalition to include 150 support organizations and their resources that were not previously in the [www.211texas.org](http://www.211texas.org) database. Each entry includes eligibility criteria, fees if applicable, and details such as necessary documentation, disability access and service delivery times. Maintaining an accurate and complete database of services is an ongoing commitment of over 60,000 organizations, many with multiple service sites. Over 243 organizations specifically target service members and their families. National Information & Referral Standards require formal annual updates on each resource. Dynamic information is updated more often to maintain current.

## **FINDINGS AND RECOMMENDATIONS**

The committee was tasked with evaluating the advantages, including potential cost savings, of centralizing call center activities for referral to benefits providers for veterans. The committee seeks to ensure that veterans are able to easily receive both information about the benefits for which they qualify and access to the actual benefits and programs. The interim charge specifies a centralized call center; there are a variety of numbers that veterans can call to access information about benefits, currently. Additionally, the committee sought information regarding a centralized website; there are a variety of websites maintained by various agencies that veterans can access to receive information regarding benefits.

The Defense & Veterans' Committee recommends that the TVC and VLB call center that was merged as a result of sunset legislation leverage the most current technology to ensure that veterans receive information in the most streamlined method possible. Further, the sunset requirement that the TVC and VLB work cooperatively to create one website that provides complete, accessible information about all available Texas veterans' benefits and services needs to be fully implemented. The Texas Veteran Portal should leverage state of the art technology and the services of other agencies to ensure that there is one veteran portal for all benefits and services available to Texas veterans.

Currently the VLB Call Center does not use a call transfer disconnect system. If a veteran calls the VLB Call Center - 1-(800)-252-VETS - during their hours of operation, a live person at the VLB Call Center answers the phone and about 90% of the time, the Call Center personnel are able to answer the concerns of the caller completely. However, in about 10% of the cases, the caller needs to be transferred to another agency, such as the Veterans Administration. In these cases, the VLB Call Center personnel will give the caller the appropriate number to dial. Then the call is disconnected and the caller must make an additional phone call. The Committee believes it is of utmost importance that veterans' calls are answered completely and their concerns are addressed as seamlessly as possible. Therefore, the Committee recommends that

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the VLB obtain and use a call transfer disconnect system, or, alternatively, that the VLB Call Center personnel and operations be transferred to the statewide 2-1-1 system.

The TVC sunset legislation, HB 3426, 80th Legislature, Regular Session, 2007, directed the TVC to implement a policy to use appropriate technological solutions to improve the commission's ability to perform its functions. Further, it stated that the policy must ensure that the public is able to interact with the commission on the Internet. Additionally, HB 3140, 80th Legislature, Regular Session, 2007, directed the Veterans Land Board to enter into a memorandum of understanding with the TVC to specify the guidelines, powers, and duties necessary for the board and the commission to coordinate veterans benefits outreach activities. The state has several websites for veteran benefits, mostly maintained by the various agencies that provide veteran services.

During the Summer and Fall of 2010, under the direction and coordination of the Department of Information Resources, various stakeholders began to develop the Texas Veterans Portal through the Veterans Portal Advisory Council (VPAC). The objectives of the VPAC are to ensure that the portal provides easy access to relevant resources and information for Texas Veterans, to identify and define content of the portal, and to provide input and feedback to the content and change management processes for portal requirements. The portal should be operational in the Winter of 2010.

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**CHARGE THREE**

Monitor and review the disbursement and use of border and homeland security funds. Evaluate the effectiveness in meeting the state's border and homeland security program goals and objectives. *Joint Interim Charge with House Committee on Appropriations*

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## BACKGROUND AND INTERIM STUDY

In January 2004, House Bill 9, passed by the Seventy-eighth Legislature, Regular Session, created the Governor's Office of Homeland Security and required the governor to develop a statewide homeland security strategy that improves the state's ability to detect and deter threats to homeland security, respond to homeland security emergencies and recover from homeland security emergencies.<sup>13</sup> This office coordinates the Homeland Security Council and prepares the Texas Homeland Security State Plan.<sup>14</sup> In May, 2010, the office released the updated Texas Homeland Security Strategic Plan 2010-2015, <http://www.governor.state.tx.us/files/press-office/tx-homeland-security-strategic-plan-2010-2015.pdf>, that will guide the state's preparation, preparedness, response and recovery efforts for all types of threats over the next five years. The plan serves as a high-level roadmap to allow for adaption to evolving situations in an ever-changing threat environment. The office also has primary oversight over the Governor's Division of Emergency Management (GDEM), which is housed within the Texas Department of Public Safety (DPS). GDEM makes recommendations regarding the distribution of federal homeland security funds, administers applications for local and state entities applying for federal homeland security-related grant funds, audits and tracks homeland security funds, and coordinates implementation of the state's Homeland Security Plan. Prior to 2005, the Texas Engineering Extension Service served as the administrative agency for Texas' homeland security funds.

The State of Texas, for the first time, appropriated funds specifically to address border security issues during fiscal years 2008–09.<sup>15</sup> \$108.1 million in All Funds (\$63.7 million in General Revenue Funds within the GDEM goal and \$44.4 million in State Highway Funds within DPS strategies outside the GDEM goal) for border security operations including funding for local law enforcement surge operations, joint operation and intelligence centers, a border security operations center, and additional trooper and aviation support were appropriated. Portions of these funds were for overtime, per diem, and travel expenses for the National Guard and law enforcement personnel from other jurisdictions cooperating in surge operations. In addition, funds were provided for local law enforcement overtime, per diem, training, equipment, and technology acquisition. The state also had access to various federal grant funds to pay for homeland and border security related programs, including funding for DPS and pass through funding to local and other state agencies.

