



Interim Report

to the 84th Legislature

House Committee on
Homeland Security and Public Safety



January 2015

**HOUSE COMMITTEE ON HOMELAND SECURITY AND PUBLIC SAFETY
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2014**

**A REPORT TO THE
HOUSE OF REPRESENTATIVES
84TH TEXAS LEGISLATURE**

**JOE C. PICKETT
CHAIRMAN**

**COMMITTEE CLERK
MARIANN H. MORELOCK**



Committee On
Homeland Security and Public Safety

January 12, 2015

Joe C. Pickett
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

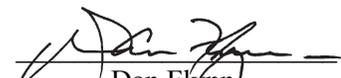
Dear Mr. Speaker and Fellow Members:

The Committee on Homeland Security and Public Safety of the Eighty-third Legislature hereby submits its interim report including recommendations and drafted legislation for consideration by the Eighty-fourth Legislature.

Respectfully submitted,


Joe C. Pickett


Allen Fletcher

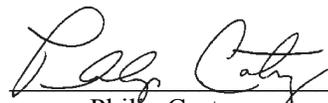

Dan Flynn


Tim Kleinschmidt


Kenneth Sheets

George Lavender


Tony Dale


Philip Cortez


Ron Simmons

Allen Fletcher
Vice-Chairman

Members: Dan Flynn, Tim Kleinschmidt, Kenneth Sheets, George Lavender, Tony Dale, Philip Cortez, Ron Simmons

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HOMELAND SECURITY AND PUBLIC SAFETY

Introduction

In February of 2013, during the 83rd Legislative Session, Speaker Joe Straus appointed nine Members to the House Committee on Homeland Security and Public Safety: Joe C. Pickett, Chairman, Allen Fletcher, Vice-Chairman, Phillip Cortez, Tony Dale, Dan Flynn, Tim Kleinschmidt, George Lavender, Kenneth Sheets, and Ron Simmons.

Pursuant to House Rule 3, Section 32, the Committee has jurisdiction over all matters pertaining to:

1. law enforcement;
2. the prevention of crime and the apprehension of criminals;
3. the provision of security services by private entities;
4. homeland security, including:
 - a. the defense of the state and nation, including terrorism response; and
 - b. disaster mitigation, preparedness, response, and recovery; and
5. the following state agencies: the Commission on Law Enforcement Officer Standards and Education, the Department of Public Safety, the Texas Division of Emergency Management, the Emergency Management Council, the Texas Forensic Science Commission, the Texas Military Preparedness Commission, the Texas Private Security Board, the Commission on State Emergency Communications, and the Texas Crime Stoppers Council.

HOUSE COMMITTEE ON HOMELAND SECURITY AND PUBLIC SAFETY

Interim Study Charges

1. Assess the level of preparedness among critical infrastructure entities, state and local emergency planning organizations, first response efforts, and overall coordination of jurisdictions across the state. Include a review of the state's role in preparing, resourcing, and coordinating with local emergency response, specifically in rural areas or areas that depend largely on volunteer response efforts. Investigate the fatal explosion in West, Texas, in April 2013, for deficiencies in safety, risk management, and disaster planning by chemical facilities and state entities.
2. Determine if any changes should be made to existing laws and rules relating to inspection, investigation, and enforcement, and make specific recommendations on how to reduce the likelihood for damage, injury, or death.
3. Evaluate state and local entities' effectiveness in meeting the state's border and homeland security program goals and objectives.
4. Review the Driver Responsibility Program and consider methods for overall improvement of the program.
5. Conduct legislative oversight and monitoring of the agencies and programs under the committee's jurisdiction and the implementation of relevant legislation passed by the 83rd Legislature. In conducting this oversight, the committee should:
 - a. consider any reforms to state agencies to make them more responsive to Texas taxpayers and citizens;
 - b. identify issues regarding the agency or its governance that may be appropriate to investigate, improve, remedy, or eliminate;
 - c. determine whether an agency is operating in a transparent and efficient manner; and
 - d. identify opportunities to streamline programs and services while maintaining the mission of the agency and its programs.

EMERGENCY PREPAREDNESS

Charge 1: Assess the level of preparedness among critical infrastructure entities, state and local emergency planning organizations, first response efforts, and overall coordination of jurisdictions across the state. Include a review of the state's role in preparing, resourcing, and coordinating with local emergency response, specifically in rural areas or areas that depend largely on volunteer response efforts.

Background

The federal Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 was designed to assist states and local governments in developing emergency response plans by requiring states to establish state emergency response commissions (SERCs) and appoint local emergency planning committees (LEPCs).¹ Before the EPCRA was enacted, however, Texas had already passed the Texas Disaster Act of 1975, which included EPCRA-like provisions.²

State Emergency Response Commission

In Texas the SERC is often referred to as the Emergency Management Council of Texas (the Council); however it is a standing element of the Council and has fewer members. The SERC carries out certain planning, reporting, and public information access responsibilities relating to hazardous materials that are mandated by EPCRA. The SERC is chaired by the director of the Texas Division of Emergency Management (TDEM) and consists of multiple agencies: General Land Office (GLO), Department of State Health Services (DSHS), Texas Commission on Environmental Quality (TCEQ), Texas Department of Agriculture (TDA), Texas Department of Public Safety (DPS), Texas Department of Transportation (TxDOT), Texas A&M Engineering Extension Service (TEEX), Texas Parks and Wildlife Department (TPWD), Railroad Commission of Texas (RRC), the Texas Commission on Fire Protection (TCFP) and TDEM. (See **Error! Reference source not found.**)

The SERC's day-to-day operations are overseen by the TDEM. Under EPCRA, and according to the most recent LEPC Handbook, the SERC is supposed to appoint an LEPC for each Emergency Planning District (EPD), which is designated as a county in Texas.³ The Handbook indicates LEPC members are nominated by the county judge and approved by the SERC. Other than this approval, the SERC does not seem to play much of a role to LEPCs.

Local Emergency Planning Committees

EPCRA, not Texas law, dictates the legal responsibilities of LEPCs, the types of members to be included, and that bylaws are to be established; however, the frequency of meetings are not mandated and LEPCs are not funded. The role of LEPCs is to form a partnership between local government and industry as a resource for enhancing hazardous materials preparedness. An LEPC should provide input for the local emergency management plan to incorporate planning for hazmat incidents, evaluate capabilities, develop response options, and train responders.

Texas Division of Emergency Management

TDEM deploys resources in response to an emergency or disaster, implements programs to increase public awareness about threats and hazards, coordinates emergency planning, provides an extensive array of specialized training for emergency responders and local officials, and administers disaster recovery and hazard mitigation programs in the state.

TDEM coordinates the state emergency management program, which is intended to ensure the state and its local governments respond to and recover from emergencies and disasters. It also adopts standards for local emergency management plans and reviews those required plans from cities and counties.

Local Governments

By statute, the county judge and the mayor are the emergency management directors for their jurisdictions.⁴ Each may designate an emergency management coordinator (EMC) to facilitate the cooperation and protection of the jurisdiction in the work of disaster mitigation, preparedness, response, and recovery. Each judge and mayor must also prepare and keep current an emergency management plan and provide it to TDEM. County judges should also appoint members to the LEPC.⁵

Councils of Government

Texas has 24 regional councils of government (COGs) that include more than 2,000 municipal and county governments, ranging from densely populated cities and counties to rural regions. They deal with problems and planning needs that cross jurisdictional boundaries or require regional attention. The COGs assist the state in planning, coordinating, training, and allocating funding for emergency preparedness initiatives to local jurisdictions.

COGs and the Texas Association of Regional Councils (TARC) have partnered with the state to plan and implement regional emergency preparedness strategies to assist with emergency management planning, regional project implementation, critical infrastructure information, radio interoperability planning and purchasing, and many other functions.

Coordination and collaboration are key missions of the regional councils. Regional advisory committees, made up of first responders, emergency management professionals and citizens from the regions' cities and counties, collaborate to plan and help determine how assets should be allocated within the region. A prioritization process ensures that the allocation of state and federal funds is made at the local level and allows local elected officials and residents of the regions to determine what is needed and important to their communities.⁶

Other Entities

A multitude of other entities, organizations and associations play a role in preparedness at varying levels of involvement. From hospitals and fire departments to food and shelter providers and counseling services, the needs and issues that many occur as a result of an emergency are too numerous to detail in this report. Whether public or private, paid or volunteer, these providers are a necessary component to ensure proper preparedness.

Committee Action

The Texas Department of State Health Services (DSHS) gave a presentation to the committee on July 1, 2014, on the Hospital Preparedness Program as well as the Emergency Medical Task Force (EMTF). In response to the presentation, committee members and legislative staff were given the opportunity to walk through an AmBus parked in the Capitol Complex to observe the capabilities of these emergency response vehicles on August 5, 2014.

On October 7, 2014, the committee heard invited testimony on different aspects of emergency preparedness throughout the state from two councils of government, DSHS, DPS, the State Office of Risk Management (SORM), and CenterPoint Energy.

It is important to note that the committee heard throughout multiple hearings throughout 2013 and 2014 about the state's emergency preparedness and response efforts.

Current Structure and Potential Actions

Coordination among jurisdictions in a region is an essential role for COGs. A major part of being prepared for an emergency--whether it is a natural disaster like flooding and tornados or a man-made act--is having a plan in place. COGs assist with integrated local regional emergency preparedness plans that are updated annually. These plans and procedures guide tactical response to a variety of incidents and concerns, including Chemical, Biological, Radiological and Nuclear Explosives (CBRNE); mass fatality; disaster debris management; cyber attack vulnerabilities; and radio interoperability plans. Some COGs can conduct full-scale exercises to provide hands-on training to emergency response professionals and volunteers within the region.

For most rural counties in Texas, the majority of emergency response is dependent on the efforts and availability of volunteers.⁷ Because of time and resource constraints on volunteers, their efforts must be supported by local officials in order to ensure that cohesiveness exists between various resources, capabilities, and levels of government.

One such program overseen locally by regional councils and managed by TARC throughout the state is the Texas Citizen Corps Program.⁸ Based on a national grassroots model, the Texas Citizen Corps Program offers volunteers opportunities to support local fire, law enforcement, emergency medical services, and community public health efforts. With the support of these citizen volunteers, emergency service providers have more time to fulfill their highly skilled responsibilities to make our communities safer and better prepared.

The decrease in state and federal funding for homeland security and emergency preparedness threatens the very existence of comprehensive rural preparedness programs.⁹ Furthermore, the existing funding strategy that is based on threat and risk decreases the potential for rural jurisdictions to have the funding capacity to increase preparedness within their communities. However, without federal and state funding assistance, engaging communities and training volunteers is simply not possible.

Recommendations

- **TDEM needs to take a more active role in ensuring LEPCs are formed, meeting regularly and performing appropriately.**
- **Increase federal and state funding for homeland security and emergency preparedness for rural Texas specifically.**
- **Increase funds to rural Texas for 911 services i.e., upgrade to system, add reverse 911.**
- **Ask TEEEX to work with COGs with high population of volunteer firefighters to do more localized training.**
- **Seek funding from the federal government to sustain the effective and efficient programs found in rural areas.**
- **Establish mechanisms that support the preparedness of the State of Texas as a whole rather than continuing to utilize funding allocation formulas that detract from the clear and present needs of the rural areas.**

WEST DISASTER

Charge 2: Investigate the fatal explosion in West, Texas, in April 2013, for deficiencies in safety, risk management, and disaster planning by chemical facilities and state entities. Determine if any changes should be made to existing laws and rules relating to inspection, investigation, and enforcement, and make specific recommendations on how to reduce the likelihood for damage, injury, or death.

Background

On April 17, 2013, a horrible explosion at an ammonium nitrate facility in West, Texas took the lives of 15 individuals and injured multiple others. The small, farming community was devastated by these events. It was the second worst industrial event in Texas history. The fertilizer plant that was destroyed is not unlike approximately 50 others in Texas and 1300 more across the nation. This tragic event forced citizens, local governments, state agencies and the federal government to evaluate the level of oversight, guidance and enforcement associated with these types of facilities.

Ammonium Nitrate

Ammonium nitrate (AN) is a commonly used fertilizer due to its high nitrogen content. It is also a highly hazardous chemical with strict guidelines for handling and storage. In pure form, AN is stable and very differently to ignite. However, AN is a strong oxidant and reacts with combustible materials (such as many other fertilizers) and heating can cause a violent explosion. As a result, temperature, storage facility(ies), surrounding structure(s), proximity to other chemicals, ventilation, humidity, and extinguishing agents are critical considerations for keeping businesses and the public safe.

