



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

File #: 15-0095, **Version:** 1

Approve and authorize a transfer totaling \$500,820.00 from General Fund Contingencies, 001-1050-8034-CAO020, to the Enterprise Risk Fund, 001-1210-8429-COU006 to comply with a restitution order.

RECOMMENDATION:

It is recommended that the Board of Supervisors approve and authorize a transfer totaling \$500,820.00 from General Fund Contingencies, 001-1050-8034-CAO020, to the Enterprise Risk Fund, 001-1210-8429-COU006 to comply with a restitution order.

SUMMARY/DISCUSSION:

In 2004, a criminal defendant, posted a bail bond in the amount of \$500,000.00, secured by his home. In 2005 the defendant sold his home and substituted \$500,000.00 cash for the bond. During his 2005 trial, he absconded to Ireland and then South America. After he was captured in Uruguay, while awaiting extradition, the court declared his \$500,000.00 bail forfeited. Summary judgment was entered in February of 2006 and almost all of the bail money was transferred from the court to the County General Fund.

In 2011, the defendant attempted to have the summary judgment set aside and his bail money returned to him. He argued that the Notice of Forfeiture sent by the court was void because it did not explain in sufficient detail the steps he could have taken to avoid bail forfeiture, resulting in a deprivation of his right to due process of law under the United States Constitution. The trial judge denied his motion, but he appealed. The appellate court issued a decision in May of 2014, agreeing with the defendant and declaring the bail forfeiture unconstitutional. The Office of the County Counsel petitioned the California Supreme Court to review the appellate court's decision, but the Supreme Court declined review.

Back in Superior Court, the defendant and his wife made a motion for restitution of the \$500,000.00. The court issued a decision on October 31, 2014, ordering restitution of \$500,820.00 plus 3% post-judgment interest by December 31, 2014, ("Ruling" attached). The attorneys for the moving parties have agreed to briefly forego enforcement of the judgment to allow the County time to make any budgetary transfers or appropriations that may be necessary.

The State of California Government Code - County Budget Act (excerpts attached) requires that the Board of Supervisors must approve transfers or revisions to the adopted budget at a regular meeting. The requirement is part of the internal controls set forth in the County Budget Act.

OTHER AGENCY INVOLVEMENT:

The report has been reviewed by the County Administrative Office and the Auditor-Controller's Office. The Budget Committee received and supported this recommendation at its meeting on January 28, 2015.

FINANCING:

The transfer of \$500,820.00 is needed to comply with the October 31, 2014, court order directing the return of

\$500,820.00.

General Fund Operational Contingencies are sourced with one-time funding. Any use of General Fund Contingencies may require reductions in other programs to continue the program. FY 2014-15 budgeted General Fund Contingencies is \$2,748,524. Thus far, \$1,259,000 transfers from General Fund Contingencies have been approved by the Board in FY 2014-15. With this requested action to transfer \$500,820.00 from Contingencies, the remaining General Fund Operational Contingencies budget would be \$988,704. However, contingency funds have been sought by other projects, such as the MCWRA Interlake Tunnel Project; and the BOS has expressed interest in providing funding. This action will lower the amount of available funding in Contingencies for those projects.

Prepared by:

William Litt, Deputy County Counsel

Approved by:

Steve Mauck, Risk Manager

Attachments:

Superior Court of Monterey - Ruling