Funding for the state's Border and Homeland Security goals and objectives comes from both state and federal sources.<sup>16</sup> For Fiscal Years 2010-11, \$90,592,579 came from state funding. Of the state funding, \$2,125,192 came from General Revenue; \$6,100,000 came from General Obligation Bond Proceeds; \$24,162,673 came from State Highway Fund 6; and \$58,204,714 came from General Revenue - Dedicated Operators and Chauffeurs license Account 99. Federal funding accounted for \$29,550,000 from the Byrne Justice Assistance Grants.

The House committee on Appropriations and the House Committee on Defense & Veterans' Affairs, subcommittee on border and homeland security funding, met in a public hearing in Austin on May 11 to hear testimony regarding the charge. Representatives from the State Auditor's Office, Legislative Budget Board, Governor's Office, Department of Public Safety, Adjutant General's Department and Texas Parks & Wildlife Department (TPWD) provided the following testimony.

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Representatives from the Legislative Budget Board testified that several sources of funding are used to support border security operations in Texas. In fiscal year 2009, approximately \$17.8 million was awarded or passed through to 16 border counties and five regional councils of government in federal homeland security and criminal justice funds. About \$14.2 million was awarded to the 16 counties with a physical border with Mexico; \$3.6 million was awarded to border Councils of Government. These figures do not include state agency and university awards, nor do they include monies awarded for interoperability communication projects.

For Fiscal Years 2008-9, \$110.3 million in state funding was appropriated for border security funding. Of that amount, \$108.1 million was allocated to DPS; \$2.1 million was allocated to TPWD. In FY 2008-09, funding was allocated for enhanced border security operations at DPS and TPWD, surge operations, and equipment and for and operation of Joint Operation and Intelligence Centers and the Border Operations Center.

For Fiscal Years 2010-2011, \$90.6 million in state funding and \$28 million in American Recovery and Reinvestment Act (ARRA) funds were appropriated. Of these funds, DPS received \$100.6 million; Trusteed Programs within the Office of the Governor received \$13.2 million; TPWD received \$4.3 million; and Texas Department of Criminal Justice (TDCJ) received about \$500,000. In FY 2010-11, funding was for enhanced border security operations at DPS and TPWD, additional local border security support, a Laredo Crime Lab, upgrading Texas Task Force II, a Longview helicopter, additional DPS, TPWD and TDCJ staff and funding for specific border security operations at the Governor's Office, and ARRA funding for 150 DPS vehicles, border-wide crime mapping, and radio interoperability.

The Texas State Auditor's Report, 09-022, from March 2009, found that the Governor's Division of Emergency Management (Division), the Department of Public Safety (DPS), and the Parks and Wildlife Department (TPWD) had spent approximately \$79.0 million (56 percent) of the \$142.3 million in state and federal funds available to them for border security operations for fiscal years 2006 through 2009. Of the \$79.0 million spent, 81 percent was for expenditures related to salaries (\$23.0 million), equipment (\$21.5 million), and contracts (\$19.3 million).

According to the audit, the Division's grant review process offers effective controls to ensure that border security funds are used to pay for only valid costs in accordance with contracts or grants funded by riders in the general appropriations act. The audit found that the Division could improve its grant review process by ensuring that grantees submit all required supporting documentation prior to the review process to ensure the accuracy of payments. Further, the Division should conduct a more thorough review of supporting documentation submitted by grantees to ensure that it identifies all payment miscalculations.

Rider 59 of the General Appropriations Act, 80th Legislature, appropriated to DPS \$44.4 million for fiscal years 2008 and 2009 for the enhancement of border security operations. As of November 30, 2008, DPS had spent \$33.5 million on resources authorized in Rider 59; \$27.5 million of that amount was spent by the Texas Highway Patrol and Aircraft Divisions. However, resources paid for with these funds were not always allocated to counties within the Texas-Mexico border region. The Rider did not specify where DPS should place these resources to enhance border security operations.

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The Governor's Division of Emergency Management (Division) is responsible for the coordination of border security operations. DPS and the Division did not coordinate the allocation of certain resources paid for with Rider 59 funds to ensure that the placement of these resources was maximized to enhance border security operations. The audit found that DPS generally complied with Rider 59 requirements and purchasing guidelines.

DPS generally agreed with the findings and recommendations of the audit report. In their response to the State Auditor in December, 2009, DPS self-reported that they had fully implemented each of the audit's recommendations. DPS completed a comprehensive assessment of homeland security missions and objectives for the state. A strategic plan that maps out a road map for border and homeland security was adopted. The Texas Homeland Security Strategic Plan 2010-2015 will guide the state's preparation, preparedness, response and recovery efforts for all types of threats over the next five years. The plan serves as a high-level roadmap to allow for adaption to evolving situations in an ever-changing threat environment.

The Governor's Criminal Justice Division (CJD) is the designated State Administering Agency for the federal Byrne Justice Assistance Grants (JAG) Program. JAG funding comes from the Bureau of Justice Assistance (BJA) and provides states and local governments with funding to support a range of program areas including law enforcement, prosecution and court, corrections, drug treatment and enforcement, technology improvement, and crime victim and witness initiatives.

Once the Bureau of Justice Statistics (BJS) calculates the funding the state will receive, 60 percent of the allocation is awarded to the State Administering Agency (SAA). The remaining 40 percent is allocated by formula to local governments who may apply directly to BJA for local JAG funds. The Governor's office monitors funding for the state, including local government funding from other sources. As part of grant applications, local governments must disclose all sources of funds. In this way, the Governor's office, in coordination with the GDEM monitors and coordinates resources to assist in executing the state's homeland security plan.

