



**EL PASO COUNTY**  
**82<sup>nd</sup> Legislative Agenda**

**Adopted by Commissioners Court on November 1, 2010**

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## Executive Summary

This document represents opportunities for El Paso County to promote legislative changes that improve local governance during the 82<sup>nd</sup> Legislative session. The scope and breadth of county government requires periodic refreshing. The County continually uses its existing authority to enhance its effectiveness within its given authority. Changes that are more fundamental require legislative action.

The County, working with its Legislative Delegation, seeks these actions to meet its mission of providing a safe and healthy quality of life that enables people to thrive and reach their potential by the efficient, effective, and equitable operation of government. These changes improve operations, relieve the local taxpayer of increasing burdens, or address issues that threaten a safe and healthy quality of life.

- Strengthen the Bill Blackwood Law Enforcement Management Institute of Texas by providing funding that matches current needs.
- Increase the fee required by a defendant for a peace officer's service in executing or processing an issued arrest warrant, *capias*, or *capias pro fine* from \$50 to \$75 dollars to cover current costs.
- Improve Courthouse security by shifting more of the financial burden to legal filing fees.
- Improve the County's ability to defray the costs of some core services by adjusting the population bracket to an existing fee to allow access.
- Support ethical governance in El Paso County by making modest changes to recently enacted Ethic Legislation.
- Manage the use of fireworks in rural unincorporated areas of the County in a manner that allows the enjoyment of these products but protects the safety of local residents.
- Promote a change that enables local units of government to consolidate a function when it makes sense to do so.
- Promote sensible land use opportunities that protect homeowners through proper construction regulation and shields the County from unsustainable development.
- Enable detention officers to execute a subpoena, warrant, or *capias*.
- Enable effective response to noise disturbance complaints in unincorporated rural areas by defining enforcement timeframes.
- Support refinements to the Public Information Act that promote a timely response.

In addition to our legislative agenda, the County offers a Guidance Document. This statement of principles provides guidance on a broad range of issues that may arise during the upcoming legislative session. It supports a quick response to our Legislative Delegation by providing the County's prospective position on an array of important issues.

These are critical and often intractable issues. The County appreciates any opportunity to affect timely positive action. There are also issues where action may be contrary to the County's interests. We respectfully identify those issues as well.

## **Increase Funding for the Bill Blackwood Law Enforcement Management Institute of Texas (LEMIT)**

### **History/Background**

The 70<sup>th</sup> Regular Session of the Texas Legislature in 1987 created the Bill Blackwood Law Enforcement Management Institute of Texas (LEMIT). Its namesake, Representative Bill Blackwood of Mesquite, a staunch supporter of law enforcement, sponsored the legislation creating the Law Enforcement Management Institute during that session. The Legislature re-named the Institute in his honor during the 73rd Regular Session in 1993 after his sudden death.

LEMIT is tasked with the development of the administrative, analytical, and executive skills of current and future law enforcement officials at no cost to either the participant or his/her agency. The Institute studies public administration, management issues, the political, legal, and social environments of policing, and advanced technical issues in detail. It is the largest and most sophisticated statewide preparation program for police management in the United States.

LEMIT fulfills this tasking through various training programs geared specifically for two primary groups: police administration professionals and constable offices. LEMIT is the mandated training provider of courses for Newly Appointed and Continuing Education for Police Chiefs, and Newly Elected and Continuing Education for Constables as well as the 100-hour Constable Leadership College. However, its flagship course for law enforcement administrators is the Masters-level curriculum of the 480-hour Leadership Command College. As of October 2008, 26 El Pasoans have graduated from the Leadership Command College.

### **Problem Statement**

Section 96.64(c) of the Texas Education Code mandates that all costs for LEMIT participants who are residents of the State of Texas (including tuition, books, room, board, and travel costs) SHALL (emphasis added) be paid from the Bill Blackwood LEMIT fund. This LEMIT fund is financed and replenished through Section 133.102 of the Texas Local Government Code, which mandates that 2.1683% of the State Consolidated Court Costs assessed and received by the state on every traffic, criminal, and municipal code conviction (excluding pedestrian and parking violations) throughout the state be channeled into the LEMIT fund.

