

FORT BEND COUNTY FY 2009
COMMISSIONERS COURT AGENDA REQUEST FORM

Return Completed Form by E-Mail to: Agenda Coordinator, County Judge's Office

Date Submitted: 06-17-09	Submitted By: JOHN HEALEY
	Department: 4801 DA
Court Agenda Date: 06-23-09	Phone Number: 281-341-4473

SUMMARY OF ITEM: APPROVE BI-WEEKLY SALARY SUPPLEMENTS FROM THE DISTRICT ATTORNEY'S OFFICE DISCRETIONARY FUND ACCOUNTING UNIT 335480104 FOR THE FOLLOWING POSITIONS: 4801-0058 \$96.16, 4801-0047 \$115.00, 4801-0070 111.59, 4801-0033 \$44.57, 4801-0086 \$115.40, 4801-0027 \$91.19, 4801-0023 \$55.41

RENEWAL AGREEMENT/APPOINTMENT YES NO

REVIEWED BY COUNTY ATTORNEY'S OFFICE: YES NO

List Supporting Documents Attached

FINANCIAL SUMMARY
 BUDGETED ITEM YES NO

FUNDING SOURCE: 335480104

Instructions to submit Agenda Request Form:

- Completely fill out agenda form: incomplete forms will not be processed.
- Agenda Request Forms should be submitted by e-mail, fax, or inter-office mail, and all back-up information must be provided by Wednesday at 2:00 p.m. to all those listed below.
- All original back-up must be received in the County Judge's Office by 2:00 p.m. on Wednesday.

DISTRIBUTION:
 Original Form Submitted with back up to County Judge's Office (✓ when completed)
 If by E-Mail to ospindon@co.fort-bend.tx.us If by Fax to (281) 341-8609

Distribute copies with back-up to all listed below. If by fax, send to numbers below:

<input checked="" type="checkbox"/> Auditor (281-341-3774)	<input checked="" type="checkbox"/> Comm. Pct. 1 (281-342-0587)
<input checked="" type="checkbox"/> Budget Officer (281-344-3954)	<input checked="" type="checkbox"/> Comm. Pct. 2 (281-403-8009)
<input type="checkbox"/> Facilities/Planning (281-633-7022)	<input checked="" type="checkbox"/> Comm. Pct. 3 (281-242-9060)
<input type="checkbox"/> Purchasing Agent (281-341-8642)	<input checked="" type="checkbox"/> Comm. Pct. 4 (281-980-9077)
<input type="checkbox"/> Information Technology (281-341-4526)	<input checked="" type="checkbox"/> County Clerk (281-341-8697)
<input type="checkbox"/> Other:	<input checked="" type="checkbox"/> County Atty (281-341-4557)

RECOMMENDATION / ACTION REQUESTED:

Special Handling Requested (specify):

DISTRICT ATTORNEY
STATE ASSET / FORFEITURE BUDGET
ACCOUNT LINE 335480104
OCTOBER 1, 2008

	DESCRIPTION	BUDGET AMOUNT
61000	SALARY & LABOR	\$ 24,000.00
61100	TEMPORARY/PART-TIME	2,000.00
61200	OVERTIME	20.00
62000	PAYROLL TAXES	2,700.00
62100	RETIREMENT	1,000.00
63000	FEES	9,000.00
63200	TRAVEL	6,000.00
63300	RENTAL	0.00
63500	OFFICE SUPPLIES	5,500.00
63600	OPERATING SUPPLIES	4,000.00
63700	REPAIRS & MAINTENANCE	1,500.00
64000	PROPERTY & EQUIPMENT	22,120.00
64500	CAPITAL AQUISIONS	6,000.00
65000	IT	14,000.00
		<u><u>\$ 97,840.00</u></u>

clerk of the court shall issue a citation for service by publication addressed to "The Unknown Owner of _____," filling in the blank space with a reasonably detailed description of the property subject to forfeiture. The citation must contain the other requisites prescribed by and be served as provided by Rules 114, 115, and 116, Texas Rules of Civil Procedure.

(l) Proceedings commenced under this chapter may not proceed to hearing unless the judge who is to conduct the hearing is satisfied that this article has been complied with and that the attorney representing the state will introduce into evidence at the hearing any answer received from an inquiry required by Subsections (c)-(h) of this article.

ART. 59.05. FORFEITURE HEARING

(a) All parties must comply with the rules of pleading as required in civil suits.

(b) All cases under this chapter shall proceed to trial in the same manner as in other civil cases. The state has the burden of proving by a preponderance of the evidence that property is subject to forfeiture.