CJD coordinates with the Texas Office of Homeland Security Division and the Texas Department of Public Safety to identify funding through CJD that will be used in support of the Texas Homeland Security Strategy Plan (2010 – 2015). Since 2006, CJD has awarded nearly \$100 million in grants with the Byrne Justice Assistance program contributing \$78 million. 49% of the funds have been allocated to DPS; 46% of the funds have been allocated to Local Governments; 4% of the funds have been allocated to the Border Sheriff's Coalition; and Texas Parks & Wildlife Department received a little less than \$500,000, or 1% of the funds.

CJD uses a variety of mechanisms to monitor and oversee recipients of funding. CJD's on-line grants management system is set-up to limit the program activities and budget items to only those eligible under JAG. In addition, each application undergoes an intensive multi-layered review incorporating checks and balances to ensure proposed activities and budget items are eligible, reasonable, and cost effective. CJD's Monitoring Section performs on-site reviews, desk reviews, grantee contact visits and technical assistance reviews. These reviews are primarily financial, but do incorporate limited testing of programmatic factors and performance

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progress. CJD's Programs Sections perform on-site programmatic reviews to ensure grantees are following through with the approved activities. CJD contracts with each of the 24 Regional Councils of Governments to conduct either a detailed technical assistance site visit or phone contact using CJD prescribed checklists. CJD contracts with the Public Policy Research Institute (PPRI) at Texas A&M University to collect federally required performance data from the JAG grantees.

With the award of \$90 million in JAG American Recovery and Reinvestment Act (ARRA) funds, came a unique opportunity to strengthen the foundation of the criminal justice system in Texas by equipping agencies and communities with resources to enhance public safety. CJD distributed this one-time influx of funding with priority given to programs incorporating or addressing Border Security, Capacity Building in Rural Texas Regions and Regional and Local Priorities.

CJD has awarded \$43 million of the JAG ARRA funds in support of Border Security initiatives. Award recipients include:

- Local sheriffs and police departments along the Texas/Mexico and coastal borders,
- Texas Department of Public Safety (DPS), and
- Texas Parks and Wildlife.

Of the funds awarded to date, \$32.7 million or 75% will be used to increase the capacity of law enforcement resources through the purchase of equipment and contracted services.

The Texas Military Forces (TXMF) support the DPS and the Governor's Office for Homeland Security or other designated Lead State Agencies in working to keep Texans safe by ensuring their readiness at the time of need. Since September of 2001 to the present, the Department of Defense has executed through the TXMF approximately \$340 million dollars in direct support of border operations in Texas. In 2007, TXMF received a \$2.5 million Public Safety Interoperable Communications Grant from the GDEM. The grant supported the development of a robust capability of communication packages dedicated to the State's response.

TPWD received appropriations for an additional 15 game wardens on the border. At the time of the hearing, those new cadets had been hired and were receiving training in the academy. They are scheduled to graduate in the Summer of 2010. TPWD has an intimate knowledge of state parks, deer camps and hunting lands along the border and throughout the state. As part of the additional border security funding they received, TPWD has increased boat patrols on Falcon Reservoir, the Rio Grande and the Gulf of Mexico. They work with DPS and the border sheriff's coalition to protect Texas Borders.

## **COMMITTEE FINDINGS AND RECOMMENDATIONS**

The committees find that overall Border and Homeland Security funds are being disbursed and used as intended. Further, Texas continues to improve its ability to detect and deter threats to homeland security, respond to homeland security emergencies and recover from homeland security emergencies.

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The committees recommend that because of the amount of border and homeland security funds appropriated, the Legislature continue to monitor their use and encourage the State Auditor's Office to audit the funds on a regular basis. Further, the committees recommend that Riders to the appropriations bill regarding border and homeland security funds be written more specifically to ensure their use is solely for Border and Homeland Security objectives. For instance, if a piece of equipment is to be bought through funds appropriated to Border Security, the actual location of that equipment should be on the Border and that specification should be included in the Rider.

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**CHARGE FOUR**

Study ways the state can enhance military and overseas voters' ability to obtain and return balloting materials and reduce burdens on those voters' exercise of their right to vote. *Joint Interim Charge with House Committee on Elections*

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## BACKGROUND AND INTERIM STUDY

Texas is home to the nation's largest population of military service members serving overseas. Texans understand that their soldiers make great sacrifices to defend our democracy, and therefore take very seriously the right and ability of our soldiers to participate in that democracy by casting ballots in Texas elections.

Unfortunately soldiers from Texas and across the country have never had sufficient ability to participate in elections. For decades, federal and state election laws and procedures have failed to protect the right to vote for our military, their families and others who live overseas in other capacities. The basic problem is that those serving in our military cannot be certain that their absentee ballots will be tallied because of outmoded state rules and deadlines. Back in 1952, President Harry Truman asked Congress to reform the election system in order to enfranchise those serving in the postwar reconstruction. But nearly six decades later the problem still exists.

The most comprehensive research on this topic has been conducted by the Pew Center on the States. The 2009 Pew research showed that the laws and procedures of 25 states — including Texas — and the District of Columbia do not provide our overseas military enough time to vote, because these states mail out their absentee ballots too late for military voters to receive them, mark them, and return them in time to meet all of the required deadlines.