However, the Legislature has not raised these fees in 6 years, and because of this, LEMIT cannot fulfill this mandate. Specifically, LEMIT is now in such a funding deficit that although state law mandates they provide these training programs at no cost to local governments, they cannot provide travel and lodging costs to participants in the following courses:

1. Newly Elected Constable Course (mandated by Ch. 1701, Occupations Code)
2. Continuing Education for Constables (mandated by Ch. 1701, Occupations Code)

Furthermore, the budget shortfalls affect other courses offered or mandated. This includes the Leadership Command College and the Constable Leadership College.

Finally, continuing education and training for peace officers throughout the state is also funded through the Law Enforcement Officers Standards and Education (LEOSE) funds collected from the same Consolidated Court Costs pool, and distributed to law enforcement agencies statewide every February by the Comptroller of Public Accounts. At a time when political subdivisions in Texas are already struggling with budget shortfalls, training is likely candidate for local cuts thus state funds are even more critical, particularly to smaller agencies such as constable offices.

### **Recommended Solution**

LEMIT's mandate is to provide all courses to Texas participants at no cost to the law enforcement agency. However, as the Consolidated Court Costs at the state level have not increased in 6 years, LEMIT and the LEOSE funds are not covering the current costs of law enforcement training statewide.

We recommend:

1. Remove the Bill Blackwood LEMIT percentage from the Consolidated Court Fees formula. Substitute **non-formulated \$3.00 fee per case (changed from \$2.00 to \$3.00 upon recommendation of West Texas JPCA during annual conference April 14-17, 2010)** to court fees in all criminal cases, including Class C Misdemeanor criminal cases, excluding pedestrian and parking violations, specifically for the LEMIT. This can be accomplished through creation of a new Article 102.110 of the Code of Criminal Procedure; and
2. Redistribute the formulated percentage per case of 2.1683% vacated by LEMIT between Texas Commission on Law Enforcement Officers Standards and Education and the Texas Justice Court Training Center, to benefit both agencies in light of recent budget crises. **(Amended upon recommendation of West Texas JPCA during annual conference April 14-17, 2010)**

We reflect the impact of the proposed changes in the following chart.

## LEMIT Funding Base Comparison

This example is based on a current Class C Truancy case in JP-2. On the left are the current fees and percentages. On the right are the revised fees and percentages. The notes below the chart explain the impact of the passage of this proposal in the Legislature.

CURRENT FEES		%	Fee Description	%		PROPOSED FEES
\$5.00			ARREST FEE			\$5.00
3.00			COURTHOUSE SECURITY			3.00
40.00			CONSOLIDATED COURT FEES			40.00
	\$1.94	4.8362	JUDICIAL & COURT STAFF TRNG FUND	5.92035	\$2.37	
	\$2.00	5.0034	LEOSE FUND	6.08755	\$2.44	
	\$0.87	2.1683	LEMIT FUND	0	0	0
4.00			COURT TECHNOLOGY FEE			4.00
20.00			CHILD SAFETY FEE			20.00
4.00			JURY SERVICE FEE			4.00
5.40			SUPPORT OF JUDICIARY FEE – SJFS			5.40
.60			SUPPORT OF JUDICIARY FEE – SJFC			.60
1.00			JP COURTHOUSE SECURITY FEE			1.00
5.00			JUVENILE CASE MGMT. FEE			5.00
2.00			INDIGENT DEFENSE FEE			2.00
			LEMIT FEE			3.00
\$90.00			TOTAL FEES – CLASS “C” TRUANCY			\$93.00

**NOTES:** Judicial and Court Staff Training Fund: 33% goes to each of the following categories: County & District Courts, Justice Courts, And Municipal Courts. All courts funded by the County of El Paso would benefit from this LEMIT proposal.

**LEOSE Fund:** 33.3% funds the operations of the Texas Commission on Law Enforcement Officer Standards & Education (TCLEOSE), and the remainder goes into a special account at the Texas Comptroller to distribute to law enforcement agencies statewide every February to fund continuing education for peace officers. All law enforcement agencies funded by the County of El Paso, as well as every agency statewide, would benefit from this LEMIT proposal.