Ammonium nitrate is used by agribusiness as a fertilizer, but it is also used as an explosive. When used in quarries and mines and the like, these businesses are regulated by federal mining laws.¹⁰ Unfortunately, AN can also be used as a powerful and devastating explosive for criminal enterprises.

West Fertilizer Company

The City of West in McLennan County is a rural community in north-central Texas with a population of approximately 2800.

Adair Grain, Inc. *dba* West Fertilizer Co. (“West facility”) was built in 1962 and sold fertilizer for agricultural purposes to central Texas communities. A portion of the plant was in the West city limits; the other portion was in the jurisdiction of McLennan County.

The plant maintained a variety of agricultural chemical products (e.g., ammonium nitrate, potash, ammonium sulfate, diammonium phosphate, and ammonium nitrate) and would use various combinations to blend a final product for distribution by a customer.

In the months following the disasters, it was determined that approximately 150 facilities store AN--some for agricultural purposes and some for controlled explosions. By July 2014, there were approximately 55 facilities similar to the West facility in terms of storing and selling AN for agricultural purposes.

At the West facility, a 12,000 square foot building stored feed and fertilizers in storage bins and open areas and contained processing equipment (conveyors, elevators, etc.) and other typical farm and ranch hardware. On April 17, 2013 which was approaching the end of the spring planting season, on the north end of the building, one bin with 20-30 tons of AN was separated by approximately 24 foot wood walls from the *seed room* which contained several hundred 50-pound bags of seed. On the west side of the building, several storage bins contained various fertilizers and were separated by approximately 10 foot walls of wood and plywood. 20-30 tons of AN was stored in one of these bins; other bins contained various types of fertilizers. Also, a rail car holding approximately 100 tons of AN was on site (and never detonated).

Explosion and Investigation

A fire was reported at the West facility at 7:29pm on April 17, 2013, which prompted a response from the West Volunteer Fire Department. The fire seemed to be located in the seed room and efforts were concentrated on extinguishing the fire. As captured in great detail in the Firefighter Fatality Investigation report prepared by the State Fire Marshal's Office (SFMO), firefighters, law enforcement, and civilians worked courageously to address the situation.¹¹ The fire grew quickly and the roof collapsed. Only 22 minutes after the initial call, an explosion occurred at 7:51pm that created a 90 foot wide and 10 foot deep crater, killed 15 people and damaged or destroyed 500 structures. Following an investigation by the SFMO and Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), several causes of the fire were eliminated, but the cause of the fire at the West facility is still undetermined.

Committee Action

In the first four hearings of the interim, the committee heard testimony from multiple governmental entities and associations on their respective roles in the investigation of West fire and explosion, their oversight of chemical facilities, and their involvement in disaster planning. In the last three hearings, the focus shifted to developing guidelines, concepts and legislation to prevent future, similar disasters.

Hearings

At the first hearing on May 1, 2013, the committee heard invited testimony from the Department of Public Safety (DPS), State Fire Marshal's Office (SFMO), Texas Department of Insurance (TDI), Department of State Health Services (DSHS), Office of the Texas State Chemist (OTSC), Texas Commission on Environmental Quality (TCEQ), Texas Division of Emergency Management (TDEM), and Texas Department of Agriculture (TDA). Much of the testimony focused on the tragedy and response effort. Time was devoted to listening to each agency explain their role, if any, in dealing with similar facilities and their response to the tragedy. As a result, the committee produced a report on May 16, 2013, that summarized its findings.¹²

On June 17, 2013, the committee heard invited testimony from DPS, SFMO, and DSHS. Two months after the event, the topics of discussion were the suspected causes of the fire and explosion in West, facilities that are similar to the West facility, and the status of federal assistance to the West community.

Testimony revealed that the SFMO could not inspect private businesses that sell ammonium nitrate. Regardless, the committee encouraged the SFMO to contact each AN facility requesting the facility grant the SFMO access. For all AN facilities, especially those that do not reside in a jurisdiction with a fire code or fire inspection program, the committee asked the SFMO to create a best practices document on the storage of AN.

TDEM and SFMO agreed that access to the Tier II database would be beneficial for both agencies, especially when responding to an incident. The agencies worked with DSHS and now TDEM and SFMO have access to the database.

In an attempt to balance the public's interest in knowing where facilities similar to West are located with the reality of others using this same information for criminal purposes, the committee asked the SFMO to create an online application that allows users to search for AN facilities by zip code. A few months later SFMO completed the application and uploaded it in September 2013.¹³

On August 26, 2013, the committee heard invited testimony from DPS, SFMO, DSHS, OTSC, TDEM, TDI, and Texas Ag Industries Association (TAIA). SFMO testimony revealed some of the findings from the 60+ inspections/consultations already conducted by SFMO of AN facilities. The remaining 90 or so would be completed by the end of October. A best practices guide on the storage of AN is provided to the owner/operator on each visit.

On April 14, 2014, the committee heard invited testimony from SFMO, DSHS, OTSC, TDEM, TDI, and Texas Engineering Extension Service (TEEX). Public testimony was provided by the State Firemen's & Fire Marshals' Association (SFFMA) and the Texas Aggregates and Concrete Association (TACA).

Many of those testifying agreed that 90 days is too long for facilities to submit an updated Tier II report (which is discussed in detail in the next section). All confirmed there is no way to know for certain if facilities are providing annual or updated Tier II reports to the local fire department or LEPC. The committee learned that approximately 78% of fire departments in Texas are represented by volunteers. Based on the current definition of fire chief in the Texas Community Right-to-Know Acts that define Tier II reports, the fire chief of a volunteer fire department does not have access to chemical facilities.

TEEX shared details about the training course they developed specifically for industrial emergencies in response to West disaster. There was much discussion on getting training for volunteer firefighters, county judges, and mayors.

Draft Legislation

Part of the committee's charge was to determine if there should be changes made to existing laws and rules relating to inspection, investigation and enforcement. To stimulate discussion and evaluate different options, the committee heard testimony in July, August and October 2014 on several drafts of legislation.

July 1, 2014 – SFMO, DSHS, OTSC, TDEM, TEEX, TCEQ, SFFMA, TACA, TAIA, and County Judges and Commissioners Association of Texas

August 5, 2014 – SFMO, DSHS, OTSC, TCEQ, TAIA, Texas Chemical Council, and Northeast Texas Farmers Co-op

October 7, 2014 – TAIA and OTSC

Current Structure and Potential Actions

Federal and State Laws

Federal and state laws impose reporting requirements on facilities using or storing hazardous chemicals. The reporting requirements stem from the federal Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 that was designed to assist states and local governments in developing emergency response plans by, among other things, appointing local emergency planning committees (LEPCs).¹⁴ In 1993, Texas enacted some of EPCRA's hazardous reporting requirements by passing three Texas Community Right-to-Know Acts, each of which are applicable to different types of facilities and are often referred to as the Tier II program.¹⁵ These laws rely on the federal definitions of *hazardous chemical* and *extremely hazardous substance*.¹⁶

Hazardous chemicals present at a facility in amounts of 10,000 pounds or more trigger the Tier II reporting requirement. *Hazardous chemicals* include any chemical classified by the Occupational Safety and Health Administration (OSHA) as a "physical hazard or a health hazard, a simple asphyxiate, combustible dust, pyrophoric gas, or hazard not otherwise classified."¹⁷ Ammonium nitrate **is classified** as a hazardous chemical. DSHS applies OSHA's definition of *extremely hazardous chemical* on a case-by-case basis to determine which products must be included in a Tier II report. The list of all reportable hazardous chemicals is extremely large and ever-changing because new products are invented every day that might meet the *hazardous chemical* definition and there is no standardized system for naming hazardous chemical products.

An *extremely hazardous substance (EHS)* present at a facility in amounts of 500 pounds or more also triggers the Tier II reporting requirement. *Extremely hazardous substances* include any substance listed by the Environmental Protection Agency (EPA) in appendices A and B of 40 C.F.R. part 355.¹⁸ Ammonium nitrate **is not listed** as an *extremely hazardous substance*.

Facilities are also required to report certain chemicals to the U.S. Department of Homeland Security (DHS).¹⁹ The list of chemicals includes chemicals determined by DHS to present security issues. Facilities that store 400 pounds or more of AN are required to report to DHS.

Department of State Health Services (DSHS)

The Tier II Chemical Reporting program is administered by the Department of State Health Services and is derived from a portion of the federal EPCRA. Every facility that stores substantial amounts of hazardous substances must make an annual report to DSHS on those chemicals. The Tier II reports are currently outlined in three chapters of the Health and Safety Code (HSC).

- **Manufacturing Facilities** (Chapter 505): Can include any manufacturing plant that uses raw materials to make a final (not necessarily dangerous) product. Example: a company that makes plastic products.
- **Public Employers** (Chapter 506): Cities, water districts, MUDs (chlorine gas used for treating water); school districts (fuel and propane used for bus fleets). Can include any subsidiary of the state.
- **Non-Manufacturing Facilities** (Chapter 507): Oil production is the main example and comprises 60% of the Tier II database. According to industry experts, most AN facilities would be classified as non-manufacturing.

When *hazardous chemicals* or *extremely hazardous substances* are present at a facility in certain threshold amounts, the law requires the facility to compile and maintain a Tier II report containing information about the chemicals and substances. Tier II reports must be filed annually and the facility must give a copy of the report to the local fire department having jurisdiction over the facility and the appropriate LEPC. If a facility begins storing a new chemical, it must update its Tier II report within 90 days. Federal and state laws also dictate that a facility must provide the LEPC with the name of a facility emergency coordinator and any other information pertinent to the LEPC's emergency planning process.

LEPCs and other local emergency managers can use data in Tier II reports to plan response strategies within their communities. Tier II reports can also be used by emergency response personnel, such as firefighters and healthcare providers, to help protect first responders and the community during a hazardous chemical emergency.

These Tier II reports are not specific to AN, but rather all hazardous chemicals.

Recommendation: *Ensure that critical information--on AN facilities, at least--contained in Tier II reports is provided to local planners and safety experts.*

Tier II reports are filed annually or when a facility begins storing a new chemical. The facility must also give a copy of the report to the local fire department having jurisdiction over the facility and the appropriate LEPC. There is no way to know if the facility provided these reports or if they were received by the LEPC or fire department.

One option is to have DSHS furnish a copy of the Tier II report for an AN facility within 72 hours to the State Fire Marshal's Office (SFMO) and TDEM. In turn, the SFMO and TDEM will send those forms to the local fire department and LEPC, respectively, having jurisdiction over the facility. These extra steps by DSHS, TDEM and SFMO put the onus on the state agencies—so citizens are not relying solely on AN storage facility operators—to put critical information about AN used in fertilizer in the hands of the right people. The latitude and longitude information included in the forms are used by first responders to pinpoint locations. The AN and other chemical information in the report can be used by LEPCs for planning and other purposes and fire chiefs for planning and response.

Regarding hazardous chemicals, DSHS is more of an information repository than a safety regulation agency. DSHS assumed Tier II responsibilities more than 20 years ago when other EPCRA provisions with health implications were delegated to the Texas Department of Health, now DSHS. As those other programs have been dissolved or removed, the Tier II program is the legacy.

Recommendation: Consider moving responsibility for the Tier II program from DSHS to the Texas Commission on Environmental Quality (TCEQ).

Tier II program would become part of TCEQ's Office of Compliance and Enforcement, which investigates and enforces compliance of the state's environmental laws at facilities across the state and responds to emergencies and natural disasters. The organization has established tools and processes for compliance, has subject matter experts familiar with chemicals included in Tier II reports, and works with TDEM and others on issues and activities related to all hazards.

The Health and Safety Code indicates DSHS may use up to 20% of fees collected from manufacturing (Chapter 505) and non-manufacturing entities (Chapter 507) to be used as grants to LEPCs.

Recommendation: Encourage DSHS to make grants to LEPCs.

Office of the Texas State Chemist (OTSC)

The Office of the Texas State Chemist (OTSC) is part of Texas A&M AgriLife Research in the TAMU System. The Texas Feed and Fertilizer Control Service (the Service) is administered by the OTSC, which regulates commercial fertilizers, including the sale of ammonium nitrate and ammonium nitrate material. OTSC investigators inspect firms that produce, store, transfer, offer for sale, or sell ammonium nitrate or ammonium nitrate materials in Texas.

Ammonium nitrate (AN) facilities have two permits from OTSC: commercial fertilizer permit and a certificate of registration (specific to ammonium nitrate). If a facility's AN registration is revoked or suspended, the facility can NOT sell AN but can sell other fertilizers (for which they have a registration). If an AN facility's commercial fertilizer permit is revoked or suspended, the facility is effectively shut down.

The OTSC annually inspects permitted facilities before renewing a permit. These annual inspections are focused mainly on matters of quality control and labeling of fertilizer. OTSC inspectors also ensure facilities are securely storing AN. Texas law requires anyone engaged in the sale of AN to take steps to secure the AN against vandalism, theft, or other unauthorized access.