For a number of reasons the military's ability to vote has not been fully realized. Elections data from 2006 shows that 86% of absentee ballots requested by the general population were cast, while only 27% of absentee ballots for overseas military voters were successfully cast. According to the Department of Defense (DoD) Federal Voting Assistance Program (FVAP), among those military members who did not vote in 2004, 30% reported they were not able to vote because their ballots arrived too late or never arrived at all. 28% reported that they were unable to register, did not know how to go about requesting an absentee ballot, or found the process too complicated.

One major problem is the complexity of the American electoral system. There is tremendous variation in how the 50 states and the District of Columbia administer the election process for overseas military voters. Each state has its own requirements, deadlines and methods of overseas military voting. One telling fact: the DoD manual for UOCAVA voters is 460 pages long. The manual contains 5 to 10 pages of instructions detailing each individual state's requirements and procedures. As Pew reports:

“...some states send ballots out and allow voters to return them via e-mail or fax, while others rely entirely on postal mail to transmit blank and receive completed ballots. Some states require military and overseas voters to register first, before they can receive a ballot, while others do not—and some give voters an opportunity to register and ask for a ballot simultaneously. Some states require voters to get their ballots notarized or witnessed before returning them. Many states require absentee ballots from UOCAVA voters to be returned by Election Day, while others count them even if they come in afterward. But it is the laws and practices of the 50 states and the District of Columbia that determine how and when these voters participate—and, most important, whether they can successfully cast a ballot.”

As a result, one major obstacle facing overseas military voters is the complexity of simply deciphering and navigating the complexity of the 51 separate voting systems.

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Although solving this problem will be a long and complicated effort, advocates have identified three major reasons why the laws of states like Texas do not currently give overseas military members enough time to vote:

1. Reliance on Mail Delivery of Ballots

When a state's absentee vote system relies on mail delivery, military voters need more time to complete all of the steps required due to the time required for mail to reach distant and changing overseas locations.

2. Waiting Too Long to Distribute Ballots

States often wait too long to distribute ballots to overseas military personnel.

3. Early Deadlines for Ballot Return

States set deadlines for return of ballots that are too early.

The advocates conclude that states like Texas can dramatically increase the opportunity for military voters to participate in elections by distributing blank ballots to overseas military voters via fax and/or e-mail as early as possible and providing more time for completed ballots from overseas military voters to return to local election offices. The advocates recommend a minimum of 45 days for "ballot transit time" — that is, the amount of time between the date a state sends a blank ballot to a voter and the deadline by which the voter must return the completed ballot.

Although these proposed fixes appear relatively simple, enacting them can be somewhat difficult. The election process is a complex one that consists of a series of steps. Whether a state's election system allows enough time for military members to vote depends on how well the series of steps work together. In states like Texas where election laws and practices have developed and been meshed together session after session, it is often necessary to step back, inspect the system as a whole, diagnose problems, and reform steps of the system to ensure that the rights and unique circumstances of absentee military voters are reflected and protected by the law.

### **The 1986 Federal UOCAVA Act and the 2009 Federal MOVE Act**

A series of federal enactments forces Texas to undertake certain overseas voting reforms. In 1986 Congress enacted the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), which gives an estimated six million uniformed service members, their spouses and dependents, and United States citizens residing outside the United States the right to vote in any federal election. The law covers primary, runoff and special elections as well as the presidential and general elections.

Among its key provisions, UOCAVA provides for an application called the Federal Post Card Application (FPCA) that qualified service members and overseas citizens can use to register to vote and request an absentee ballot simultaneously. The law also allows for the use of a "back-up" ballot for federal offices, called the Federal Write-In Absentee Ballot (FWAB). This ballot may be cast by voters covered by the Act who have made timely application for, but have not received, their regular ballot from their state or territory, subject to certain conditions.

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However, the new UOCAVA could not and did not singlehandedly reform election systems across the nation. As discussed above, states' laws and practices determine how and when UOCAVA voters cast absentee ballots, and how likely their ballots are to be counted. Congress saw that further reforms were needed to ensure military voting.

As a result, in 2009 Congress passed a new law titled the Military and Overseas Voter Empowerment Act ("MOVE Act"), amending UOCAVA to establish new voter registration and absentee ballot procedures which states must follow in all federal elections. Most of these new procedures had to be implemented by the November 2010 general elections, unless a state was granted a waiver by the federal government. As amended by the MOVE Act, UOCAVA now requires state officials to:

1. Provide UOCAVA voters with an option to request and receive voter registration and absentee ballot applications by electronic transmissions and establish electronic transmission options for delivery of blank absentee ballots to UOCAVA voters;
2. Transmit validly-requested absentee ballots to UOCAVA voters no later than 45 days before an election for a federal office, when the request has been received by that date, except where an undue hardship waiver is approved by the DoD for that election;
3. Take steps to ensure that electronic transmission procedures protect the security of the balloting process and the privacy of the identity and personal data of UOCAVA voters using the procedures;
4. Expand the acceptance of the Federal Write-In Absentee Ballot to all elections for federal office beginning December 31, 2010;
5. Accept otherwise valid voter registration applications, absentee ballot applications, voted ballots, or Federal Write-In Absentee Ballots without regard to state notarization requirements, or restrictions on paper type, or envelope type; and
6. Allow UOCAVA voters to track the receipt of their absentee ballots through a free access system.

In brief, overseas military voters are now entitled to receive their ballots for all federal elections earlier (45 days before the election) and faster (using technology such as e-mail). If the ballot still fails to arrive in time, there is also a back-up plan – the Federal Write-in Absentee Ballot (FWAB), which can be accessed online, printed as a blank form, filled in manually, and then sent to an election official.

