



County of Monterey

Item No.

Board Report

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

Legistar File Number: RES 23-041

March 21, 2023

Introduced: 3/10/2023

Current Status: Agenda Ready

Version: 1

Matter Type: BoS Resolution

Consider adopting a resolution to:

- a. Approve and adopt the Levine Act Policy statement for inclusion in the Board Policy Manual given recent changes to Government Code section 84308, a provision of the Political Reform Act; and,
- b. Provide direction to staff as appropriate.

..Report

RECOMMENDATION:

It is recommended that the Board of Supervisors adopt a resolution to:

- a. Approve and adopt the Levine Act Policy statement for inclusion in the Board Policy Manual given recent changes to Government Code section 84308, a provision of the Political Reform Act; and,
- b. Provide direction to staff as appropriate.

SUMMARY:

On September 29, 2022, Governor Newsom signed Senate Bill (“SB”) 1439 into law, making a number of changes to Government Code section 84308, a provision of the Political Reform Act generally known as the “Levine Act.” Section 84308 provides, in relevant part, that an elected officer is prohibited from taking part in a license, permit, or other entitlement for use proceeding if the officer has received a campaign contribution, for any office the officer holds or seeks, in excess of \$250 within the preceding 12 months. An officer is also prohibited from accepting a contribution in excess of \$250 during the proceeding, and for 12 months following the date a final decision is rendered in the proceeding.

The Levine Act previously only applied to local governing boards composed of appointed elected officers, appointed to governing boards other than their organic board, such as joint powers authorities or Local Agency Formation Commissions. However, effective January 1, 2023, SB 1439 amended Section 84308 to also apply to elected officers sitting on their elected governing boards or in their elected positions. Given this recent change in law applicable to the Board of Supervisors and other County elected officers, attached is a draft policy for inclusion in the Board Policy Manual to create a policy for Levine Act compliance.

DISCUSSION:

The proposed Levine Act Policy would apply to all County officers and departments. County departments may have policies specific to their departments, and not in conflict with this Policy, to maintain Levine Act compliance for licenses, permits, or entitlements for use.

1. Levine Act Applicability.

The Levine Act will impose two key duties on members of the Boards of Supervisors and other County elected officers. First, it will prohibit accepting, soliciting or directing a campaign contribution of more than \$250 if the donor is involved in a proceeding involving a license, permit or other entitlement for use, including a contract award (but not including certain awards described below), that is pending before the official. Under SB 1439, this prohibition continues for 12 months following the proceeding. Second, the Levine Act will require the County official to recuse themselves from any proceeding involving a license, permit or other entitlement for use, including a qualifying contract award, if the County official has received a campaign contribution from a person or party involved in the proceeding within the previous 12 months. If the officer returns the contribution within 30 days from the date the officer knew or should have known of the contribution, the officer may participate in the proceeding.

Section 84308(a)(4) defines “officer” as: “any elected or appointed officer of an agency, any alternate to an elected or appointed officer of an agency, and any candidate for elective office in an agency.”

Section 84308(a)(5) defines “License, permit, or other entitlement for use” as:

[A]ll business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.

Specifically, this rule applies to any County officer decision on land use entitlements, appeals of Planning Commission decisions, non-competitively bid contracts, and business licenses or permits. The rule expressly does not apply to labor contracts, personal employment contracts, or contracts that are competitively bid.

Under 2 California Code of Regulations (“CCR”) Section 18438.2(b), a proceeding involving a license, permit or other entitlement for use is “pending before” an agency:

- (1) When the application has been filed, the proceeding has been commenced, or the issue has otherwise been submitted to the jurisdiction of an agency for its determination or other action;
 - (2) It is the type of proceeding where the officers of the agency are required by law to make a decision, or the matter has been otherwise submitted to the officers of the agency for their decision;
- and,
- (3) The decision of the officer or officers with respect to the proceeding will not be purely ministerial.

Finally, in deciding which sources of contributions are “participants” with “financial interests” in the proceeding, Section 84308(a)(2) defines “participant” as “any person. . . who actively supports or opposes a particular decision.” Lobbying the County officer, testifying or otherwise acting to influence the County is “participation” in a decision. To determine whether a participant has a “financial interest” in a decision, Section 84308 refers to Section 87100 of the Political Reform Act, which covers persons who have real estate, income, or business interests that could foreseeably increase or decrease materially as a result of the decision. In short, this means that campaign contributors who

participate in a hearing in which they have a financial interest cause an officer to be disqualified from participation.

2. The Policy.

This proposed Policy would apply to all County officers and departments. County departments may have policies specific to their departments, and not in conflict with the Policy, to maintain Levine Act compliance for licenses, permits, or entitlements for use. The proposed Policy is attached.

3. Levine Act Retroactivity.

On December 22, 2022, the Fair Political Practices Commission (“FPPC”) issued Opinion Number O-22-002, that the disqualification obligations in Section 84308 will not apply retroactively. As such, County officers will not be prohibited from taking part in decisions involving parties and participants from whom they received contributions of more than \$250 before January 1, 2023. Likewise, applicable proceedings that concluded before January 1, 2023 are not affected.

OTHER AGENCY INVOLVEMENT:

Not applicable.

FINANCING:

County Administrative Office, Intergovernmental & Legislative Affairs Division manages the Board Policy Manual. Approval of the recommendation will not result in additional general fund contributions.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

The Strategic Initiative Policy Areas integrate with the Board Policy Manual Policies.

- Economic Development
- Administration
- Health & Human Services
- Infrastructure
- Public Safety

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Attachments:

1. Draft resolution adopting the Levine Act Policy and Levine Act Policy