As a recent result of the West tragedy, OTSC codified in July 2014 a requirement that an AN storage facility must 1) store AN fertilizer in a separate structure and combustible or flammable materials must be separated by at least 30 feet; 2) post a National Fire Protection Association (NFPA) 704 placard (fire diamond); and 3) submit Tier II reports in order to receive/renew an AN fertilizer permit. The OTSC is confident that the safety of AN facilities will be increased by these new requirements.

State Fire Marshal's Office (SFMO)

The SFMO could not legally examine AN facilities in the aftermath of the West disaster. At the direction of Chairman Pickett, the SFMO requested access to each facility and was eventually granted access by all 134 facilities. The SFMO gained valuable information on different AN applications, business practices, communities, first responder situations, etc. associated with each facility. State Fire Marshal Chris Connealy then embarked on a statewide campaign to promote the best practices for AN storage and firefighter safety. Connealy and SFMO staff presented at 63 Ammonium Nitrate in Texas Best Practices Forums that covered 66 counties and advised businesses, citizens and first responders about the requirements of the NFPA guidelines for fire safety of storage buildings; offered recommendations for improving the general fire safety of the facilities; and provided first responders with information regarding the 16 firefighter life safety initiatives.

***Recommendation:** Allow SFMO, in coordination with local fire authorities, to enter and make thorough examination of an AN fertilizer storage facility.*

This is not mandating the agency to make examinations, but rather an allowance so that the SFMO is able to legally enter an AN storage facility. In certain communities, there may not be a fire marshal or the fire department having jurisdiction over an AN facility may not have the personnel or training to make a thorough assessment of a facility. The authority may recognize the need for further scrutiny of a facility's operations as related to fire safety concerns and call upon the SFMO to assist.

Texas Department of Emergency Management (TDEM)

TDEM deploys resources in response to an emergency or disaster, coordinates emergency planning, and provides specialized training for emergency responders and local officials in the state. Within hours of the explosion in West, TDEM officials were in West assisting with the response efforts.

TDEM is also connected to LEPCs due to the EPCRA requirements of appointing LEPCs and state emergency response commissions (SERCs). In Texas the SERC is often referred to as the Emergency Management Council of Texas (the Council); however it is a standing element of the

Council and has fewer members. It is chaired by the director of TDEM. (See **Error! Reference source not found.**) The LEPC Handbook, prepared by TDEM, indicates LEPC members are nominated by the county judge and approved by the SERC.

***Recommendation:** Evaluate giving TDEM some authority in relation to the formation, activity, and performance of LEPCs.*

Local Emergency Planning Committees (LEPCs)

The role of LEPCs is to form a partnership between local government and industry as a resource for enhancing hazardous materials preparedness. An LEPC should provide input for the local emergency management plan to incorporate planning for hazmat incidents, evaluate capabilities, develop response options, and train responders. County judges are responsible for nominating LEPC members. Even though EPCRA, not Texas law, dictates the legal responsibilities of LEPCs, county judges need to ensure LEPCs are formed and meeting regularly to meet the standard in the LEPC Handbook.²⁰

***Recommendation:** Encourage Texas Association of Counties to get involved in educating county judges and LEPC chairs on roles and available resources.*

Local Fire Departments

Approximately 78% of Texas is represented by volunteer fire departments; however, only paid fire departments have access to information and services outlined in the Tier II program statutes. As a result, the majority of fire departments having jurisdiction over Tier II reporting facilities are not allowed access to critical information and observations to be used for emergency planning purposes. This is not a function restricted to AN storage facilities only.

***Recommendation:** Expand the definition in Tier II statutes (Chapter 505-507 of the Health and Safety Code) of "fire chief" to include the head of a paid or volunteer fire department.*

Of the 40 fire departments that represent the authority having jurisdiction for the 43 AN fertilizer facilities across the state, 27 are volunteer fire departments, 7 are a combination of paid and volunteer firefighters, and 6 consist only of paid firefighters.²¹ Approximately 70% of firefighters responding to AN fertilizer facility emergency will be volunteers.

***Recommendation:** Encourage Legislature to approve a rider in Appropriations Bill for Texas A&M Forest Service that addresses funding in the Rural Volunteer Fire Department Assistance Program.*

Local Governments

By statute, the county judge and the mayor are the emergency management directors for their jurisdictions. Each may designate an emergency management coordinator (EMC) to facilitate the cooperation and protection of the jurisdiction in the work of disaster mitigation, preparedness, response, and recovery. Each judge and mayor must also prepare and keep current an emergency management plan and provide it to TDEM. County judges should also appoint members to the LEPC.

Recommendations

- **Evaluate giving TDEM some authority in relation to the formation, activity, and performance of LEPCs.**

- **Encourage Texas Association of Counties to get involved in educating county judges and LEPC chairs on roles and available resources.**

The public's awareness of LEPCs and the role they play in developing emergency management plans with local communities is critical.

- **Expand the definition in Tier II statutes of "fire chief" to include the head of a paid or volunteer fire department.**

Considering approximately 78% of Texas is represented by volunteer fire departments, this change is necessary in order for the majority of fire departments having jurisdiction over Tier II reporting facilities to have access to information and services. This is not a function restricted to AN storage facilities only.

- **Allow SFMO, in coordination with local fire authorities, to enter and make thorough examination of an AN fertilizer storage facility.**

- **Establish safety standards and/or guidelines for AN facilities to ensure an increased level of responsibility--to workers and the community--by AN facilities.**

- **Consider alternatives to ammonium nitrate.**

AN facilities could blend down fertilizer from 28%. Ammonium nitrate material is basically fertilizer with at least 28% of its nitrogen content derived from ammonium nitrate. So if there's less than 28%, then there's less of a hazard and less requirements (per Ag Code). Consumers would have to use more of the blended product in order to get the amount of nitrogen they need.

- **Consider moving responsibility for the Tier II program from DSHS to TCEQ.**

-
- **Encourage the Legislature to approve a rider in Appropriations Bill for Texas A&M Forest Service that addresses funding in the Rural Volunteer Fire Department Assistance Program.**

Additional language has been added that offers a definitive purpose in providing training for volunteer fire departments that are in the jurisdiction of an ammonium nitrate fertilizer facility across the state. Of the 40 fire departments that represent the authority having jurisdiction for the 43 AN fertilizer facilities across the state, 27 are volunteer fire departments, 7 are a combination of paid and volunteer firefighters, and 6 consist only of paid firefighters.

- **Ensure that critical information--on AN facilities, at least--contained in Tier II reports is provided to local planners and safety experts.**
- **Encourage DSHS to make grants to LEPCs.**

The Health and Safety Code indicates DSHS may use up to 20% of fees collected from manufacturing (Chapter 505) and non-manufacturing entities (Chapter 507) to be used as grants to LEPCs. Similar verbiage could be added to Chapter 506 of Health and Safety Code (public employers) in order to equalize the source of potential funds for grants to LEPCs.

BORDER SECURITY

Charge 3: Evaluate state and local entities' effectiveness in meeting the state's border and homeland security program goals and objectives.

Background

DPS is just one of many law enforcement entities working to deter, detect and disrupt criminal activity occurring along the border. In order to be effective and efficient, all law enforcement agencies operating along the border coordinate efforts and information to strengthen border security efforts.

State Government

Texas Department of Public Safety

An unsecure border with Mexico undermines both public safety and homeland security. The Texas Department of Public Safety (DPS) is the agency primarily responsible for securing the Texas border.

DPS uses land, air and maritime assets to conduct operations to deter and disrupt drug and human trafficking and other border-related crimes. Some of these assets are:

- State-of-the-art helicopters with FLIR (forward looking infrared) and night-vision capabilities that enables DPS to detect smuggling activity, which supports and directs interdictions by ground patrol officers;
- A high-altitude, fixed-wing aircraft to enable DPS support of law enforcement operations along the border, as well as other missions, including search and rescue efforts, throughout the state;
- Cessna Caravan, which features state-of-the-art equipment technology to detect smuggling activity day or night; and
- Six 34-foot shallow water interceptor boats used along the Rio Grande River and Intracoastal Waterways as patrol vessels to support the state's efforts in combating Mexican drug cartels.

The Border Security Operations Center (BSOC) in Austin captures and disseminates information gathered by the six Joint Operations and Intelligence Centers (JOICs) on the border. The focus is on intelligence gathering and working with law enforcement partners at all levels of government to support enforcement operations along the border.

Other law enforcement agencies

Other state agencies are involved in border security through commissioned peace officers or education and awareness. Game wardens with the Texas Parks and Wildlife Department conduct patrols directly on the border. Organized criminal activity, including human trafficking and prostitution, associated with border security is often conducted in bars licensed by the Texas Alcoholic Beverage Commission (TABC). TABC agents can shut down these facilities and

provide information to DPS better understand how the criminal element entered the U.S. initially or to conduct other investigations.

Federal Government

U.S. Customs and Border Protection (CBP) operate along the border but do not have sufficient resources and staffing levels to secure the border successfully. DPS interacts with the CBP on a daily basis through the BSOC and JOICs. DPS also regularly uses state aerial assets to support the CBP's ground operations. Both agencies (along with other state and federal agencies) work together on specific border security operations to share information and provide situational awareness to maximize effectiveness of resources.

Local Government

In order to strengthen enforcement and thwart criminal activity on the border, the involvement of local law enforcement in border communities is critical. Because they are ultimately responsible for keeping their communities safe from international criminal activity, they are included in regular communications by DPS. And local police departments and county sheriffs' offices often play an active role in the planning and execution of surge operations.

Committee Action

The committee visited the Texas Fusion Center in June 2013 and received a briefing on its capabilities as a data repository of criminal activities and threats from law enforcement at all levels of government and within government. Committee members saw firsthand how massive amounts of data are consolidated and used to provide real-time intelligence support to law enforcement and public safety authorities on the border and around the state.

The committee held a public meeting in McAllen on November 13, 2013 with testimony provided by DPS. The following day the committee toured the regional Joint Operations Intelligence Center and witnessed the interaction firsthand by federal, state and local agencies in one facility. The committee explored one of the agency's Mobile Command Units, which is deployed at the location of a disaster and/or law enforcement operation to provide a command and control facility for executive staff over the operation to conduct briefings. It also has the ability to serve as a temporary point to establish communications in the immediate area if they are impaired by the event. Committee members were also privy to several of the agency's air and marine assets.

On June 18, 2014, Governor Rick Perry, Lt. Governor David Dewhurst and Speaker Joe Straus directed DPS to immediately begin law enforcement surge operations (*Operation Strong Safety II*) on the Texas-Mexico border. This was in response to the reports of over 34,000 unaccompanied alien children (UAC) reported to have been apprehended from January to May of 2014. They also authorized DPS to fund border security operations at approximately \$1.3 million per week.

At a July 1, 2014 hearing, the Department of State Health Services (DSHS) and DPS testified on border operations and the recent surge of UACs.²² Mayor Jim Darling and Chief of Police Victor Rodriguez from the City of McAllen also provided testimony regarding the efforts and perspectives of some border cities.

On July 21, 2014, the committee provided a memo to legislators that highlighted the facts, the processes and statistics associated with UACs and the government's role. (See APPENDIX B.) On the same day, Governor Perry directed Texas Adjutant General John Nichols to begin preparations immediately for the deployment of up to 1,000 Texas National Guard (TXNG) troops to the border, more specifically the Rio Grande Valley (RGV). The troops were to support *Operation Strong Safety II*. Governor Perry cited the lack of federal support in his reasoning for the deployment.²³

The committee received testimony on border activities during an August 5, 2014 hearing from directors of three state agencies: Adjutant General John Nichols (Texas Military Forces), Steven McCraw (DPS), and Dr. Kyle Janek (Texas Health and Human Services Commission (HHSC)). Public testimony was also provided from individuals and organizations in support of and against the law enforcement surge on the border.

At the final interim hearing on October 7, 2014, Director McCraw (DPS) testified and provided data indicating the success of *Operation Strong Safety II*.²⁴ Brigadier General Patrick M. Hamilton (Director of Joint Staff, TXNG) gave an update on the troops stationed on the border and answered questions from the committee. Dr. Janek (HHSC) provided a brief update on UACs.

