

**TESTIMONY TO BE PRESENTED BEFORE THE SENATE
COMMITTEE OF INTERNATIONAL RELATIONS AND TRADE
REGARDING SB 1368**

Good afternoon. I am Jose Rodriguez, El Paso County Attorney, here to speak to you regarding Senate Bill 1368.

1. What does Senate Bill 1368 Do?

Senate Bill 1368 gives El Paso County the power to regulate the conduct of county officials and employees and mandate standards of ethical behavior. This bill provides a framework for ethical conduct similar to the framework which governs state officials such as yourselves. Under current law, county officials and employees are not governed by a statutory code of ethics. In El Paso County, there exists a Code of Ethics which is neither mandated nor expressly sanctioned by State law.

This bill gives express power to the county to create an ethics commission with greater authority than it has now. It will give the county the authority to create an ethics commission that can enact an ethics code, accept and investigate confidential complaints, assess civil penalties and refer complaints of criminal violations to a prosecuting attorney.

It gives the county the authority to a) issue an order creating an ethics commission; b) present the option of creating an ethics commission to the voters; or c) to do nothing.

This bill gives authority to the county, through the commission, to include county officials, county employees, vendors, lobbyists and other who do business with the county under the ethics code provisions.

It is important to note that his bill is not itself an ethics code. It is only a framework. The actual ethics code will be drafted and adopted by the county ethics commission.

2. Why Is It Needed?

Our current ethics code permits only three consequences, which are frequently too weak or too strong: an order of censure; referral to a county employee's supervisor; or referral for criminal prosecution.

Our county is in the midst of an FBI investigation that has already resulted in 10 guilty pleas. Another 80 or so persons are under investigation. El Paso is not alone in trying to get a handle on corruption. As everyone knows, cities, states, and the federal government are struggling to investigate and address this issue.

One thing we do know; the cost of public corruption is high, in tangible costs and intangible losses. On the one hand, it costs money and depletes our resources. Our own county has already lost millions due to tainted deals, and is it costing us still more money, time and resources to try and recover some of that lost property. Let me give you an

example. I mentioned before that the FBI is conducting a major corruption investigation in El Paso. In July 2007, a former County Commissioner pleaded guilty to taking money in exchange for a vote to settle a lawsuit against the county over a tract of land owned by the county, and then to sell that land to another. That act, which was taken against the advice of my office, occurred in 2003, almost 6 years ago. But the County is still paying for it. Not only did the county lose money by selling property for less than it was worth, the county is using precious resources to recover the lost land and the lost income to the county.

It's very likely other people in the county knew about that deal at the time. But under our current ethics code, there is no protection for whistleblowers and no confidentiality protection for complainants or respondents because that requires legislative action. That is why we are here today. Under Senate Bill 1368, employees and others with knowledge of unethical or corrupt acts can advise the ethics commission of questionable practices without fear of losing their jobs or other adverse action. Senate Bill 1368 contains whistleblower protection for a county employee who in good faith files a complaint or otherwise reports to the commission or other law enforcement agency a violation of the ethics code.

Another high price of corruption is the loss of public confidence, the loss of public trust. If the average person sees that ethics violations have no consequences, who really suffers? We all do. Some may think that ethics violations don't rise to the level requiring investigation and penalty. Some say "Everyone does it" and think that is a good excuse for unethical behavior. There are many snide jokes about politicians being untrustworthy. There are some, as we all know, but I know many ethical public officials who are leaders and examples to others. I also know many county employees that have great integrity and are proud to be public servants. I know many ethical businessmen and women who do business with the county. None of them like to be smeared with the toxic waste of suspicion, and rightly so. They are not afraid of an ethics code. They know that the loss of public trust would corrode government to its core.

3. How Will It Work?

HB 2301 works by providing procedural and substantive protections to both the official against whom the complaint is made and the person making the accusation. (See Exhibit A: Summary of Ethics Code provisions)

Integral to the process of establishing the commission is public input. Before drafting the ethics code, the county will seek public input. The county will ask for input from voters and taxpayers, county employees, public officials, and other interested parties, so that we can craft an ethics code that reflects the values and standards that the public expects of its county government. In 2003, when our county instituted its current ethics code, the committee met at least 12 times over 6 months to receive information from all interested parties, research other governmental ethics codes, and present our work to the Commissioners Court for approval.

The ethics commission, not the county commissioners, will draft the code. The ethics commission will be a step removed from the governing body of the county so that it can be more objective, more accurately reflect public perceptions of county operations, and be less susceptible to public pressure.

The ethics commission members will be required to receive training in open government law, conflicts and financial reporting laws pertaining to public officials and procedural rules in administrative matters. The bill sets out procedural guidelines patterned after the rules of the Texas Ethics Commission and state administrative law.

The ethics commission will provide ongoing training to all those persons covered under the code, perhaps similar to the online training available by the Attorney General and Texas Ethics Commission. The ethics board will also provide advisory opinions to covered persons.

We need this bill to hold county officials accountable, not only for criminal acts, but also for unethical acts that hurt the county and erode public trust. Accountability and transparency are the keys to public trust.

El Paso County does have an ethics code, but it has no teeth. Even more critically, it has no whistleblower protection or confidentiality provisions for persons who can provide information on unethical behavior to the committee. We cannot ask persons to risk their jobs and reputations, and make their names and complaints public information, if there is little likelihood of accountability, and great risk of punishment.

That is why this legislation is so critical.

This bill provides whistleblower protection to the county employees who know something wrong is going on, but now are powerless to do anything about it. They will have a confidential avenue to provide information to protect the county against those that would use their authority unethically, for private gain rather than the public good.

Whistleblower protection will give the tempted county official, employee, vendor, lobbyist or other county affiliate, reason to reconsider before making a wrong choice. We all know that temptation is out there, and the voices that say “Everyone does it” can become a persuasive chorus. But if he or she knows that others in the office also got training on the ethics code, and will probably find out about their questionable action, and may report it, the tempted party may find the reason they need to do the right thing.

This bill also provides a county official, employee, vendor, lobbyist or other county affiliate protection against false or malicious complaints because this bill makes complaints and investigations confidential, and subjects those who make false or malicious complaints subject to penalties or lawsuits by their victims.

I know that the idea of an ethics code makes some people nervous, but most people realize that it is simply good policy to identify questionable behavior and put it out of

bounds. Every profession and industry that exercises significant authority has an ethics code – attorneys, judges, accountants, physicians. Our county officials, county employees, vendors, lobbyists and other who do business with the county need one too. And if it makes some people nervous, perhaps that’s a good thing, if it makes them examine their behavior more closely.

Back when the 63rd Legislature enacted the Public Information Act, they listed several important principles of open government that are still as important today:

Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle that government is the servant and not the master of the people, it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. 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.

Government Code section 52.001(a)

We all recognize the need to maintain the public trust and confidence in the workings of county government; this legislation would go a long way towards achieving that end.

Thank you for your time.

José R. Rodríguez
El Paso County Attorney