As discussed below, these federal measures to protect the votes of Americans abroad are significant, but more reform is needed at the state level.

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## **Importance of the FWAB**

The Federal Write-in Absentee Ballot (FWAB) is a back-up measure for military and overseas voters who do not receive their state ballots at least 30 days before the election or the state's deadline, whichever is later. In these cases, voters can download the FWAB, write in their preferences for general elections for federal offices — president, vice president, U.S. senator and U.S. representative — and return this alternative ballot postmarked by their state's deadline. (All states accept the FWAB.) This is an important “fail-safe” option that provides military and overseas civilian voters the ability to cast a ballot if some aspect of their states' voting process goes awry.

However, many overseas voters are unaware of the FWAB's availability. And although the FWAB is accepted by all states, some states elect to accept it only for federal offices or only from uniformed military service members. Military advocates suggest that states would better serve voters by increasing awareness of the FWAB, making it available to all UOCAVA voters and accepting it for federal, state and local offices.

## **Recent Action by Texas Secretary of State**

Because the MOVE Act required state-level compliance by 2010 and the Texas legislature does not convene until January 11, 2011, the Texas Secretary of State's office took steps to implement the MOVE Act through rulemaking so that Texas could conduct compliant elections in November 2010. In July 2010 the Texas Secretary of State's office adopted new Rule §81.39, “concerning the e-mailing and tracking of balloting materials to military and overseas voters pursuant to the federal Military and Overseas Voter Empowerment Act (MOVE), 42 U.S.C. 1973ff.” The new rule implements many of the MOVE Act's requirements, and early reports suggest that the November 2010 election system did improve the ability of overseas military voters to participate.

## **Need for State Legislation**

However, there is still a need for legislative action during the 2011 legislative session. While the Secretary of State's office did an admirable job of implementing many reforms through rulemaking, explicit statutory authority is needed to guarantee that these reforms are not challenged or diminished, to avoid any challenges by the federal government, and to provide the office with authority to implement further reforms. Military voting advocates propose that the Texas Legislature should use the MOVE Act, the new Secretary of State rules, and the new Uniform Act (discussed below) as a guide in crafting legislation to make it easier for overseas Texans to participate in all federal, state and local elections. Military voting advocates call for Texas legislation that explicitly:

1. Ensures that absentee ballots are sent out at least 45 days before all elections.
2. Permits e-mailing blank ballots and information to overseas voters upon request.
3. Allows overseas voters to use the Federal Write-in Absentee Ballot (used when official ballots aren't received in time) for state and local races.

Some advocates have proposed further expediting the process by allowing overseas voters to also return their ballots by e-mail or fax. However, election officials, advocates and experts—

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including the federal General Accountability Office—have raised questions about the security and privacy of completed ballots transmitted electronically back to their states. Testimony to this interim committee suggests that e-mail or fax return of ballots is still controversial, and probably unnecessary as long as ballots are distributed to voters earlier in the process. Simply sending blank ballots out via fax or e-mail should give military citizens abroad enough time to complete the process.

### **New Model Act from the Uniform Law Commission**

As discussed above, states should strive for some measure of interstate consistency as they enact MOVE Act-required reforms, so that overseas soldiers from various states will have an easier time at deciphering absentee ballot requirements. Fortunately, the Uniform Law Commission (ULC) has spent significant time and resources studying the feasibility of drafting and enacting legislation with consistent timelines, requirements and standards for registration, absentee ballot distribution and ballot voting for military and overseas voters covered under UOCAVA.

Recently the ULC approved a Uniform Military and Overseas Voters Act at its annual meeting. Major provisions of the new Uniform Military and Overseas Voters Act include: mandating that absentee ballots for all elections be sent at least 45 days before an election; requiring electronic transmission of voting materials, including blank absentee ballots for all elections, upon request; and expanding acceptance of the Federal Write In Absentee Ballot for all elections.

This new uniform act should be a useful guide for Texas legislators as they draft legislation to amend the Texas Election Code.

## **COMMITTEE FINDINGS AND RECOMMENDATIONS**

The committee recommends that the Legislature enact the following changes to the Election Code to protect Texas' military and overseas voters' right to vote:

Require election offices to transmit ballots to military and overseas voters at least 45 days before every federal, state and local election - including primaries, runoffs, and special elections as well as the general;

Provide for email delivery of blank ballots to all military and overseas voters upon request;

Allow the Federal Write-In Absentee Ballot, or FWAB, to be accepted for federal, state and local elections in Texas. While Texas has its own write-in absentee ballot, allowing voters to use the FWAB for all elections would simplify, standardize and streamline the voting process for Texans abroad;

Follow the MOVE Act's lead and expand these protections to cover all military and overseas voters – and in particular Texas military members stationed outside of their county of residence, but in the United States, who still often face challenges in obtaining, casting and returning a ballot in time to be counted.

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**CHARGE FIVE**

Monitor the implementation of SB 1940 (81R), which established veterans court programs in Texas, and examine the link between combat stress disorders of war veterans, including post-traumatic stress disorder and traumatic brain injury, and the onset of criminal behavior. *Joint Interim Charge with House Committee on Criminal Jurisprudence*

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## BACKGROUND AND INTERIM STUDY

According to a 2008 RAND Corporation report, it is estimated that 300,000 American soldiers who have served in Afghanistan and Iraq (nearly 20 percent of the troops deployed in those operations) now suffer from Post Traumatic Stress Disorder (PTSD) or major depression. Additionally, 19 percent of those who have served report a possible Traumatic Brain Injury (TBI). The Bureau of Justice Statistics found that 12.5 percent of state prison inmates and 11.7 percent of county jail inmates reported military service. More than 200,000 veterans are behind bars. Of those, more than three-quarters were honorably discharged.<sup>17</sup> The need for Veteran Courts (VC) arose in response to these facts. These ailments increase the risk that individuals will harm themselves or others.<sup>18</sup> Because of this causal relationship, VCs offer veteran offenders a therapeutic alternative to incarceration.