Two months after the committee's last meeting, the Legislative Budget Board (LBB) met on December 1, 2014, to discuss *Operation Strong Safety II*. As recommended by legislative leadership, the LBB approved the extension of the border surge through August 2015 and approved \$86.1 million for the various agencies involved.²⁵

Current Structure and Potential Actions

Texas Department of Public Safety

In the fall of 2013, DPS initiated *Operation Strong Safety I* by adding additional security specifically in the Rio Grande Valley to combat growing threats to the region's public safety.²⁶ During that three-week initiative, DPS coordinated with local, state and federal law enforcement agencies to increase river, air and road patrols to address significant criminal activity, including human smuggling and trafficking, drug smuggling, stash house operations and home invasions. This increased patrol presence resulted in the following activity reported by law enforcement, which compares the three-week operation to the three weeks prior, in Cameron, Hidalgo, Kenedy, Starr and Willacy Counties:

- 49% decrease in marijuana seizures
- 42% decrease in cocaine seizures
- 95% decrease in methamphetamine seizures

- 185% increase in U.S. currency seizures
- 67% increase in recovery of stolen vehicles
- 74% decrease in felony pursuits
- 31% decrease in Operation Drawbridge camera detections
- Four home invasion suspects arrested

DPS has continued to enhance border operations by:

- Deploying specialized teams in specific areas posing the most significant threat.
- Using DPS aircraft to identify criminal and suspicious activity and support law enforcement ground units.
- Engaging marine resources and patrols on the Rio Grande River and intracoastal waterways.
- Establishing overt and covert observation and intelligence gathering posts.
- Using wireless cameras to monitor and detect criminal activity along remote areas of the border typically exploited by drug and human traffickers. (*Operation Drawbridge*)
- Conducting criminal enterprise investigations of Mexican cartels, which involve transnational gangs and human trafficking.

Texas Health and Human Services Commission

In 2014 Texas experienced an influx of individuals illegally crossing the border, especially in the Rio Grande Valley. (See *Table 1*.) In addition to the law enforcement response by the federal government and Texas, the state's health and human service agencies played a role.

Table 1. Apprehensions at Texas/Mexico Border in Rio Grande Valley.

	Unaccompanied children	Adults with children
January	3,706	2,286
February	4,845	3,282
March	7,177	5,752
April	7,702	6,511
May	10,580	12,772
June	10,622	16,329
July	5,501	7,405
August	3,141	3,295

Source: U.S. Department of Homeland Security²⁷

Department of State Health Services (DSHS)

Due to the unexpected high numbers of individuals, particularly children, that were apprehended and put in temporary care, concerns ranged from the condition of the holding facilities and the care the children receive to diseases carried by UACs. The Texas Department of State Health Services (DSHS), its health service regions, and local health departments monitored the situation closely to evaluate the impact to public health for Texas citizens. DSHS officials were on the scene in many of the temporary detainment facilities run by CBP. In turn, they made recommendations to the federal government regarding the standard of care, expediency of the screening, and more for detention facilities run by the CBP.

Department of Family and Protective Services (DFPS)

The federal Office of Refugee Resettlement (ORR) provides UACs temporary shelter care and services. UACs in the care of ORR remain in an ORR-contracted child residential care facility until they are placed, released or deported. The ORR contracts with private businesses to operate residential care facilities in Texas, so they are subject to state licensing laws and must be licensed by the Residential Child Care Licensing (RCCL) program within DFPS. RCCL staff conducted inspections of facilities that may hold UACs and reviewed capacity and variance requests from ORR facilities.

The largest impact to CPS could have been a reduction in the availability of space to place foster children. This would be a concern if the entities licensed in Texas to operate residential care facilities began contracting with the federal government to place UACs, thereby reducing the number of spaces available to place Texas foster children.

Child Protective Services (CPS), which is a program within DFPS, is not involved with UACs unless a UAC is eventually placed with a relative or a sponsor family in Texas. Once placed, if there are any allegations of abuse and/or neglect, then an investigation would officially be within the jurisdiction of CPS.

Texas Military Forces

Texas Military Forces consists of three branches: Texas Army National Guard, Texas Air National Guard, and Texas State Guard. All three branches are administered by the state Adjutant General, Major General John F. Nichols, who is appointed by the Governor. The Army and Air National Guards are under the command of the Governor, unless the President of the United States activates the Guard into federal service by executive order.

Governor Perry issued an Executive Order in July 2014 for up to 1,000 Texas National Guard (TXNG) troops to assist DPS in border security efforts. The soldiers and airmen that were deployed were strictly volunteers and were deployed within twenty-one days of when the order was issued. Though the troops do not have policing capabilities, they are able to support DPS on the border, specifically the Rio Grande Valley, by being extra boots on the ground. Their presence helped deter criminal activity in the area they patrolled, which pushed the activity to less populated areas. This shift helps DPS and CBP narrow their areas of coverage.

In December 2014 the Legislative Budget Board extended the border surge through August 2015.

Recommendations

- **Continue funding by the Texas Legislature to enhance border security through the dedication of DPS resources, technology, equipment and personnel.**
- **Support *Operation Drawbridge* in its efforts to thwart drug and human smuggling/trafficking operations along the border.**

Operation Drawbridge uses innovative technology systems to monitor remote areas of the border on a 24/7 basis in the Texas Fusion Center, Border Security Operations Center, and other locations by DPS, Texas Military Forces, and U.S. Customs and Border Protection (CBP). Wildlife motion-detecting cameras with low light capability have been adapted to meet law enforcement needs and the needs of the Texas border sheriffs, CBP, Texas landowners and others.

Since January 2012, Operation Drawbridge has made a sustained impact on cartel narcotic and human smuggling. As of the end of May 2014, Operation Drawbridge has directly resulted in the apprehension of more than 37,000 individuals and more than 66 tons of narcotics.

With the execution of funds by the LBB in December, DPS was authorized to increase the number of cameras deployed on the border.

DRIVER RESPONSIBILITY PROGRAM

Charge 4: Review the Driver Responsibility Program and consider methods for overall improvement of the program.

Background

The Driver Responsibility Program (DRP) began on September 1, 2003, as a result of HB 3588 (78th Legislature, Regular Session, 2003) and is administered by the Texas Department of Public Safety (DPS). DRP establishes a system to assess surcharges to an individual based on certain traffic offenses.

Surcharges are assessed in two ways: point system and conviction-based. Individuals who have both points and convictions reported to their driver record will receive separate surcharges for each offense; a surcharge for the points and a surcharge for the conviction(s).

Point System

Points are assessed for traffic convictions. Once the conviction has been added to the driver record, points are assigned and remain on the driver record for three years from the date of conviction.

- Two points are assessed for a Texas or out-of-state traffic conviction.
- Three points are assessed for a Texas or out-of-state traffic conviction that resulted in a crash.

Individuals who have six or more points on their driver record are assessed a surcharge every year they maintain six or more points. Surcharges amounts are:

- \$100 for the first six points on a driver record and
- \$25 for each additional point after six.

Conviction Based

Individuals who receive a conviction for one of the offenses listed in Table 2 will pay an annual surcharge for three years from the date of conviction. Points are not assessed for these offenses because the surcharge is automatic upon conviction.

Table 2. Convictions.

Type of Conviction	Surcharge*
1st Driving While Intoxicated (DWI) Texas or out-of state conviction for DWI, Intoxication Assault or Manslaughter	\$1,000
Subsequent DWI Texas or out-of state conviction for DWI, Intoxication Assault or Manslaughter	\$1,500
DWI with Blood Alcohol Concentration of 0.16 or More	\$2,000

Texas or out-of state conviction	
No Insurance	\$250
Driving While License Invalid (DWLI) Driver license is canceled, suspended, denied or revoked	\$250
No Driver License No driver license or commercial driver license, an expired license or endorsement violation(s)	\$100
<i>*The surcharge amount is assessed every year for three years.</i>	

Since DRP inception in FY2004, 1% of revenue is directed to General Revenue for program administration. In FY2004 and FY2005, the remaining 99% was divided equally between the Designated Trauma Facility and Emergency Medical Services (EMS) Account (Trauma Account No. 5111) and the Texas Mobility Fund (TMF). Established by HB 3588, the Trauma Account No. 5111 is a General Revenue–Dedicated Account that provides funding for designated trauma facilities, county and regional emergency medical services, and trauma care systems.

Legislators in the 78th Legislature, 3rd Called Session, changed the allocation beginning in FY2006 so that 49.5% of funds previously deposited to the TMF were deposited in the General Revenue Fund. These funds are directed back to the TMF only if combined deposits to the General Revenue Fund from DRP and the \$30 State Traffic Fine meet an annual \$250 million limit. Since this became effective in FY2006, a transfer has not been made to the TMF.

Legislation passed in 2007 amended Chapter 708, Texas Transportation Code, to authorize more extensive collection techniques, the reinstatement of installment plans, amnesty programs, and a reduction in surcharges or the number of years a surcharge would be paid when an offender demonstrates improved behavior.

Legislation passed in 2009 required DPS to establish an indigency program and amended notification requirements used when collecting fees. In January 2011, DPS offered the first amnesty program to persons delinquent on payments assessed between September 30, 2004 and December 31, 2008. Persons who qualified for the program were required to pay 10% of the original amount owed, not to exceed \$250, and their driving record was cleared of the surcharge suspension. The program lasted from January 17 to April 17, 2011 and payment was required to be made in full during this period. Of the 713,444 people eligible to participate in the program, 109,824 opted into the program. Only 90,380, or 12.6%, paid in full.

In April 2011, DPS began an Indigency Program for anyone receiving a surcharge since September 30, 2004 who is at or below 125% of the poverty level. Penalties are reduced to 10% of total surcharges owed, not to exceed \$250, and driver license suspension is rescinded while payments are being made. In September 2013, DPS began an Incentive Program for those between 126% and 300% poverty level; the surcharge is reduced to half the total amount. As of November 30, 2014, 213,033 applications were filed. Of those, 117,983 applications were approved for the Indigency Program and 5,132 for the Incentive Program.

DRP surcharges have been collected since September 2004. At the end of FY2014, 2.7 million offenders had been convicted of DRP violations. Only 51% of those offenders complied with the program. The program has billed over \$3.6 billion for offenses since its inception through FY2014, but collected approximately 51% of all surcharges billed. Half of all offenses have resulted in driver license suspension.

Committee Action

The committee met on August 26, 2013, and April 14, 2014 to hear from DPS personnel and interested parties to understand the Driver Responsibility Program and learn from invited and public testimony what some of the challenges and advantages are of the program. Public testimony was provided by Judge David Hodges; Teaching Hospitals of Texas; Texas EMS, Trauma & Acute Care Foundation; Mothers Against Drunk Driving; Shawn Dick, Williamson County Defense Bar; Texas Criminal Justice Coalition; and Judge Edna Staudt, Williamson County Justice of the Peace.

During the April hearing, DPS outlined recommendations for increased compliance with DRP to the committee based on a working group composed of representatives from DPS, Legislative Budget Board, Travis County Court, and Municipal Services Bureau. (See **Error! Reference source not found.**) DPS categorized the recommendations based on their potential to provide positive impact to the participants in the program without negatively impacting revenue for the state.

Based on these recommendations, legislation was drafted and presented to the committee at the August 5, 2014 hearing. During the hearing, invited testimony was provided by DPS and LBB and public testimony from Barbara Chapman; Texas Hospital Association; Teaching Hospitals of Texas; Sonia McMasters; Texas EMS, Trauma & Acute Care Foundation; Mothers Against Drunk Driving; Texas Criminal Justice Coalition; Judge Jean Hughes, Judicial Section Criminal Justice Legislative Committee Chair; and Judge Edna Staudt, Williamson County Justice of the Peace. A new draft with minor changes was presented at the October 7 hearing, but no testimony was provided. (See **Error! Reference source not found.**)

Current Structure and Potential Actions

Indigency Programs

Currently, DPS and the courts have separate indigency programs for surcharges. The court indigency program requires a person to obtain legal counsel and pay additional court fees to obtain a full waiver of surcharges. If the person is unable to pay for an attorney, some courts provide legal counsel and pay the costs from their funds. Most people will not attempt a court hearing for indigency due to the time and costs associated with the legal process. Also, the court program is a manual process for DPS and requires resources to process the court orders.

DPS already has the authority to reduce surcharges for a person determined to be indigent. For DPS to determine indigency, applicants are only required to complete an application and submit

supporting documentation.

These two independent programs are confusing because they have different requirements and different reductions. And the court system is a financial burden not only on customers but also the judicial system and DPS.

***Recommendation:** Amend §708.157(c) and repeal §708.158, Transportation Code, to allow the DPS indigency program to waive surcharges for a person DPS determines indigent.*

Installment Plans

The 2011 statutory amendment of the Installment plans significantly lower the monthly installment plan fees. However, these installment plans only apply to surcharges issued on or after September 1, 2011. If the statute was changed to offer these plans to all customers, the expectation is that compliance will increase. While this has the potential to reduce the amount of revenue due to lower payment amounts, it can also increase revenue by encouraging more participants to comply who have been out of compliance for an extended period.