## **Increase Warrant Fee Under Article 102.011(a) Code of Criminal Procedure**

### **History/Background**

Article 102.011(a) permits an assessment of fees for services performed by a peace officer. In the last Legislative Session, HB 1531 tried to remedy the escalating costs of this function by increasing the warrant fee from \$50 to \$75 against a defendant to recover the costs of executing warrants by law enforcement agencies. When introduced, this fee had not increased in 10 years.

### **Problem Statement**

The difference between the cost of this service and the fee represents an underfunded mandate to governmental entities responsible for this function. Local taxpayers must bear the unfunded cost of executing these warrants. During these difficult economic times, counties must divert resources from numerous efforts to support this cost.

While there is an expressed reluctance to increase fees, it is clear that the public appetite for an increase in taxes is nonexistent. Allowing the individual whose actions require this effort to shoulder more of the burden is more acceptable than a tax increase.

### **Recommended Solution**

Amend Article 102.011(a) to increase from \$50 to \$75 dollars the amount of the required fee paid by a defendant convicted of a felony or misdemeanor. This requires the recipient of the services performed in a criminal case by a peace officer for executing or processing an issued arrest warrant, capias, or pro capias to shoulder more of the financial burden. Further, make the charge uniform for issuing a written notice to appear in court for a violation of a traffic law, municipal ordinance, or penal law of the state or for making an arrest without a warrant if the peace officer must locate the defendant for service.

## **Increase Courthouse Security Contributions under Government Code Chapter 102 Court Costs in Criminal Proceedings**

### **History/Background**

Government Code Chapter 102 Court Costs in Criminal Proceedings allows the statutory placement of a court fee or cost on a person convicted of an offense under the code of Criminal Procedure. Section 102.041 (4), 102,041(5), Section 102.061 (4) and Section 102.081 (4) authorize various fees for providing security services. These fees finance security personnel for a district, county, justice, or municipal court as appropriate or to finance items when used for providing security services. These fees have not increased since 1973.

HB 4190 introduced in 2009 proposed increasing these following security fees:

- Defendant convicted of a felony offense \$10 up from \$5
- Defendant convicted of a misdemeanor offense in a county court, county court at law, or district court \$8 up from \$3
- A defendant convicted of a misdemeanor offense in a justice court pays \$9 up from \$4
- A defendant convicted of a misdemeanor offense in a municipal court pays \$8 up from \$3

The same proposed legislation allowed the clerk of a district court to collect:

- A security fee on a felony offense \$10 up from \$5
- A security fee on a misdemeanor offense of \$8 up from \$3
- A security fee on a misdemeanor offense of \$9 up from \$4

The proposed legislation authorized the clerk of a municipal court to collect:

- A security fee on misdemeanor offense of \$8 up from \$3

Prior to this session, HB 3549 introduced in 2007 proposed increasing many of the same security fees. Specifically it authorized an increase for a defendant convicted of a felony offense in district court from \$5 to \$10. It further authorized a defendant convicted of a misdemeanor offense in a justice court to pay county court \$8, up from \$4. It also increased the security fee that a clerk of a district court can collect as additional security fee on a felony offense from \$5 to \$10 as costs on conviction of a defendant. Finally, it increased the fee that a clerk of a justice court can collect as an additional security fee on a misdemeanor offense from \$3 to \$8.

## **Problem Statement**

The cost of providing courthouse security continues to increase. In 2007, El Paso County Courthouse Security revenue was \$326,234 but the costs were \$659,593. The security fees covered 47.94% of the expenditures for that fiscal year. In 2008, fees dipped to \$301,809 with expenses of \$690,367 or revenues covering 43.72% of expenditures. In 2009, revenue dipped again to \$291,434 with expenses of \$698,877 or revenue covering 41.70% of expenditures. Our year to date information is \$190,988 in revenues for 2010 with \$534,599 in expenses. This translates to revenue covering 36% of fees. This is an unsustainable trend. As in the previous item, local taxpayers must bear the unfunded cost of this service. Counties must divert resources from other efforts to support this cost.

Courthouse security is necessary. These security fees are already in statute. This modification merely acknowledges the increase in costs since the Legislature adopted the initial fees.