The establishment of Veteran Courts is intended to ensure that veterans and military personnel with combat-related mental health issues get the treatment they need. In January 2008, Judge Robert Russell formed the first Veterans Court (VC) in the country.<sup>19</sup> The court, which was erected in Buffalo, NY, takes a proactive approach similar to other specialized courts, such as Drug Courts or Mental Health Courts, by disciplining military veteran offenders through rehabilitative treatment programs rather than conventional prosecution. These courts hold them accountable through a strict schedule of court appearances and treatment appointments, and, if necessary, sanctions imposed by the judge that can include jail time. VCs have the authority to require participants to receive mentoring from other veterans, as well as medical, psychiatric, or substance-abuse programs, among others. Veteran mentoring can also help the participant with medical, housing and employment services of the Department of Veterans Affairs. Judges hold regular hearings to monitor the offender's progress through the proscribed treatment process and compliance with the terms of probation. None of the original 100 participants in the Buffalo Court has been re-arrested.

Since the formation of the Buffalo court, other states have followed in New York's footsteps by creating their own VCs. The state of Texas was a prime candidate for the expansion of VC jurisdictions due to its numerous military installations and relatively large veteran population. In 2009, the state legislature passed Senate Bill 1940, which, among others, defines a veterans court program to mean a program that has the following essential characteristics: the integration of services in the processing of cases in the judicial system; the use of a nonadversarial approach involving prosecutors and defense attorneys to promote public safety and to protect the due process rights of program participants; early identification and prompt placement of eligible participants in the program; access to a continuum of alcohol, controlled substance, mental health, and other related treatment and rehabilitative services; careful monitoring of treatment and services provided to program participants; a coordinated strategy to govern program responses to participants' compliance; ongoing judicial interaction with program participants; monitoring and evaluation of program goals and effectiveness; continuing interdisciplinary education to promote effective program planning, implementation, and operations; and development of partnerships with public agencies and community organizations, including the United States Department of Veterans Affairs. If a defendant successfully completes a veterans court program, after notice to the attorney representing the state and a hearing in the veterans court at which that court determines that a dismissal is in the best interest of justice, the court in

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which the criminal case is pending shall dismiss the criminal action against the defendant. Further, it authorizes the commissioners court of a county to establish a VC program for persons arrested for or charged with any misdemeanor or felony. A defendant is eligible to participate in a veterans court program only if the attorney representing the state consents to the defendant's participation in the program and if the court in which the criminal case is pending finds that the defendant: is a veteran or current member of the United States armed forces; and suffers from a brain injury, mental illness, or mental disorder, including post-traumatic stress disorder, that resulted from the defendant's military service in a combat zone or other similar hazardous duty area; and materially affected the defendant's criminal conduct at issue in the case. The court in which the criminal case is pending shall allow an eligible defendant to choose whether to proceed through the veterans court program or otherwise through the criminal justice system. The court's findings must accompany any docketed case.<sup>20</sup>

A veterans court program must: ensure a person eligible for the program is provided legal counsel before volunteering to proceed through the program and while participating in the program; allow a participant to withdraw from the program at any time before a trial on the merits has been initiated; provide a participant with a court-ordered individualized treatment plan indicating the services that will be provided to the participant; and ensure that the jurisdiction of the veterans court continues for a period of not less than six months but does not continue beyond the period of community supervision for the offense charged. A veterans court program shall make, establish, and publish local procedures to ensure maximum participation of eligible defendants in the county or counties in which those defendants reside.<sup>21</sup>

Further, the lieutenant governor and the speaker of the house of representatives were given oversight authority of veterans court programs in Texas and may assign to appropriate legislative committees duties relating to the oversight of veterans court programs.

On July 13, 2010, the house Committees on Defense & Veterans' Affairs and Criminal Jurisprudence met in a public hearing to take testimony on the charge. The committee heard testimony from four counties that have established VCs and from the director of the STRONG STAR Multidisciplinary PTSD Research Consortium. The committees also heard testimony from the Texas Veterans Commission, Texas Council on Family Violence, Texas Criminal Justice Coalition, Texas District and County Attorney's Association and Texas Association of Drug Court Professionals.

Implementing VC programs pursuant to S.B. 1940 is not without obstacles. Craig Erickson testified on behalf of Bexar County Community Resources. In Bexar County, the District Attorney had an issue with pretrial diversions. The District Attorney did not want to pursue pretrial diversions, particularly when there were victims of family violence. The commissioners court and the district attorney agreed to establish a VC for non-violent misdemeanors. Bexar County plans to consider every case on individually. The District Attorney hired a veterans' court coordinator as a liaison. Representatives from Bexar County travelled to Harris County to observe their VC. Bexar County applied for grants from the Texas Veterans' Commission, the Governor's Office and the federal government. The cost estimate for Bexar County's veterans' court is \$200,000 annually not including mental health treatment costs.