***Recommendation:** Amend §708.153(a), Transportation Code, so that installment plans can apply to all surcharges, regardless of when the surcharge was assessed.*

Mailing Address

When a driver has five points on his/her driving record, DPS mails the driver a notice indicating when he/she has accumulated six points on the record, a \$100 surcharge will be assessed. Currently, DPS can only use an address listed on DPS records or through U.S. Postal Service (USPS). Drivers do not always update their driver license when they move. If drivers do not update their license and/or there is no forwarding order through USPS, then DPS cannot effectively communicate with the license holders.

***Recommendation:** Amend §708.055 and §708.151, Transportation Code, so that DPS can use address information obtained from other credible sources to mail notices of surcharges.*

Notice of Potential Surcharge

Section 708.105 (a), Transportation Code, indicates that a citation issued for a traffic offense must include—and in the largest font on the citation—a statement that reads “A conviction of an offense under a traffic law of this state or a political subdivision of this state may result in the assessment on your driver's license of a surcharge under the Driver Responsibility Program.”

DRP customers comment they were unaware of the DRP law and surcharge assessments when they were convicted by the court. Although the warning statement is on the citation, drivers may not read or understand it. The court may not have clarified the surcharge assessment at the time of disposition or the defendant may not have understood.

This lack of knowledge or understanding has led to millions in uncollected surcharges and suspended licenses. If after 105 days from the notice date the person fails to pay the surcharge or fails to establish an installment plan with DPS, then the person's driving privileges are suspended. If a person doesn't realize that they owe a surcharge or pays only the initial surcharge without realizing that the same amount will be due for two more years, a crippling spiral is likely to begin. When the surcharge is not paid, the driver license is suspended. The person drives to work and is stopped and ticketed for driving with a suspended license. If convicted of Driving While License Invalid (DWLI), a new \$250 surcharge is assessed for three years. The driver cannot get a driver license until all surcharges and other fees are paid. The driver must still work and drives anyway, gets caught and is assessed another surcharge for a subsequent DWLI. This and similar scenarios represent vicious cycles that happen more often than they should and can quickly put a driver in debt and in a hopeless situation.

Even though the citation provides an explanation and judges testified that defendants are notified of the program and what to expect, there still seems to be a lack of understanding by defendants. Courts interact with defendants more than DPS or other contacts in the process. If courts provided information about potential surcharges to defendants at the time of disposition or when the fine is paid, this would likely improve drivers' understanding of the program and increase compliance.

***Recommendation:** Encourage or consider requiring the court to notify a defendant of the program in writing at the defendant's first court appearance or when the fine is paid.*

One-time Assessment

The source of great confusion among defendants is the fact that conviction-based surcharges (No Insurance, No Driver License, Driving While License Invalid (DWLI) and Driving While Intoxicated (DWI)) are assessed **annually for three years**. Customers comment that they didn't understand or were never told that payment is required for multiple years.

Changing the current three-year annual assessment to a one-time assessment would alleviate a major point of misunderstanding among defendants. As a result, this change could increase compliance. Per testimony, reasonable opponents and proponents of the program tended to agree that this change would have a significant positive impact on the program and customers.

***Recommendation:** Reduce the requirement from three years to one year for conviction-based offenses.*

Assessment Reduction

Defendants comment that the total amount of the conviction-based surcharge is too high for them to comply. Historical trends show that most customers do not have the ability to pay the amount owed due to personal debt and life circumstances. (See *Table 3*.)

Table 3. DRP Statistical Information (September 30, 2004 to August 31, 2014).

	Points	Intoxication	No Insurance	DWLI	No DL
Cases:	787,630	1,228,527	5,646,095	957,522	3,659,312
Revenue Billed:	\$90,131,191.00	\$1,300,825,400.00	\$1,550,855,797.00	\$252,794,550.00	\$411,727,830.00
Revenue Collected:	\$65,841,394.61	\$548,623,886.76	\$626,225,979.77	\$57,364,273.13	\$120,279,017.05
Collection Rate:	73%	42%	40%	23%	29%
Total Cases:	12,279,086				
Total Revenue Billed:	\$3,606,334,768.00				
Total Revenue Collected:	\$1,432,255,215.84				
Total Revenue Waived	\$398,425,417.49				
Total Collection Rate:	51%				

Source: Texas Department of Public Safety

In comparison, the points system has a 73% collection rate from inception through FY2014 for certain offenses e.g., moving traffic convictions. Once the conviction has been added to the driver record, points are assigned and remain on the driver record for three years from the date of conviction. Individuals who have accumulated six or more points on their driver record are assessed a surcharge every year they have six or more points. The surcharge for points is \$100 for the first six points on a driving record and \$25 for each additional point after six.

Of the conviction-based surcharges, the best collection rate is 42% for intoxication-related offenses. However, due to the nature of the offense and the intent for the Trauma Account to be funded by those offenders using the funds, most witnesses concurred with the concept of not lowering the surcharge intoxication-related offenses.

The remaining offenses--No Insurance, No Driver License, and Driving While License Invalid (DWLI)--represent the majority of cases, the majority of repeat offenders, and the lowest collection rates. The No Insurance category alone represents

- the highest number of cases with 45% of all DRP cases. (*No Driver License is second highest at 30%.*)
- most revenue billed and most revenue collected
- offenders that are most likely to have additional surcharges in the same or other categories. (*No Driver License is the second most likely to have repeat offenders.*)

Recommendation: *Consider reducing all surcharge amounts for No Insurance, No Driver License and Driving While License Invalid (DWLI).*

Reducing surcharge amounts could increase compliance. There is no way to gauge the willingness of customers with a history of non-compliance to participate based on the lower amounts. Moreover, there is also no way to determine how a change in compliance and/or the lower amount might impact revenue collections.

However, based on current collection rates, lowering surcharge amounts would most likely decrease the amount of revenue collected. Based on preliminary research conducted by the Legislative Budget Board (LBB) on reducing the total amount owed by \$100 for the three categories of offenses, the total estimated loss is \$16.03 million, so approximately \$8 million less would go to General Revenue and the Trauma Fund each. Based on testimony in this committee and previously filed legislation, the concern associated with a loss of revenue is for the impact it will have on the Trauma Fund and the recipients of those funds.

As indicated in Table 4, it is important to note that historically less than 60%, on average, of revenues collected for the Trauma Fund has been appropriated; the remaining balance has been used to certify the General Appropriations Bill. Considering FY2015 revenue in the Trauma Fund is estimated at \$115.8 million, an \$8 million loss in revenue may not prohibit legislators from maintaining current appropriations. Also of significance is that the estimated fund balance for FY2015 is \$99 million.

Table 4. General Revenue Dedicated 5111, Designated Trauma Facility and EMS.

	Prior to Fund Swap and HB 1025				
	FY11	FY12	FY13	FY14	FY15
Revenue ^{1,5}	\$116,874,000	\$112,967,000	\$115,800,000	\$115,800,000	\$115,800,000
Appropriations ^{2,3,6}	\$75,000,808	\$59,750,808	\$59,750,808	\$59,750,808	\$59,750,808
Fund Balance ^{1,4,5}	\$270,584,000	\$340,748,305	\$424,788,000		
	Additional Adjustments				
	HB 1025 Appropriations		\$137,860,100	\$0	\$0
	Art. 9 Medicaid		\$0	\$160,000,000	\$140,000,000
	Estimated Fund Balance		\$286,927,900	\$182,977,092	\$99,026,284

Created by the Legislative Budget Board on May 18, 2013

Sources:

¹ Comptroller's Biennial Revenue Estimate, 2012-2013. (FY11-13 Revenue, FY11 Fund Balance)

² General Appropriations Act, Eighty-first Regular Session, 2010-11. (FY11 Appropriations)

³ General Appropriations Act, Eighty-second Regular Session, 2012-13. (FY12-13 Appropriations)

⁴ Comptroller's Annual Cash Report, 2011. (FY12 Fund Balance)

⁵ Comptroller's Biennial Revenue Estimate, 2014-2015. (FY13-15 Revenue, FY13 Fund Balance)

⁶ Conference Committee Recommendations, SB1, Eighty-third Regular Session, 2014-15. (FY14-15 Appropriations)

DWLI Surcharge

In a common scenario that was outlined previously as to how a person can get caught in a cycle of not paying a surcharge and then having his/her driver license suspended, the cycle is perpetuated because the driver continues to drive in order to get to work or take children to school, go to medical appointments, etc., but is ticketed for driving with a suspended license (i.e. DWLI).

Currently, if convicted of a first-time DWLI, the defendant pays surcharges and his/her driver license is suspended, which involves reinstatement fees to DPS. Courts may take extra measures (e.g. deferred adjudication, probation) to dismiss the offense if the person takes steps to lift the enforcement action currently on their record. The courts' goal is not to have the driver license

suspended and to avoid surcharges.

Due to the number of people suspended for unpaid surcharges, a first-time DWLI offense was reduced from a class B misdemeanor to a class C misdemeanor effective September 1, 2007. All class B misdemeanors required that the person be arrested and taken before a magistrate, which increased the number of persons in local jails and appearing in court. Courts continue to experience an influx of offenders for DWLI offenses, which causes a significant burden on the courts in terms of police processing, increased jail population, and court settings.

No witnesses suggested any changes that would impact the court's discretion.

Recommendation: Consider eliminating the surcharge associated with a first-time DWLI conviction.

This change would align the penalty with the level of offense. Similar class offenses don't have surcharges associated with them. Ultimately, this change would give offenders a pass on surcharges for the first DWLI conviction. DWLI has the lowest collection rate (23%) for surcharges. The driver license is still suspended, but the driver would be more aware of potential surcharges if convicted of a subsequent DWLI(s). This would cause a revenue loss of approximately \$20 million for the first year because it would reduce the number of first-time surcharges by approximately 80,000 annually.

Another thought is to require courts to defer/probate all first-time DWLI offenses. As a result there would most likely be no convictions and therefore no surcharges assessed and no fees are remitted to DPS.

Dismissal of No Driver License and No Insurance Offenses

As recounted by several witnesses, some drivers charged with non-alcohol-related offenses have an explanation as to why they meet the criteria for the charge. Unfortunately, they are not given the opportunity to correct the situation and are assessed an annual surcharge for three years.

Some drivers may not have realized their driver license expired because they moved and never received a notice. One witness recounted that a widower didn't realize his insurance payment was due because his wife handled the finances. He renewed the insurance as soon as he was charged, but was still assessed a surcharge. There are numerous situations in which the driver did not intentionally drive without insurance or a driver license. In these situations, it seems appropriate to reward a driver's responsible actions by relieving the surcharges.

Discussions about the No Driver License offense were focused on the draft legislation, which was applicable to Class A, B, C and M licenses and not commercial licenses.

Recommendation: Allow the court to dismiss a No Driver License charge if the defendant provides proof to the court that the license was obtained within a reasonable amount of time from the offense.

If a driver is charged with a No Driver License violation and the defendant obtains a license within an established number of days of the offense, then the law could be changed to allow the court to dismiss the charge. DPS suggested that 60 days should be sufficient time for an individual to obtain a new driver license.

Currently, individuals suspended for a conviction of No Insurance who had insurance at the time of the offense can submit proof of insurance to DPS. The suspension will be waived, but the individual must still pay the surcharge. An option for these responsible drivers and others who unintentionally broke the law but correct it immediately is to have the No Insurance charge dismissed if the defendant establishes financial responsibility within a reasonable number of days from the offense. Based on testimony from various judges and prosecutors, the consensus is that 20 days is sufficient time to secure insurance. Some of the same witnesses asserted that the policy should be pre-paid and valid for at least six months.

Similar to the dismissal of an expired license charge (in §521.026) and other traffic-related charges, the defendant could be required to pay a court fee for the dismissal of a No Driver License or No Insurance charge.

***Recommendation:** Allow the court to dismiss a No Insurance charge if the defendant proves to the court that financial responsibility has been established within a reasonable amount of time from the offense and meets certain criteria.*

By giving people the opportunity to remedy the cause for the surcharge and in a reasonable amount of time, this would most likely reduce the number of people driving without a valid license or without insurance.

Occupational Licenses

If an individual's driver license has been suspended or revoked, but needs to drive a vehicle to go to work or school or to perform household duties, the person may be eligible to apply for an occupational license. If granted, the order dictates to the driver the hours and days of the week and the areas or routes of travel that are permissible. Typically, a person cannot operate a motor vehicle for more than four hours in any 24-hour period.²⁸ Also, the drive must have insurance.²⁹

The challenge in getting an occupational license is that legal representation is required in most cases. Unfortunately, people suspended for non-payment of surcharges are not always able to pay for legal representation to obtain an occupational license and courts are not able to provide legal advice. So people will not petition for an occupational license but rather continue to drive with a suspended license.