## **Recommended Solution**

Amend Government Code Section 102.041 (4), 102,041(5), Section 102.061 (4) and Section 102.081 (4) to increase current fees. This allows the County to recoup a higher percentage of the cost of providing necessary courthouse security.

## **Adjust Population Bracket for Court Costs In Certain Counties**

### **History/Background**

Code of Criminal Procedure Article 102.009 Court Costs in Certain Counties authorizes the commissioners court in counties with a population of 3.3 million or more to set court cost not to exceed \$7 on conviction of a Class C misdemeanor in justice courts.

### **Problem Statement**

El Paso County is experiencing serious financial challenges. It is not alone among urban counties struggling in the current economic environment. It prefers to increase existing statutory charges whenever possible to avoid withering cuts in services.

Our Auditor's office did a fiscal impact. It looked at the number of Class C Misdemeanors filed in Justice of the Peace courts and through Court Collections. It estimated that if legislation adjusted the population bracket to a population of a county with approximately 100,000 or more, the three-year impact would be an additional \$499,284.33. These revenues can contribute to helping the County meet its statutory obligations.

### **Recommended Solution**

Amend Article 102.009 and Subchapter F Criminal Court Costs in Justice Court Section 102.101 (8) to adjust the current population bracket of 3.3 million or more to a threshold of 100,000. This enables more counties to collect this revenue on an existing fee.

## **Recommended Changes to the Ethics Legislation, Chapter 161 of the Texas Local Government Code**

### **History/Background**

El Paso County has a voluntary code of ethics, which provides guidelines for the appropriate manner for officials, lobbyists, and other persons to conduct county business. However, Texas counties could not legally enact ethics codes enforceable by civil or criminal sanction until Senate Bill 1368 and House Bill 2301 were presented and SB1368 signed into law in the last session in 2009.

SB1368 amended the Local Government Code to add Chapter 161, which authorized the Commissioners Court of El Paso County to create a county ethics commission by an order adopted by a majority of the court's full membership. El Paso County Commissioners Court did adopt an order to establish a county ethics commission in September 2009. The newly formed Ethics Commission held its first meeting in November 2009 and has met regularly (twice a month) since that time with its primary focus on creating an ethics code.

### **Problem Statement**

Since its inception, the County of El Paso and the Ethics Commission have been operating under the newly created statute. It is during this practical application of the statute that minor inefficiencies or discrepancies have been realized. These matters include:

1. Terms of Commissioners are not staggered;
2. A conflict with the training mandate for commission members;
3. Clarification needed in two areas regarding training for those covered by the code
4. Ineffectiveness of provisions regarding chair rotation; and
5. Language that holds an entity responsible for an individual's actions.

### **Description & Recommended Solution**

**Issue #1** - The terms of the members all expire at the same time, which could result in disruption of effectiveness in service due to the lack of historical knowledge and experience in the board composition.

Section 161.057 currently reads:

Sec. 161.057. TERMS. (a) Members of the commission serve terms of two years beginning on February 1 of each odd-numbered year.

(b) A member may serve more than one term.

Recommended solution:

*Sec. 161.057. TERMS. (a) Members of the commission who are the individual selections of the county judge or commissioners serve two year terms which begin February 1<sup>st</sup> of odd years; and*

*(b) Members of the commission who are nominees of outside entities serve two year terms which begin February 1<sup>st</sup> of even years.*

*(c) A member may serve more than one term.*

**Issue #2** - Currently, the statute mandates that all commission members complete all the required training prior to being considered in attendance at any commission meetings. When new members are appointed at the end of terms, this could create difficulties with establishing quorum or having an open public meeting to conduct business, process complaints, and even for the members to receive the necessary training.

Section 161.104 currently reads:

Sec. 161.104. COMMISSION MEMBER EDUCATION AND TRAINING.

(c) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

Recommended changes:

*(c) A person who is appointed to and qualifies for office as a member of the commission **must complete this training within thirty (30) days** of being appointed or they may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission **after the 30<sup>th</sup> day of appointment** until the person completes a training program that complies with this section.*

**Issue #3** – Currently, the statute reads that the commission and commission staff shall provide periodic training for persons covered by the ethics code. The Commission thinks the terms “shall provide” lacks clarity. The second concern is the lack of the authority of the commission to determine and enforce how often attendance at the training should be required.