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Judge Brent Carr from Tarrant County Currently gave an overview of his court. At the time of the hearing, Tarrant County had have 10-12 enrollees in their court. Judge Carr is very supportive of veterans courts, yet always keeps the principle of public safety in mind. The Tarrant County court includes veterans who have committed low level felonies, such as substance abuse and theft, or misdemeanors. The Tarrant County court has received considerable financial support from the US Veterans Administration. In fact, it is possible they will have to return some funds because there will be a balance. 25% of Tarrant County's enrollees are in residential treatment. The Veterans of Foreign War and the Purple Heart Associations are local support resources for Tarrant County. The Tarrant County start-up budget was \$200,000. Judge Carr recommended that the legislature clarify eligibility for expunction after graduating from a veterans' court program. The Governor's Office grant is phased out to decrease over time, such that a jurisdiction with a veterans' court will eventually have to pay all of the costs on its own.

Judge Michael Snipes administers the veterans court in Dallas County. The Dallas County Veterans Court began operations on May 10, 2010. Typically, to be eligible for admission into the program, a client has been charged with a third degree or state jail felony offense that the state would offer probation for, if the client was not accepted into the program. Typical offenses would include narcotics possession, burglary of a building or state jail felony theft. Other, more serious offenders may be admitted into the program on a case by case basis. The court received a grant from the Texas Bar Foundation in the amount of \$15,000. An additional grant is being sought from the State of Texas in the amount of \$130,058.00. The court ultimately looks to serve in the neighborhood of fifty clients at any given time. At the time of the hearing, the court had seven potential clients at this time. Some of these clients have not yet been accepted into the program, pending final assessment of VA. Judge Snipes noted that spouses of veterans are not statutorily eligible to be served by the veterans court system. An issue the legislature may want to consider. Additionally, Judge Snipes commented that funding is an issue. Staff are having to do work for free in order to sustain the Dallas County veteran's court.

Pat McCann testified on behalf of the Harris County veterans' court. In Harris County, a person is not eligible to enter the veterans court program if the person's pending case is either a sexual offense, drug delivery or a 3G offense, with the exception of aggravated assault. If a client has been charged with any other felony or misdemeanors, it is possible for that person to enter the program if, the person does not have a prior conviction or deferred adjudication for sexual assault or 3G offense with the exception of aggravated assault; is not seriously and persistently mentally ill and cannot participate; or, has not previously been terminated or graduated from Veterans' Court program. Four of the enrollees in Harris County have committed 2nd degree felonies, two of which were aggravated assault. 25% of the Harris County enrollees have TBI. All of the staff and, initially, all of the lawyers, for the veterans' court were there voluntary. The Harris County Court has received funding for treatment from both the Governor's Office and the Task Force on Indigent Defense. Ultimately they brought in over \$400,000, so they are skeptical about claims of prohibitive costs for veterans' courts. Mr. McCann recommended that there needs to be more clarity about judges' authority to supervise misdemeanants and felons.

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Mary Covington, a member of the Texas Association of Drug Court Professionals, who works in Harris County was called in response to a committee member's concern that variance among different veterans' court jurisdictions is a problem. The statute was written to allow each county to determine the mechanics of its own VC. Ms. Covington testified that contrary to the concern that each county could be different, having each individual jurisdiction adapt its own rules according to its own situation such as funding, judicial and prosecutorial preferences, military population, etc. is the ideal approach. However, she is more than willing to work with any legislative mandates.

Tina Carnes from the Texas Veterans' Commission stated that the TVC has set aside \$200,000 in veterans' court grants that will be spread to Harris, Dallas, Tarrant, and Bexar counties after September 1st.

Dr. Alan Peterson, Professor, Department of Psychiatry; Chief, Division of Behavioral Medicine; Director, STRONG STAR Multidisciplinary PTSD Research Consortium, and Deputy Chair for Military Collaboration at University of Texas Health Science Center at San Antonio testified on the second half of the charge: examine the link between combat stress disorders of war veterans, including post-traumatic stress disorder and traumatic brain injury, and the onset of criminal behavior. Dr. Peterson is the Director of STRONG STAR, a multidisciplinary and multi-institutional research consortium funded by the U.S. Department of Defense (DoD) to develop and evaluate the most effective early interventions possible for the detection, prevention, and treatment of combat-related posttraumatic stress disorder (PTSD) in active-duty military personnel and recently discharged veterans.

Dr. Peterson testified that 20% of OIF/OEF returning veterans, approximately 300,000, have symptoms of PTSD and depression; 19% have TBI. The best predictor of PTSD is exposure to combat trauma. Of those affected by these conditions, 53% sought treatment and 50% received at least minimally adequate care.

The biggest predictor for recovery is social support networks such as family, friends, or war buddies who can relate to returned soldiers and help them vent about their experiences. Members of the National Guard and Reserves are more isolated and spread out, so it's harder for them to rehabilitate from PTSD, which is probably why they commit offenses at higher rates. Veterans with PTSD are three to four times more likely to commit a violent act than veterans without PTSD. Substance abuse and PTSD have to be treated at the same time because they are mutually re-enforcing.

Erica Surprenant, representing Texas Criminal Justice Coalition, testified that she is concerned with the rate at which service members are entering the criminal justice system. Ms Surprenant offered the following recommendations: 1) Increase and enhance veterans' courts throughout the state. 2) Encourage access for other veterans who were perhaps dishonorably discharged. 3) Applaud Harris country for incorporating more serious felonies in their veterans' court program. 4) Promote the use of mentoring and funding to get more mentors. 5) Allow judges to consider combat experience as a mitigation factor. 6) Centralized veteran reentry programs/system (post incarceration). It's estimated that 39% of incarcerated veterans have PTSD. 7) provide counseling to veterans during incarceration.