(c) It is an affirmative defense to forfeiture under this chapter of property belonging to the spouse of a person whose acts gave rise to the seizure of community property that, because of an act of family violence, as defined by Section 71.004, Family Code, the spouse was unable to prevent the act giving rise to the seizure.

(d) A final conviction for an underlying offense is not a requirement for forfeiture under this chapter. An owner or interest holder may present evidence of a dismissal or acquittal of an underlying offense in a forfeiture proceeding, and evidence of an acquittal raises a presumption that the property or interest that is the subject of the hearing is nonforfeitable. This presumption can be rebutted by evidence that the owner or interest holder knew or should have known that the property was contraband.

(e) It is the intention of the legislature that asset forfeiture is remedial in nature and not a form of punishment. If the court finds that all or any part of the property is subject to forfeiture, the judge shall forfeit the property to the state, with the attorney representing the state as the agent for the state, except that if the court finds that the nonforfeitable interest of an interest holder in the property is valued in an amount greater than or substantially equal to the present value of the property, the court shall order the property released to the interest holder. If the court finds that the nonforfeitable interest of an interest holder is valued in an amount substantially less than the present value of the property and that the property is subject to forfeiture, the court shall order the property forfeited to the state with the attorney representing the state acting as the agent of the state, and making necessary orders to protect the nonforfeitable interest of the interest holder. On final judgment of forfeiture, the attorney representing the state shall dispose of the property in the manner required by Article 59.06 of this code.

(f) On forfeiture to the state of an amount greater than \$2,500, the clerk of the court in which the forfeiture proceeding was held is entitled to court costs in that proceeding as in other civil proceedings unless the forfeiture violates federal

requirements for multijurisdictional task force cases authorized under Chapter 362, Local Government Code. The procedure for collecting the costs is the procedure established under Subsections (a) and (c), Article 59.06.

(g) If property is seized at a federal checkpoint, the notice of seizure and intended forfeiture may be filed in and the proceeding may be held in:

- (1) the county in which the seizure occurred; or
- (2) with the consent of the owner, operator, or agent in charge of the property, a county that is adjacent to the county in which the seizure occurred, if both counties are in the same judicial district.

*See pg 493
(c)(1)*

ART. 59.06. DISPOSITION OF FORFEITED PROPERTY

(a) Except as provided by Subsection (k), all forfeited property shall be administered by the attorney representing the state, acting as the agent of the state, in accordance with accepted accounting practices and with the provisions of any local agreement entered into between the attorney representing the state and law enforcement agencies. If a local agreement has not been executed, the property shall be sold on the 75th day after the date of the final judgment of forfeiture at public auction under the direction of the county clerk. Prior notice of public auction is provided by law for certain items. The proceeds of the sale shall be distributed as follows:

1. to any interest holder to the extent of the interest holder's nonforfeitable interest; and
2. the balance, if any, after the deduction of court costs to which a district court clerk is entitled under Article 59.05(f) and, after that deduction, the deduction of storage and disposal costs, to be deposited not later than the 30th day after the date of the sale in the state treasury to the credit of the general revenue fund.

(b) If a local agreement exists between the attorney representing the state and law enforcement agencies, the attorney representing the state may transfer the property to law enforcement agencies to maintain, repair, use, and operate the property for official purposes if the property is free of any interest of an interest holder. The agency receiving the forfeited property may purchase the interest of an interest holder so that the property can be released for use by the agency. The agency receiving the forfeited property may maintain, repair, use, and operate the property with money appropriated for current operations. If the property is a motor vehicle subject to registration under the motor vehicle registration laws of this state, the agency receiving the forfeited vehicle is considered to be the purchaser and the certificate of title shall issue to the agency. A law enforcement agency to which property is transferred under this subsection at any time may transfer or loan the property to any other municipal or county agency or to a school district for the use of that agency or district. A municipal or county agency or school district to which a law enforcement agency loans a motor vehicle under this subsection shall maintain any automobile insurance coverage for the vehicle that is required by law.

(b-1) If a loan is made by a sheriff's office or by a municipal police department, the commissioners court of the county in

which the sheriff has jurisdiction or the governing body of the municipality in which the department has jurisdiction, as applicable, may revoke the loan at any time by notifying the receiving agency or district, by mail, that the receiving agency or district must return the loaned vehicle to the loaning agency before the seventh day after the date the receiving agency or district receives the notice.

- (b-2) An agency that loans property under this article shall:
 - (1) keep a record of the loan, including the name of the agency to which the vehicle was loaned, the fair market value of the vehicle, and where the receiving agency will use the vehicle; and
 - (2) update the record when the information relating to the vehicle changes.