Section 161.105 currently reads:

Sec. 161.105. EDUCATION AND TRAINING FOR PERSONS COVERED BY ETHICS CODE. (a) The commission and commission staff shall provide periodic training for persons covered by the ethics code adopted by the commission on at least a quarterly basis.

Recommended changes:

*Sec. 161.105. EDUCATION AND TRAINING FOR PERSONS COVERED BY ETHICS CODE. (a) The commission and commission staff shall make available periodic training for persons covered by the ethics code adopted by the commission.*

*(e) All covered persons, including vendors and lobbyists, must complete the training as determined by the Commission from time to time.*

**Issue #4** – The statute is set up where the position of chair rotates every 6 months amongst the commission's members in a specific order. This creates a situation where a person could be appointed to the commission and within one meeting or one month has to assume the chair position. It also creates a situation where after serving 4 of the 6 months as chair, a person's term on the commission could expire without clarification on filling the 2 months remaining on the chair role. It also does not allow for a person on the commission to decline the chair role, which the need to decline may arise for various reasons.

Section 161.0591 currently reads:

Sec. 161.0591. CHAIR. (a) The position of chair alternates every six months between members appointed under Section 161.055(a) (1) and members appointed under Section 161.055(a)(2) and rotates so that each position on the commission serves as chair, as follows:

(1) the rotation of members appointed under Section 161.055(a)(1) begins with the member appointed by the county judge, followed by the members appointed by the county commissioners in order of precinct number; and

(2) the rotation of members appointed under Section 161.055(a)(2) begins with the member appointed under Section 161.055 (a)(2)(A), followed by the members appointed under Sections 161.055 (a) (2) (B) , (C), (D), and (E) in that order.

(b) The member serving as chair may not vote on a matter before the commission except to break a tie vote.

Recommended changes:

*Sec. 161.0591. CHAIR. (a) The position of chair shall be selected from among the Commission members by a majority vote. The chair shall serve a term of six (6) months.*

*(b) The member serving as chair may not vote on a matter before the commission except to break a tie vote.*

**Issue #5** – As currently written, the statute prohibits “The county” from retaliating against a county employee for reporting violations of the ethics code. In drafting a code and applying enforcement provisions, the County of El Paso Ethics Commission finds that this is not practical in application and it should prohibit an individual from retaliating instead of an entity.

Section 161.157 currently reads:

Sec. 161.157. RETALIATION AGAINST COUNTY EMPLOYEE REPORTING VIOLATION OF ETHICS CODE PROHIBITED. (a) The county may not suspend or terminate the employment of or take other adverse action against a county employee who in good faith files a complaint or otherwise reports to the commission, commission staff, or another law enforcement authority a violation of the ethics code by a person subject to the ethics code.  
(b) The county may not suspend or terminate the employment of or take other adverse action against a county employee who in good faith participates in the complaint processing, preliminary review, hearing, or any other aspect of the investigation and resolution by the commission of an alleged violation of the ethics code by a person subject to the ethics code.

Recommended changes:

*Sec. 161.157. RETALIATION AGAINST COUNTY EMPLOYEE REPORTING VIOLATION OF ETHICS CODE PROHIBITED. (a) A county public servant may not suspend or terminate the employment of or take other adverse action against a county....*  
*...(b) A county public servant may not suspend or terminate the employment of or take other adverse action against a county employee who in good faith participates in the complaint...*

## **Amend the Texas Local Government Code Section 158 Powers of the Commission to Allow for Subpoena Power**

### **History/Background**

County and Sheriff's Department Civil Service Systems were created by the legislature in 1987. The purpose is to provide for uniformity of treatment and insure fairness in the administration of labor relations in the respective governmental bodies that they serve. Their powers are set forth at Sec. 158.009 and 158.035 respectively, and are essentially identical and essential to the administration of labor management systems in the public sector.

### **Problem Statement**

The ability to affect these powers and duties in a quasi-judicial setting involves principles of due process. This includes the ability of each body to require the production of witnesses and things for the use and benefit of both the governmental entity and employee. The authority to compel production is commonly found in civil service systems but is totally lacking in the systems to which this legislation relates.