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Gloria Terry, representing Texas Council on Family Violence, testified that last year there was a large amount of family violence reported to the police, as well as a large amount of family violence resources accessed by victims. She supports carefully implemented, community-based veterans' courts. In crimes where there is a victim, particularly violent crimes, offender accountability in the criminal justice system should be treated more conventionally, regardless of whether the offender has PTSD.

Shannon Edmonds of the Texas District and County Attorney's Association testified that the veterans' court law doesn't preclude any type of offender from entering a veterans' court law, despite the severity of their offense. Before the passage of this law, veteran offenders still got "breaks" or mitigated punishments due to prosecutorial convention. Last session the legislature unintentionally made any offender eligible for expunction with the language of SB 1940, as opposed to just veterans' court graduates. However, expunction is problematic in the context of veterans' courts because it wipes past offense histories off of veterans' records, when having those histories would be helpful/valuable if a veteran becomes a repeat offender.

### **COMMITTEE FINDINGS AND RECOMMENDATIONS**

The House committee on Defense & Veterans' Affairs applauds the efforts and successes of the established veterans courts in Texas and encourage other counties to establish programs within their jurisdictions. The statute was written to allow each county wide latitude to determine the mechanics of its own veterans court. Having each individual jurisdiction adapt its own rules according to its own situation such as funding, judicial and prosecutorial preferences, military population, etc. is the ideal approach.

The House committee on Defense & Veterans' Affairs recommends that the 82nd Texas Legislature direct the TVC to market and promote their available services to veterans courts, so that the courts, their clients and family members are made aware of mentoring programs for veterans, employment services, peer-to-peer counseling for veterans and their family members and mental health services. The committee encourages more collaboration between the Texas Veterans Commission, the Veterans Administration, the veterans' courts, law enforcement agencies and not-for-profits that provide veteran services.

Additionally, local law enforcement organizations should require their members to receive training on interacting with individuals who suffer from PTSD and other mental health illnesses.

The committee recommends the 82nd Texas Legislature make one statutory change. Language adopted in SB 1940 makes the records of any offender in the state eligible for expunction. Except as otherwise provided in statute, this section should be clarified so that only the records of offenders who successfully complete a veterans court program are eligible for expunction.

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## ENDNOTES

- <sup>1</sup> (Office of the Governor Rick Perry- Texas Military Preparedness Commission, 2007)
- <sup>2</sup> Making Peace: March 2010, Melissa Savage. NCSL. <http://www.ncsl.org/?tabid=19738>. Accessed 7.30.2010
- <sup>3</sup> Working with State Legislators: A Guide for Military Installations and State Legislators. National Conference of State Legislatures. Department of Defense.
- <sup>4</sup> James Cannizzo, Attorney Advisor. Camp Stanley, Camp Bullis and Ft. Sam Houston
- <sup>5</sup> Practical Guide to Compatible Development Near Military Installations @ p.VI-10
- <sup>6</sup> Planning Tools and Polices to Encourage Compatible Development near Military Installations, Issue Brief. NGA Center for Best Practices. February 2006.
- <sup>7</sup> MD Code, Real Property, s. 4-117
- <sup>8</sup> Dave Dahl. United States Navy Mission Sustainment Officer, Code N38 (Also representing the OSD)
- <sup>9</sup> New Rule Strengthens Protections for Airports, Airspace. Sarah Brown. July 21, 2010
- <sup>10</sup> Mission Accomplished: Getting Wind Turbines and Radar to Work Together, Dwight Williams. Windletter. Volume 27, Issue 3. March 2008
- <sup>11</sup> Arizona Military Airports Regional Compatibility Project. Western Maricopa County/ Luke Air Force Base. Project Bulletin #1, June 2002.
- <sup>12</sup> State Strategies to Address Encroachment at Military Installations, Issue Brief. Environment, Energy, and Natural Resources. NGA Center for Best Practices. September 2004.
- <sup>13</sup> [http://www.lbb.state.tx.us/Federal\\_Funds/Other\\_Publications/Homeland\\_Security\\_Funding\\_Texas\\_1108.pdf](http://www.lbb.state.tx.us/Federal_Funds/Other_Publications/Homeland_Security_Funding_Texas_1108.pdf)
- <sup>14</sup> <http://governor.state.tx.us/homeland/>
- <sup>15</sup> [http://www.lbb.state.tx.us/Federal\\_Funds/Other\\_Publications/Homeland\\_Security\\_Funding\\_Texas\\_1108.pdf](http://www.lbb.state.tx.us/Federal_Funds/Other_Publications/Homeland_Security_Funding_Texas_1108.pdf)
- <sup>16</sup> Testimony prepared for the committees by LBB staff.
- <sup>17</sup> Testimony of Dr. Peterson.
- <sup>18</sup> "Criminal Behavior and PTSD: An Analysis," U.S. Department of Veterans Affairs, 06-01-2010, (<http://www.ptsd.va.gov/professional/pages/criminal-behavior-ptsd.asp>).
- <sup>19</sup> "N.Y. court gives veterans chance to straighten out," USA Today, 06-01-2008, ([http://www.usatoday.com/news/nation/2008-06-01-veterans-court\\_N.htm](http://www.usatoday.com/news/nation/2008-06-01-veterans-court_N.htm)).
- <sup>20</sup> S.B. No. 1940, 81st Regular Session, 06-19-09, (<http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=81R&Bill=SB1940>).
- <sup>21</sup> *ibid.*