The current occupational license process is maintained by the courts as a judicial proceeding. One option presented during a hearing was to make the occupational license an administrative process for drivers suspended due to non-compliance with surcharges. However, if a separate administrative process is created solely for drivers with surcharge suspensions, it would most likely result in confusion for drivers determining when they have to go court for an occupational license due to other types of suspensions or to DPS for surcharge-only suspensions. Secondly, if the entire occupational process is changed from a judicial to an administrative process, it will

eliminate the judges' and prosecutors' ability to incorporate the occupational license as part of the negotiation, plea and punishment phases.

An online occupational application process would be beneficial. The Travis County Law Library has an online application for customers to complete their own application for court.³⁰ DPS could provide the link and information on the DPS Driver License Division webpage.

Recommendations

- **Amend §708.157(c) and repeal §708.158, Transportation Code, to allow the DPS Indigency Program to waive surcharges for a person DPS determines indigent.**

These changes would eliminate the court indigency program and amend the DPS Indigency Program to allow for a full waiver of surcharges (as opposed to current option to only reduce surcharges). These modifications eliminate costs to customers and the judicial system as well as confusion caused by two independent programs that have different requirements and different reductions.

- **Amend §708.153(a), Transportation Code, so that installment plans can apply to all surcharges, regardless of when the surcharge was assessed.**

Installment plans significantly lower the monthly installment plan fees, but currently only apply to surcharges issued on or after September 1, 2011.

- **Amend §708.055 and §708.151, Transportation Code, so that DPS can use address information obtained from other credible sources to mail notices of surcharges.**

The Texas Department of Motor Vehicles (DMV) and Texas Department of Insurance (TDI) have contact with potential drivers on at least an annual basis, if not more frequently, for vehicle registration and financial responsibility verification. This change would allow DPS to utilize address information from DMV and TDI, which could improve the effectiveness and efficiency in locating and notifying program participants of surcharges due.

- **Encourage or consider requiring the court to notify a defendant of the program in writing at the defendant's first court appearance or when the fine is paid.**

Courts could post signage in courts, disseminate postcard/pamphlet information at the time of disposition, or utilize a pamphlet about the DRP available at no cost on the DPS website. Courts can include other information too, such as reduction programs offered by DPS.

-
- **Reduce the requirement from three years to one year for conviction-based offenses.**

Surcharges are assessed annually for three years for No Insurance, No Driver License, Driving While License Invalid (DWLI), and Driving While Intoxicated (DWI) offenses. Changing to a one-time assessment could increase compliance.

- **Consider reducing all surcharge amounts for No Insurance, No Driver License and Driving While License Invalid (DWLI).**

These offenses represent the majority of cases, the majority of repeat offenders, and the lowest collection rates. This change would lower what has to be paid, which would hopefully be enough to increase compliance and therefore collection revenues.

- **Consider eliminating the surcharge associated with a first-time DWLI conviction.**

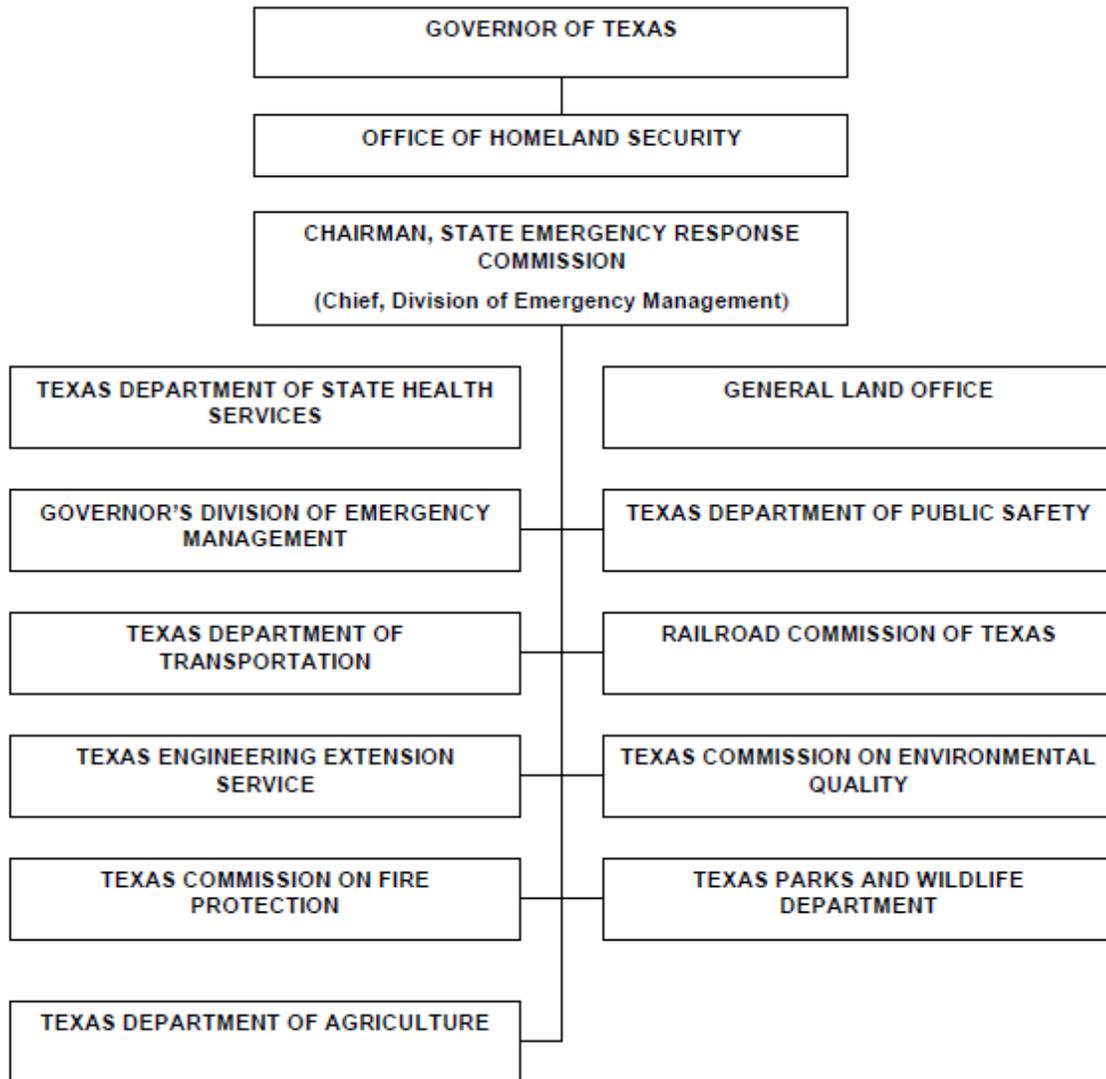
DWLI arrests require considerable time in police processing, increased jail population and court settings. Keeping first-time DWLI offenders out of the program might encourage these offenders to remedy their problems in order to reinstate or retain their driver license.

- **Allow the court to dismiss a No Driver License charge if the defendant provides proof to the court that the license was obtained within a reasonable amount of time from the offense.**

This change would allow relief of potential surcharge penalties as a result of the driver's responsible actions. By giving people the opportunity to remedy the cause for the surcharge, it could reduce the number of people driving without a valid license.

- **Allow the court to dismiss a No Insurance charge if the defendant proves to the court that financial responsibility has been established within a reasonable amount of time from the offense and meets certain criteria.**

APPENDIX A
State Emergency Response Commission



APPENDIX B

Memo to Legislators on Unaccompanied Alien Children

ALLEN FLETCHER
VICE-CHAIR

MARIANN H. MORELOCK
COMMITTEE CLERK



COMMITTEE ON
HOMELAND SECURITY & PUBLIC SAFETY
JOE C. PICKETT
CHAIR

MEMORANDUM

MEMBERS:
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TIM KLEINSCHMIDT
KENNETH SHEETS
GEORGE LAVENDER
TONY DALE
PHILIP CORTEZ
RON SIMMONS

Joe Pickett
OK
FOR DISTRIBUTION

TO: Members and Staff of the 83rd Legislature

FROM: Representative Joe C. Pickett, Chair
House Homeland Security and Public Safety Committee

DATE: July 21, 2014

RE: Border Security: Unaccompanied Alien Children

In response to a briefing by the Texas Department of State Health Services (DSHS) on border operations at the July 1 hearing of the Homeland Security and Public Safety Committee, staff pulled information together on Unaccompanied Alien Children (UACs). The facts have been assembled from agency websites and comments made by several government officials. All information is up to date as of July 18, 2014.

What is the situation as it pertains to public health in Texas?

- DSHS continues to closely watch the situation on the border and its impact to public health for Texans.
- These children come from highly vaccinated countries. Measles, polio, and rubella have been declared eliminated in North, South and Central America for several years now. (Source: http://ais.paho.org/hip/viz/im_coveragebycountry.asp)
- DSHS has seen the following diseases in the unaccompanied children population:
 - Three cases of tuberculosis
 - One confirmed case of H1N1 flu
 - Two cases of Type A presumptive H1N1 flu
 - Minimal chickenpox cases
 - Cases of scabies, lice, rashes

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-
- There is currently no evidence to suggest that the above cases caused any secondary illness; there are currently no outbreaks evident in Texas.
 - DSHS continuously performs surveillance to detect disease outbreaks within its public health mission.

How does DSHS know about disease in Texas?

- Texas law requires that certain diseases that occur within the state be reported to DSHS. A list of required reportable disease can be found at <http://www.dshs.state.tx.us/idcu/investigation/conditions/>.
- Texas has made it clear that the expectation is that federal facilities report these conditions to DSHS.
- For diseases that are not reportable, like the flu, DSHS has maintained daily contact with federal entities and receives daily reports on illnesses occurring in facilities holding UACs.

What concerns are there about the UAC influx?

- The concern is that shelter situations can breed outbreaks of diseases typically seen in Texas, especially when detention periods exceed 72 hours.
- The concern is also ensuring that every federal detainee released into the public receives full health screening, just like anyone else immigrating into the country.

What has DSHS done?

- DSHS has provided advice and education to the federal government. The challenges are:
 - Overcrowding in facilities;
 - Minimal standards of care being observed;
 - Inadequate isolation for sick children who are contagious; and
 - Insubstantial public health precautions, such as hand washing, water, separation of toilet and eating areas.
- DSHS has made the following recommendations to federal agency staff/leadership:
 - Ensure full screening of any child in U.S. Border Patrol detention more than 72 hours and of any individual released into the country.
 - Continue involvement of the Centers for Disease Control and Prevention in U.S. Border Patrol stations to ensure protection of public health.

-
- Implement mass standards of care in U.S. Border Patrol facilities to the extent possible. At a minimum ensure adequate showers, water, toilets, trash receptacles, and adherence to hand washing protocols.
 - Provide the state better visibility on the locations of new facilities in Texas used by the U.S. Department of Health and Human Services to shelter the UACs.
 - Provide visibility on how children are being placed after their immigration proceedings are complete, including where they end up, with whom, and how sponsors for these children are screened.

What is the big picture?

- Some progress has been made. Fewer children are coming over the border, allowing the remaining children to be processed through U.S. Border Patrol custody more quickly.
 - This has mitigated the overcrowding problem and reduces the amount of time that infection can be spread.
- One reason for recent downturns seems to be the derailment of a train that individuals ride to get to the U.S. border.
 - It is unclear whether the train derailment is the only reason for the trend downward. The heat of summer months could also be a factor.
 - This is expected to be a temporary lag, but it is unknown what future numbers of inbound UACs may look like.
- The current lull in activity allows the federal government to make plans for how it will better protect the public health of the UACs, U.S. Border Patrol staff, and Texans should the influx of migrants coming over the border increase to high levels again.

APPENDIX C

Driver Responsibility Program Recommendations (April 2014)

A small working group composed of representatives from the Texas Department of Public Safety, Legislative Budget Board, Travis County Court, and Municipal Services Bureau offered recommendations for increased compliance with the Driver Responsibility Program.

The recommendations below represent those presented by all members of the working group. Recommendations have been categorized according to the potential for them to provide positive impact to the participants in the program without negatively impacting revenue for the state. Each recommendation includes the current process and the proposed change.