### **Recommended Solution**

Amend Sec. 158.009 by adding a subsection that grants specific subpoena power to these bodies and establish a protocol for the issuance of the subpoena. The City of El Paso civil service process provides a useful guide. In addition, provide for a penal sanction as well as the authority to request writs of attachment from courts of record.

## **Control the Discharge of Fireworks in Unincorporated Areas and Provide Funding for Necessary Cleanup**

### **History/Background**

In the last legislative session, two bills, HB 4530 and HB 3817, tried unsuccessfully to address the nuisance issue of the sale of fireworks in unincorporated communities. Both efforts focused on regulating the location of fireworks sale. Both were bracket bills designed to regulate the sale of fireworks in a two-mile radius of an area where the sale of fireworks to retail customers occurs. Both included a petition process. The bills required a petition filed 90 days prior to the sale of fireworks. The petition requested the prohibition of the sale of fireworks signed by at least 500 persons 18 years of age or older residing in the designated area. Commissioners Court or its designee reviews for validity the threshold number of petitioners. The bracketing of the bills did not dissipate opposition to its passage.

### **Problem Statement**

El Paso County struggles to find an effective way to manage the use of fireworks in unincorporated areas of the County. Most recently, residents of Montana Vista complain that the location of firework vendors near their community invites purchasers to congregate near vendors. Some groups purchase and discharge fireworks in their neighborhoods without regard to noise disturbances. Alcohol consumption can encourage rowdy behavior. Residents complain of blocked driveways, public urination, and profanity. The following day residents find litter throughout the community.

Residents are concerned that the discharge of fireworks near homes can cause fires. These residents rely on volunteer fire departments. These volunteer services are often under pressure during the holidays most often associated with the sale of fireworks. This fire concern prompted efforts to address the issue through the statutory regulation of restricted fireworks.

Many fireworks vendors are prudent businesspersons. For them, this is an ongoing seasonal business venture. Some employ not for profit groups or schools to help them during peak time in return for a percentage of the profits. The groups help clean the areas surrounding the stands as part of their arrangement. The ethical businesses suffer when associated with less scrupulous vendors. Although they understand the residents' concerns, they do not believe the remedy is to regulate them out of business.

The Local Government Code, Title 11 Public Safety, Subchapter B County Public Safety Chapter 352.051 allows the regulation of restricted fireworks. The restriction identifies skyrockets with sticks or missiles with fins. It ties the restrictions to a Keetch-Byram Drought Index (KBDI) of 575 or greater. This scale

measures fire potential by measuring soil moisture. A high KBDI means a greater likelihood of organic flammability. El Paso County has not met these conditions in the past two years.

Since this statute ties restrictions to drought conditions, the County has tried to manage the issue through the location of sales. By pushing vendors further from rural communities, the County hopes to move the problem to unpopulated areas. The County has also explored public nuisance codes as other means to address this issue.

To assist its residents, the County has closed streets and increased Sheriff's patrols during peak fireworks periods. These measures are costly and the County seeks other ways to manage this issue.

### **Recommended Solution**

Amend Texas State Penal Code Title 9 Chapter 42.01 (5) to include fireworks as an unreasonable noise in a public place or near a private residence. This provides an enforceable way to move the discharge of fireworks away from residences.

In addition, amend Texas Occupations Code Chapter 2154 Regulation of Fireworks and Fireworks Displays and Texas Administrative Code Title 28 Insurance Chapter 34 State Fire Marshal, 34.814 Fees to increase the cost of the retail fee or add a new fee for counties to address the significant costs of fire, cleanup, and the obstruction of highways that result from the retail sale of fireworks.

## **Extend the Use of Intergovernmental Cooperation and Consolidation to Authorize Prevailing Wage Activities**

### **History/Background**

During the last session, the County supported HB 1042 relating to the repeal of public prevailing wage laws for public works projects. The intent was to streamline this time-consuming requirement by allowing local units of government to perform this function as a cooperative effort.

