



County of Fresno

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Legislation Text

File #: 17-0148, **Version:** 1

DATE: February 28, 2017

TO: Board of Supervisors

SUBMITTED BY: Brandi L. Orth
Fresno County Clerk/Registrar of Voters

SUBJECT: Letter of Support for Proposed Amendment to Government Code §1360

RECOMMENDED ACTION(S):

Authorize Chairman to execute a letter of support for one of the provisions in Senate Bill 205, the Local Government Omnibus Act of 2017; specifically, to support the proposed amendment to Government Code §1360 that would clarify the requirement of public officers to take an oath of office following election or appointment.

The Senate Governance & Finance Committee will author the "Local Government Omnibus Act of 2017" which proposes numerous relatively minor, noncontroversial changes to the laws affecting local agencies' powers and duties. When signed into law by Governor Jerry Brown, the omnibus bill will take effect on January 1, 2018.

ALTERNATIVE ACTION(S):

Your Board could opt not to approve the letter of support; however, this will result in continued ambiguity regarding when to take an oath of office and potential litigation.

FISCAL IMPACT:

There is no increase in Net County Cost associated with the recommended action.

DISCUSSION:

Each year officials discover problems with the state statutes that affect counties, cities, special districts, and redevelopment agencies, as well as the laws on land use planning and development. These minor problems do not warrant separate (and expensive) bills. Therefore, the provisions correcting the minor problems are grouped together in one "omnibus" bill.

Current law requires candidates for elected office to take the oath of office prescribed by Article XX, Section 3 of the California Constitution at the time they file their candidacy for a primary, general or final election (Elections Code §200). Article XX, Section 3 of the California Constitution and Government Code §1360 also requires all public officers and employees to take the oath of office before entering the duties of their office. The law is not clear whether an elected official is required to take the Oath of Office after the election or if the Oath of Office subscribed to at the time the candidacy papers are taken out/filed satisfies the Constitutional Oath requirement. This ambiguity has caused counties to interpret the law differently.

In Fresno County, lawsuit(s) have been threatened regarding whether failure to take the Constitutional oath of office following the election rendered elected board members' actions subsequent to the election void.

Additionally, this ambiguity has caused some elected officials to question why they must take the same oath of office they subscribed to when filing their candidacy papers. To clarify when an oath of office is required, the proposed bill would require public officers to take an oath of office following election or appointment. [See SEC. 2 of the proposed bill.]

The proposed amendment to Government Code §1360 included in Local Government Omnibus Act of 2017, Senate Bill 205, is recommended for passage and includes the following proposed clarification to Government Code Section 1360:

"Unless otherwise provided, **AND FOLLOWING ELECTION OR APPOINTMENT**, before any officer enters on the duties of his office, he shall take and subscribe the oath or affirmation set forth in Section 3 of Article XX of the Constitution of California.

ATTACHMENTS INCLUDED AND/OR ON FILE:

Senate Bill 205
Letter of Support

CAO ANALYST:

Ronald Alexander