CURRENT PROCESS	PROPOSED CHANGE
<p>Key Prospects: Have the highest potential to provide increased compliance and maintain current revenue</p>	
<p>Court Indigency Program: The court indigency program requires the person to obtain legal counsel and pay additional court fees to obtain a full waiver for surcharges. If the person is unable to pay for an attorney, some courts provide legal counsel and pay the costs from their funds. Most people will not attempt a court hearing for indigency due to the time and costs associated with the legal process.</p>	<p>Eliminating the court indigency program and amending the statute to allow the DPS indigency program to waive surcharges will eliminate costs to customers and the judicial system. It also eliminates confusion caused by two independent programs that have different requirements and different reductions.</p> <p>Furthermore, the court indigency program is currently a manual process for DPS and requires resources to process the court orders. The DPS indigency program is part of the contracted services.</p> <p>This requires a repeal of TRC 708.158 and an amendment to TRC 708.157 so the DPS indigency program can waive all surcharges.</p> <p>A social security number is used routinely by debt collectors in the collection of fines and fees; however, DPS is not allowed to disseminate the social security number maintained as part of the driver record except as authorized by statute. By releasing the social security number of people suspended for non-payment of surcharges to the vendor, it will allow for credit bureau reporting to encourage compliance by people wishing to maintain a satisfactory credit score.</p> <p>Transportation Code 521.044 requires amendment to allow the DRP contracted vendor access to social security information for use in credit bureau reporting.</p>
<p>Credit Reporting: DPS is not able to utilize the social security number for the debt collection practice of reporting to credit bureaus.</p>	<p>The ability to offer these extended plans to all customers would allow for increased compliance. For those currently paying the higher monthly fees, it may result in revenue collections being reduced initially.</p>
<p>Installment Plans: During the 81st Legislative Session, HB2730 was passed that extended the installment plan periods and significantly lowered the monthly installment plan</p>	

<p>fees. These changes were effective September 1, 2011 and only applied to surcharges issued on or after that date.</p>	<p>While this has the potential to reduce the amount of revenue due to lower payments amounts, it can also increase revenue by encouraging more participants to comply who have been out of compliance for an extended period.</p> <p>This will require a change to TRC 708.153 to state that all surcharges are eligible to receive the extended installment plan period.</p>
<p style="text-align: center;">CURRENT PROCESS</p> <p>Dismissal of No Insurance and No DL Offense: A surcharge is not waived for a No Insurance conviction if the customer is able to show proof of insurance at the time of the offense. Additionally, a No DL surcharge is not waived if the driver obtains a license before disposition with the court.</p> <p>Mailing Address: Statute only allows DPS to send notices to customers using either their current address on the driver record or available through the U.S. Postal Service.</p> <p>Tiered Settlements: The DRP law requires the customer to pay the amount assigned in statute, except for those who meet the authorized reduction programs.</p> <p>Court Notification: Customers still complain they were unaware of the DRP law and surcharge assessments when they plead to an offense or were convicted by the court. Although the statute requires a warning statement on the citation, this statement is not understood by drivers and is not clarified by courts at the time of disposition.</p>	<p style="text-align: center;">PROPOSED CHANGE</p> <p>Courts could be given the ability to dismiss a No Insurance or No DL citation provided the customer can show proof that they obtained insurance or became licensed within the last 20 days. This would allow relief of potential surcharge penalties as a result of the driver's responsible actions.</p> <p>This requires amending TRC 521.021 and 601.193 with language similar to TRC 521.026 for dismissal of an Expired DL.</p> <p>The ability to notice customers timely is key to improving compliance. Allowing DPS the ability to obtain current and valid address information from other entities or services would be a benefit to the customer.</p> <p>Transportation Code 708.151 will need to be amended to allow DPS to use the address on the driver record or the most current address available from other entities or services.</p> <p>Authorizing DPS the ability to implement tiered settlement to collect lower amounts for older surcharges would align with a practice already used by debt collectors and can produce revenue from people who have been out of compliance for an extended time.</p> <p>This has the potential to reduce the amount of revenue due to lower payments but could also encourage customers to wait longer for their surcharges to be reduced before complying.</p> <p>A new section will need to be created to allow DPS the ability to offer a reduced amount with a range of lower payment amounts based on the time out of compliance.</p> <p>The statement on the citation should be simplified to clarify the law, and courts should be required to provide information about potential surcharges and the program at the time of disposition.</p> <p>Recommendations from court associations were signage posted in courts or postcard/pamphlet information disseminated at the time of disposition. Cost of signage will vary based on the size of the court and an accurate assessment is not available.</p>

<p>DPS has a pamphlet about the program available at no cost on our website, which can be provided to customers. These options address providing information to individuals who appear in person at the court for a disposition, but it does not address those that pay by mail. Courts should be required to mail the information in this circumstance.</p> <p>Transportation Code 708.105 requires amendment of the citation language, and a new section to mandate the court requirement to inform customers of potential surcharge requirements.</p>	
CURRENT PROCESS	
PROPOSED CHANGE	
<p>Intermediary Prospects: Could result in increased compliance but may also negatively impact state revenue or efficiency of the current process; additional research is required to fully understand the long term impact of these recommendations.</p> <p>Range of Surcharge Amounts: Historical trends show that certain categories have higher compliance based on driver incentives for maintaining a license and other categories have lower compliance based on the amount of surcharges assessed.</p>	<p>Allowing DPS the ability to change the surcharge amount for each category based on improved compliance could result in increased revenue and lower non-compliance rates. An example of the change is to require the surcharge amount to be within a statutory range similar to court fines. This option could be used in lieu of tiered settlements.</p> <p>This requires a change to the amount defined in the following sections: TRC 708.054; 708.102; 708.103; 708.104.</p>
<p>Reduced Surcharge Amounts: Surcharges are assessed annually for three years. Customers continue to complain that they didn't understand that payment is required for multiple years even when they were told of the three year requirement. If they wait until all three years have been assessed, they complain that the total amount is too high for them to comply.</p>	<p>Historical trends show that most customers do not have the ability to pay the current amounts due to personal debt and life circumstances. Lowering all surcharge amounts and reducing the requirement from three years to only one year could increase compliance. We cannot gauge the willingness of customers with a history of non-compliance to participate based on the lower amounts, or the potential impact to the revenue collected.</p> <p>Once the Advance Payment directive is implemented, there will be only one-time assessments. The total amount will still be based on the three annual surcharges, and the customer would still have the ability to pay in installments.</p>
	<p>This requires amendment of the same sections as the proposed Range of Surcharge Amounts.</p>

<p>Driving While License Invalid (DWLI) Surcharge: Due to the number of people suspended for unpaid surcharges, a first-time DWLI offense was reduced to a class C misdemeanor. Courts experienced an influx of first-time offenders for Driving While License Invalid offenses, and now take extra measures to dismiss the offense if the person takes steps to lift the enforcement action currently on their record.</p>	<p>The elimination of the surcharge associated with a first-time Driving While License Invalid offense would be comparable to the reduced offense classification.</p> <p>In lieu of eliminating the surcharge, the court recommendation to defer/probate all first-time DWLI offenses would have the same result as the elimination of the surcharge. However, the suspension and associated reinstatement fee administered by DPS will not be collected.</p> <p>By eliminating all first time DWLIs you would potentially reduce the number of first time surcharge assessments by approximately 80,000 annually and \$8,000,000 in reinstatement fees associated with the Driving While License Invalid Suspension. These funds are currently deposited in the Texas Mobility Fund.</p> <p>These options would require statute changes to TRC 708.103 and 521.457.</p>
<p>CURRENT PROCESS</p>	
<p>PROPOSED CHANGE</p>	
<p>Lowest Prospects: Based on historical trends for the surcharge program, these recommendations have limited potential for increased compliance or will negatively impact state revenue. They also have the potential to require state funding to support the change.</p>	<p>Other state surcharge programs provide additional consequences for non-compliance. These other consequences include warrants, liens against property, intercepting state tax refunds and lottery winnings, garnishing wages and bank account funds, and retaining unclaimed property.</p>
<p>Additional Penalties for Non-Payment: The consequences for non-payment of surcharges are a driver license suspension.</p>	<p>This option would create the need for more DPS resources, and would also create more complaints regarding the hardship placed on customers for program requirements. A new section in the DRP law must be created to allow for these types of actions.</p>
<p>Alternate Payment Sources: Customers are able to make cash payment through several wire transfer options.</p>	<p>Additional payment options are to allow surcharge payments to be accepted by alternate sources, such as the Driver License Office or tax assessors/collectors.</p>
	<p>The acceptance of payments at DL offices would extend the wait time for customers who do not have other methods for obtaining required DL services.</p>
	<p>This requires the creation of a new section of the DRP law that would authorize the collection of surcharge fees through other governmental agencies. There will also be an impact to these agencies an accurate assessment is not available.</p>
<p>Community Service: DPS does not have the authority to provide community service as an option for payment as the statute only provides this option to the Judicial branch.</p>	<p>An option for customers that do not have the ability to pay their surcharges is to allow DPS the authority to contract with local courts to offer community service in lieu of payment. While this has been proposed before, there is a conflict of interest with this</p>

	<p>option since community supervision is an option of the judicial system and this is an administrative action.</p> <p>This would require the creation of a new section in the DRP law authorizing DPS to enter into Interlocal Contracts with courts for this service.</p>
<p>Change from Automatic Surcharge to Points: Point Surcharges have the highest Compliance rate at 72%. Historically this has been the case since drivers who accumulate multiple offenses are more likely to pay because they want to maintain valid driving privileges.</p>	<p>Changing the No Insurance, No Driver License and Driving While License Invalid surcharges from an automatic surcharge to the point based surcharge could result in higher compliance rate for the surcharge program. The intoxication surcharges would remain as an automatic surcharge.</p> <p>While we can't guarantee a higher compliance rate, there is the potential that if No Ins and No DL and DWLI were reduced to points with a lower surcharge amount, the compliance rate for these could increase.</p> <p>This will require changes to TRC 708.103 and 708.104.</p>
CURRENT PROCESS	
Administrative Changes: These have the ability to increase the efficiency of the current processes and benefit participants without impacting revenue.	
<p>Notarized Applications: Applications for DPS Indigency Program are required to be notarized.</p>	<p>By removing the notary requirement, it reduces the cost to the customer and allows for electronic submission and response for faster processing.</p> <p>The administrative rule change has begun, and is expected to go before the Public Safety Commission in June 2014.</p>
<p>Amnesty Program: Statute allows for DPS to offer another Amnesty opportunity for increased compliance.</p>	<p>While the initial Amnesty Program did not produce the significant participation that was expected, it's possible that by amending the administrative rule to lower the amount required to pay and targeting those in non-compliance for an extended period, expanding the criteria for those eligible and saturating the media with advertisements, another amnesty period could reduce the number of people currently suspended.</p> <p>Once priority legislative initiatives are complete, the ability to offer another Amnesty period will be considered.</p>
<p>Alternate Notification Method: The DPS relies on courts to assist in notifying customers of potential surcharges. Many are not aware of the surcharges until they receive their first notice from DPS.</p>	<p>The ability to advertise the name of people currently suspended for non-payment of surcharges could be done in a similar fashion as the Comptroller advertises people who are owed money by the state.</p> <p>This would require the creation of a new section to authorize DPS to work with the Comptroller and use the same resources for advertising. This has the potential to reach drivers that may not know that they owe surcharges, but could also cause concern about</p>

<p>Website Link: People suspended for non-payment of surcharges are not always able to pay for legal representation to obtain an occupational license and courts are not able to provide legal advice. For those who are truly indigent, the local government may pay to provide legal representation for these people.</p>	<p>the publication of the driver's name. The ability to provide a link to an online occupational application process for customers to complete their own application for court would be beneficial. A link to the Travis County Law Library's online application is going to be provided on the Driver License Division webpage concerning occupational licenses.</p>
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APPENDIX D

Draft Legislation for Driver Responsibility Program, Version 84R 1801

By: _____

____.B. No. _____

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the administration of the driver responsibility
3 program; imposing a fee and changing a surcharge.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subchapter B, Chapter 521, Transportation Code,
6 is amended by adding Section 521.0265 to read as follows:

7 Sec. 521.0265. DISMISSAL OF DRIVING WITHOUT REQUIRED
8 LICENSE CHARGE. (a) A judge may dismiss a charge of operating a
9 motor vehicle without a driver's license under Section 521.021 if
10 the defendant obtains a driver's license not later than the 60th
11 working day after the date of the offense.

12 (b) The judge shall assess the defendant an administrative
13 fee not to exceed \$50 when a charge is dismissed under Subsection
14 (a).

15 (c) This section does not apply to a charge of driving
16 without a commercial driver's license under Section 522.011.

17 SECTION 2. Subchapter G, Chapter 601, Transportation Code,
18 is amended by adding Section 601.192 to read as follows:

19 Sec. 601.192. DISMISSAL OF CHARGE OF OPERATION OF MOTOR
20 VEHICLE IN VIOLATION OF MOTOR VEHICLE LIABILITY INSURANCE
21 REQUIREMENT. (a) A judge may dismiss a charge under Section
22 601.191 for a defendant who cannot establish financial
23 responsibility on the date of the offense if the defendant
24 establishes financial responsibility under Section 601.051 not

1 later than the 20th working day after the date of the offense.