Texas Government Code Section 2258.022 Determination of Prevailing Wage Rates requires entities to determine the general prevailing rate of per diem wages for each craft or type of worker needed to execute the contract as well as the prevailing rate for legal holiday pay and overtime work. The prevailing wage can be determined by conducting a survey. The survey focuses on the wages received by classes of workers employed on projects similar to the proposed public work. Alternatively, the governmental entity may use the Department of Labor Davis-Bacon Act wages if the wages rates are within a three-year period of the proposed project.

### **Problem Statement**

Most local units of government perform public works projects. Each entity must have prevailing wage rate information available in order to award a contract.

While conducting its most recent survey, El Paso County suggested a joint survey. Many of the local governments agreed to participate in such an effort. The intent was to minimize the individual efforts that each entity committed to the task by joining in a cooperative effort. County representatives consulted with local trade unions regarding this idea. There was no expressed resistance to this option.

During the legislative session, numerous questions surfaced regarding the intent of this legislation. There was concern that this consolidation could diminish the intent of identifying and enforcing a prevailing wage. The legislation failed.

### **Recommended Solution**

The current difficult economic climate has prompted interest in more interlocal cooperation. Government Code Chapter 791 Interlocal Cooperation Contracts authorizes local governments to use cooperative contracts to increase the efficiency and effectiveness of their functions. Section 791.003(3) identifies these functions and services.

Rather than trying to address this effort through the prevailing wage statutes, the Legislative Committee recommends an alternative. It suggests identifying this

activity as an administrative function or creating other language that allows the cooperation of local governments to perform this function if desire it. The existing statute addresses all the issues that this type of contracting requires.

## **Strengthen Noise Ordinance Enforcement in Unincorporated Areas of the County**

### **History and Background**

The Texas Penal Code Chapter 42.01 a (5) identifies one act of disorderly conduct as “makes unreasonable noise in a public place other than a sport shooting range, as defined by Section 250.001 of the Local Government Code, or in or near a private residence that he has no right to occupy”. For the purposes of this section c (2) states “a noise is presumed to be unreasonable if the noise exceeds a decibel level of 85 after the person making the noise receives notice from a magistrate or peace officer that the noise is a public nuisance”.

### **Problem Statement**

Unincorporated areas of El Paso County are growing. Many who live in these unincorporated areas enjoy the peace and quiet of rural life. This new growth can create conflict when certain commercial ventures establish themselves in what existing residents consider as largely residential developments.

One particular area of west El Paso County has seen the establishment of rental halls. These facilities take advantage of their rural location to promote outdoor venues for weddings and parties. These events typically include music as part of the entertainment.

### **Recommended Solution**

Amend Texas Penal Code Chapter 42.01 (c) (2) to reduce the decibel level of 85 to 70 between the hours of midnight and 5:00 AM after the person making the noise receives notice from a magistrate or peace officer the noise is a public nuisance.

## **County Land Use and Planning**

### **History/Background**

Texas counties are experiencing explosive population growth similar to that in cities. However, Texas has historically failed to provide counties local authority to effectively regulate land development in the un-incorporated areas of counties. This failure has resulted in the development of “colonias” typically identified by insufficient water and wastewater infrastructure and substandard housing. It has also resulted in homes and other structures being built in floodplains, which increase the danger to life and property from flooding. The state has enacted laws to limit the development of future residential subdivision without adequate water and sewer services. The state has also spent approximately \$1 billion in direct and indirect expenditures in an effort to remediate existing chronic health and safety problems created by this lack of proper authority. Additionally, the state provides funds to study and remediate dangers created by the lack of proper flood planning.

### **Problem Statement**

Counties lack effective authority to prevent substandard residential development. Counties also lack effective authority to prevent the construction of homes in flood zones, which later create danger for the homeowner as well as upstream and downstream property owners. Without adequate discretionary local county regulatory authority, “colonia” developments, substandard and unsafe housing will continue to develop in the future. These conditions negatively affect counties’, as well as cities’ ability to provide safe, affordable housing; negatively affect property values, and seriously endanger the health, safety, and welfare of Texas residents now, and will continue to do so for many years into the future.

### **Recommended Solution**

Grant counties effective authority to better regulate residential development, including requiring the housing be built to modern standards, including nationally recognized minimum safety codes for residential, electrical, fire and structural standards, and to restrict the construction of homes in floodplains when such construction creates or increases the danger to residents from flooding.