(c) If a local agreement exists between the attorney representing the state and law enforcement agencies, all money, securities, negotiable instruments, stocks or bonds, or things of value, or proceeds from the sale of those items, shall be deposited, after the deduction of court costs to which a district court clerk is entitled under Article 59.05(f), according to the terms of the agreement into one or more of the following funds:

- (1) a special fund in the county treasury for the benefit of the office of the attorney representing the state, to be used by the attorney solely for the official purposes of his office;
- (2) a special fund in the municipal treasury if distributed to a municipal law enforcement agency, to be used solely for law enforcement purposes, such as salaries and benefits, pay for officers, officer training, specialized instruction, equipment and supplies, and items used by officers in their law enforcement duties;
- (3) a special fund in the county treasury if distributed to a county law enforcement agency, to be used solely for law enforcement purposes; or
- (4) a special fund in the state law enforcement agency if distributed to a state law enforcement agency, to be used solely for law enforcement purposes.

(d) Proceeds awarded under this chapter to a law enforcement agency or to the attorney representing the state may be spent by the agency or the attorney after a budget for the expenditure of the proceeds has been submitted to the commissioners court or governing body of the municipality. The budget must be detailed and clearly list and define the categories of expenditures, but may not list details that would endanger the security of an investigation or prosecution. Expenditures are subject to audit provisions established under this article. A commissioners court or governing body of a municipality may not use the existence of an award to offset or decrease total salaries, expenses, and allowances that the agency or the attorney receives from the commissioners court or governing body at or after the time the proceeds are awarded. The head of the agency or attorney representing the state may not use the existence of an award to increase a salary, expense, or allowance for an employee of the attorney or agency who is budgeted by the commissioners court or governing body unless the commissioners court or governing body first approves the expenditure.

(e) On the sale of contraband under this article, the appropriate state agency shall issue a certificate of title to the recipient if a certificate of title is required for the property by other law.

f. A final judgment of forfeiture under this chapter perfects the title of the state to the property as of the date that the contraband was seized or the date the forfeiture action was filed, whichever occurred first, except that if the property forfeited is real property, the title is perfected as of the date a notice of lis pendens is filed on the property.

(g) 1) All law enforcement agencies and attorneys representing the state who receive proceeds or property under this chapter shall account for the seizure, forfeiture, receipt, and specific expenditure of all such proceeds and property in an audit, which is to be performed annually by the commissioners court or governing body of a municipality, as appropriate. The annual period of the audit for a law enforcement agency is the fiscal year of the appropriate county or municipality and the annual period for an attorney representing the state is the state fiscal year. The audit shall be completed on a form provided by the attorney general. Certified copies of the audit shall be transmitted by the law enforcement agency or attorney representing the state to the comptroller's office and the attorney general not later than the sixth day after the date on which the annual period that is the subject of the audit ends.

2) A copy of the audit shall be delivered to the attorney general within the period provided by Subdivision 1. If the copy is not delivered within the period, the attorney general shall, at the request of the law enforcement agency or attorney representing the state, grant an extension of time for the attorney to deliver a copy of the audit after the period required by Subdivision 1, and before the seventh day after the date on which the annual period that is the subject of the audit ends. If the law enforcement agency or the attorney representing the state fails to establish good cause for not delivering the copy of the audit within the period required by Subdivision 1) or fails to deliver a copy of an audit within the extension period, the attorney general shall notify the comptroller of that fact. On notice under this subdivision, the comptroller shall perform the audit otherwise required by Subdivision 1). At the conclusion of the audit, the comptroller shall forward a copy of the audit to the attorney general. The law enforcement agency or attorney representing the state is liable to the comptroller for the costs of the comptroller in performing the audit.

(h) As a specific exception to the requirement of Subdivisions (1)-(3) of Subsection (c) of this article that the funds described by those subdivisions be used only for the official purposes of the attorney representing the state or for law enforcement purposes, on agreement between the attorney representing the state or the head of a law enforcement agency and the governing body of a political subdivision, the attorney representing the state or the head of the law enforcement agency shall comply with the request of the governing body to deposit not more than a total of 10 percent of the gross amount credited to the attorney's or agency's fund into the treasury of the political subdivision. The governing body of the political subdivision shall, by ordinance, order, or resolution, use funds received under this subsection for:

- (1) nonprofit programs for the prevention of drug abuse;
- (2) nonprofit chemical dependency treatment facilities licensed under Chapter 464, Health and Safety Code;