2 (b) If the defendant establishes financial responsibility
3 under Subsection (a) through a motor vehicle liability insurance
4 policy that complies with Subchapter D, the policy must be prepaid
5 and valid for at least a six-month period.

6 (c) The judge shall assess the defendant an administrative
7 fee not to exceed \$50 when a charge is dismissed under Subsection
8 (a).

9 SECTION 3. Section 708.055, Transportation Code, is amended
10 to read as follows:

11 Sec. 708.055. NOTICE OF ASSIGNMENT OF FIFTH POINT. The
12 department shall notify the holder of a driver's license of the
13 assignment of a fifth point on that license by first class mail sent
14 to the person's most recent address as shown on the records of the
15 department or records obtained by the department from another
16 entity or service.

17 SECTION 4. Sections 708.102(b), (c), and (d),
18 Transportation Code, are amended to read as follows:

19 (b) The ~~[Each year the]~~ department shall assess a surcharge
20 on the license of a [each] person for each conviction ~~[who during~~
21 ~~the preceding 36-month period has been finally convicted]~~ of an
22 offense relating to the operating of a motor vehicle while
23 intoxicated.

24 (c) The amount of a surcharge under this section is:

25 (1) \$3,000 for the first conviction;

26 (2) \$4,500 ~~[\$1,000 per year, except that the amount of~~
27 ~~the surcharge is~~

1 ~~[(1) \$1,500 per year]~~ for a second or subsequent
2 conviction within a 36-month period; or

3 (3) \$6,000 ~~and~~
4 ~~[(2) \$2,000]~~ for a first or subsequent conviction if
5 it is shown on the trial of the offense that an analysis of a
6 specimen of the person's blood, breath, or urine showed an alcohol
7 concentration level of 0.16 or more at the time the analysis was
8 performed.

9 (d) A surcharge under this section ~~[for the same conviction]~~
10 may not be assessed more than once for the same conviction ~~[in more~~
11 ~~than three years]~~.

12 SECTION 5. Section 708.103, Transportation Code, is amended
13 to read as follows:

14 Sec. 708.103. SURCHARGE FOR CONVICTION OF DRIVING WHILE
15 LICENSE INVALID OR WITHOUT FINANCIAL RESPONSIBILITY. (a) The
16 ~~[Each year the]~~ department shall assess a surcharge on the license
17 of each person who is ~~[during the preceding 36 month period has~~
18 ~~been]~~ convicted of an offense under:

19 (1) Section [521.457,] 601.191 [r] or 601.371; or
20 (2) Section 521.457, if the defendant has been
21 previously convicted one or more times of an offense under that
22 section.

23 (b) The amount of a surcharge under this section is \$650
24 ~~[\$250 per year]~~.

25 SECTION 6. Section 708.104, Transportation Code, is amended
26 to read as follows:

27 Sec. 708.104. SURCHARGE FOR CONVICTION OF DRIVING WITHOUT

1 REQUIRED [~~VALID~~] LICENSE. (a) The [~~Each year the~~] department shall
2 assess a surcharge on the license of a person who is [~~during the~~
3 ~~preceding 36 month period has been~~] convicted of an offense under
4 Section 521.021.

5 (b) The amount of a surcharge under this section is \$200
6 [~~\$100 per year~~].

7 (c) A surcharge under this section [~~for the same conviction~~]
8 may not be assessed more than once for the same conviction [~~in more~~
9 ~~than three years~~].

10 SECTION 7. Section 708.105, Transportation Code, is amended
11 by adding Subsection (c) to read as follows:

12 (c) The court shall notify a defendant charged with an
13 offense under a traffic law of this state or a political subdivision
14 of this state, in writing, at the time of the defendant's first
15 court appearance or as soon as possible on or after the date the
16 defendant pays a fine associated with the offense, whichever is
17 earlier, that a conviction may result in the assessment of a
18 surcharge under the driver responsibility program. The written
19 notification must include the statement described by Subsection
20 (a).

21 SECTION 8. Section 708.106, Transportation Code, is amended
22 to read as follows:

23 Sec. 708.106. DEFERRAL OF SURCHARGES FOR DEPLOYED MILITARY
24 PERSONNEL. The department by rule shall establish a deferral
25 program for surcharges assessed under Section 708.103 or 708.104
26 against a person who is a member of the United States armed forces
27 on active duty deployed outside of the continental United States.

1 The program must:

2 (1) toll the surcharge payment [~~36-month~~] period while
3 the person is deployed; and

4 (2) defer assessment of surcharges against the person
5 until the date the person is no longer deployed for an offense
6 committed:

7 (A) before the person was deployed; or

8 (B) while the person is deployed.

9 SECTION 9. Section 708.151(a), Transportation Code, is
10 amended to read as follows:

11 (a) The department shall send notices as required by
12 Subsection (b) to the holder of a driver's license when a surcharge
13 is assessed on that license. Each notice must:

14 (1) be sent by first class mail to:

15 (A) the person's most recent address as shown on
16 the records of the department or records obtained by the department
17 from another entity or service; or

18 (B) [~~to~~] the person's most recent forwarding
19 address on record with the United States Postal Service if it is
20 different;

21 (2) specify the date by which the surcharge must be
22 paid;

23 (3) state the total dollar amount of the surcharge
24 that must be paid, the number of monthly payments required under an
25 installment payment plan, and the minimum monthly payment required
26 for a person to enter and maintain an installment payment plan with
27 the department; and

1 (4) state the consequences of a failure to pay the
2 surcharge.

3 SECTION 10. Section 708.153(a), Transportation Code, is
4 amended to read as follows:

5 (a) The department by rule shall provide for the payment of
6 any [a] surcharge assessed under this chapter in installments,
7 including a surcharge pending on September 1, 2015, regardless of
8 when the surcharge was assessed.

9 SECTION 11. Section 708.157(c), Transportation Code, is
10 amended to read as follows:

11 (c) The department by rule shall establish an indigency
12 program for holders of a driver's license on which a surcharge has
13 been assessed for certain offenses, as determined by the
14 department. The department may waive all surcharges assessed under
15 this chapter for a person the department determines is indigent.

16 SECTION 12. Subchapter B, Chapter 103, Government Code, is
17 amended by adding Sections 103.02135 and 103.02136 to read as
18 follows:

19 Sec. 103.02135. ADDITIONAL FEES AND COSTS IN CRIMINAL CASE:
20 TRANSPORTATION CODE. A defendant shall pay the following
21 administrative fee on dismissal of a charge of driving without a
22 required license (Sec. 521.0265, Transportation Code) . . . \$50.

23 Sec. 103.02136. ADDITIONAL FEES AND COSTS IN CRIMINAL CASE:
24 TRANSPORTATION CODE. A defendant shall pay the following
25 administrative fee on dismissal of a charge of operation of a motor
26 vehicle in violation of motor vehicle liability insurance
27 requirement (Sec. 601.192, Transportation Code) . . . \$50.

1 SECTION 13. Sections 708.158 and 708.159, Transportation
2 Code, are repealed.

3 SECTION 14. (a) Except as provided by Subsection (b) of
4 this section, the change in law made by this Act applies only to an
5 offense committed on or after the effective date of this Act. An
6 offense committed before the effective date of this Act is governed
7 by the law in effect on the date the offense was committed, and the
8 former law is continued in effect for that purpose. For purposes of
9 this section, an offense was committed before the effective date of
10 this Act if any element of the offense occurred before that date.

11 (b) The change in law made by this Act to Section
12 708.153(a), Transportation Code, applies to a surcharge pending on
13 the effective date of this Act, regardless of when the surcharge was
14 assessed.

15 SECTION 15. This Act takes effect September 1, 2015.

ENDNOTES

- ¹ See generally 42 U.S.C. 116.
- ² Texas Government Code, Chapter 418.
- ³ Local Emergency Planning Committee (LEPC), *A Primer for Local Planning for Hazardous Materials*, July 2006.
- ⁴ Texas Government Code, 418.1015.
- ⁵ Texas Administrative Code, Title 37, Part 1, Ch. 7, Subchapter B, Rule 7.12 Local Planning Required.
- ⁶ Written testimony provided by The Honorable Tom Bonn, Caldwell County Judge and Second Vice-Chair, Capital Area Council of Governments (CAPCOG), to Texas House Committee on Homeland Security & Public Safety, October 7, 2014, *Judge Bonn Testimony*, available at <http://www.legis.state.tx.us/tlodocs/83R/handouts/C4202014100714001/5e190f35-4c8a-4090-9bba-f3b66943048c.PDF>.
- ⁷ Written testimony provided by The Honorable Justin Lewis, Hill County Judge, to Texas House Committee on Homeland Security & Public Safety, October 7, 2014, *Judge Lewis Testimony*, available at <http://www.legis.state.tx.us/tlodocs/83R/handouts/C4202014100714001/167ea7ba-6cf9-4ed5-8b44-beb7b0395b5b.PDF>.
- ⁸ Written testimony provided by The Honorable Tom Bonn, Caldwell County Judge and Second Vice-Chair, Capital Area Council of Governments (CAPCOG), to Texas House Committee on Homeland Security & Public Safety, October 7, 2014, *Judge Bonn Testimony*, available at <http://www.legis.state.tx.us/tlodocs/83R/handouts/C4202014100714001/5e190f35-4c8a-4090-9bba-f3b66943048c.PDF>.
- ⁹ Written testimony provided by The Honorable Justin Lewis, Hill County Judge, to Texas House Committee on Homeland Security & Public Safety, October 7, 2014, *Judge Lewis Testimony*, available at <http://www.legis.state.tx.us/tlodocs/83R/handouts/C4202014100714001/167ea7ba-6cf9-4ed5-8b44-beb7b0395b5b.PDF>.
- ¹⁰ See 27 CFR §555.41(b) and 27 CFR §555.45.
- ¹¹ *Firefighter Fatality Investigation Report*, State Fire Marshal's Office, April 12, 2013, available at <http://www.tdi.texas.gov/reports/fire/documents/fmlodwest.pdf>.
- ¹² *Special Report, Part 1 Regarding the May 1st Hearing on the West, Texas Disaster*. Texas House Committee on Homeland Security & Public Safety, May 2013, available at <http://www.house.state.tx.us/members/member-page/newsletters/79/Homeland-Security-&-Public-Safety-Special-Report-Part-1.pdf>.
- ¹³ <https://apps.tdi.state.tx.us/ammoniumnitrate/StartAction.do>
- ¹⁴ See generally 42 U.S.C. 116.
- ¹⁵ Texas Health & Safety Code, Chapters 505–507.
- ¹⁶ Texas Health & Safety Code, subsection .004(9) and (13) of Chapters 505-507
- ¹⁷ 29 CFR §1910.1200(c).
- ¹⁸ 40 CFR §355.
- ¹⁹ 6 CFR §27.
- ²⁰ Local Emergency Planning Committee (LEPC), *A Primer for Local Planning for Hazardous Materials*, July 2006.
- ²¹ Per data provided by State Fire Marshal's Office in October 2014.
- ²² Written testimony provided by Dr. David Lakey, Commissioner, Texas Department of State Health Services, to Texas House Committee on Homeland Security & Public Safety, July 1, 2014, *Hospital Preparedness Program*.
- ²³ *Gov. Perry Deploys Texas National Guard Troops to Border* [Press Release], Office of Governor Rick Perry, July 21, 2014, available at <http://governor.state.tx.us/news/press-release/19925/>.
- ²⁴ Written testimony provided by Steve McCraw, Director, Texas Department of Public Safety, to Texas House Committee on Homeland Security & Public Safety, October 7, 2014, *DPS Testimony on Operation Strong Safety*, available at <http://www.legis.state.tx.us/tlodocs/83R/handouts/C4202014100714001/37fde4f1-f9bd-4783-9160-035f98185993.PDF>.
- ²⁵ *Budget Executive Order*, Legislative Budget Board, December 1, 2014, available at http://www.lbb.state.tx.us/LBB_Meetings/BudgetExecutionOrder-12-1-14.pdf.
- ²⁶ *Operation Strong Safety Targets Crime, Takes Back Border* [Press Release], Texas Department of Public Safety, October 24, 2013, available at http://www.txdps.state.tx.us/director_staff/media_and_communications/pr102413.htm.
- ²⁷ <http://www.dhs.gov/news/2014/09/08/statement-secretary-johnson-about-situation-along-southwest-border>.
- ²⁸ Texas Transportation Code, §521.248.

²⁹ Texas Transportation Code, §521.244.

³⁰ <http://texaslawhelp.org/resource/occupational-drivers-license>.