## **Amend Code of Criminal Procedure Article 15.01, 23.13 and 224.01 to Clarify that a Detention Office is Eligible to Execute a Subpoena, Warrant or Capias**

### **History/Background**

The Code of Criminal Procedure contains various provisions for the service/execution of various types of subpoenas, attachments, and warrants. For the past 45 years, the only individuals authorized to serve or execute these various instruments have been peace officers. More recently, a new category of officials whose duties are law enforcement related are recognized in various places within the statutory scheme of this state. These individuals are variously referred to as “jailers”, “guards”, or “detention officers”. These individuals are charged with insuring the safe custody of people who are incarcerated, which includes maintaining order and discipline in correctional and detention facilities.

On occasion it is necessary to serve or execute various types of process, writs, subpoenas, and attachments on individuals confined to a detention facility. For example, an inmate may be detained in jail when additional charges are brought against him/her. In such situations, the common practice is a new warrant is issued and must be served on the inmate with its own bond set for the new, alleged offense. Presently, only deputies may execute those warrants.

### **Problem Statement**

Some facilities, including our own, are staffed with non-deputized detention officers. When service is required, it is necessary to call a deputy in from the field or his area of patrol or primary duty, to perform the ministerial duty of serving or delivering the warrant on the inmate. This involves bringing an employee in from somewhere else when there are sufficient individuals available in the facility who could easily perform this function.

### **Recommended Solution**

Amend Art. 24.01 (b)(2) including jailers as among individuals who are authorized to serve subpoenas in criminal cases on inmates, renumbering the subsections as appropriate.

Amend Art. 24.11, including jailers as among individuals who are authorized to serve attachments in criminal cases on inmates.

Amend Art. 15.01, CCP by inserting jailers as individuals authorized to deliver an inmate for the purposes therein set forth.

Amend Art. 23.13, CCP so as to contain parallel provisions regarding the service of a capias.

## **Amend the Public Information Act for More Clarity**

### **History/Background**

Government Code Title 5, Subtitle A Open Government, Chapter 552 Public Information makes clear the state's policy to that each person is entitled, unless otherwise expressly provided by law, to complete information about the affairs of government and the official acts of public officials and employees. It clearly expresses the notion that the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. The language states that the chapter shall liberally construe in favor of granting a request for information.

In the last legislative session, the County supported HB 3522 and SB 1068. Only SB 1068 passed.

### **Problem Statement**

Section 552.263 allows an officer for public information to require a deposit or bond for payment of anticipated costs for the preparation of a copy of public information. The charge for a governmental body that has more than 15 full-time employees is \$100. If a requestor fails to make a deposit or post a bond before the 10<sup>th</sup> business day the request is considered withdrawn. On occasion, there is some negotiation on the scope of the request. There is a question regarding the effective day of the 10-day rule when the requestor modifies the request.

Section 552.301 allows a governmental body to request a decision from the Attorney General about whether a request falls within one of the exceptions under Subchapter C. The governmental body must ask for the Attorney General's decision and state the exceptions that apply within a reasonable time but no later than the 10<sup>th</sup> business day after receiving the written request. There are various other deadlines for responses to the requestor but there is no guidance on when to start the clock. Without some reference point beyond the postmark, it is possible to infer a violation of the response deadlines.

In Section 552.130 a motor vehicle operator or driver's license or permit, motor vehicle title or registration is excepted from public information requests. Similarly, in 552.136 credit card, debit card, charge card, or access device numbers is confidential. This information may appear in various forms in government documents. It would be cumbersome to request permission to redact this information from other information that governmental bodies must release to the public.

## **Recommended Solution**

- Amend \$100 cost letter rule to make clear that 10 day deadline starts again if requestor modifies or narrows request in response to a cost letter, § 552.263 of the Texas Government Code.
- Add presumption that a PIA is deemed received 3 days after postmarked date of mailing in the absence of other evidence of date of receipt, § 552.301 of the Texas Government Code.
- Clarify that no AG request is necessary to redact driver's license numbers and credit card numbers from otherwise public information prior to release. , § 552.130 and § 552.136 of the Texas Government Code.