ASSEMBLY BILL No. 1250

Introduced by Assembly Member Jones-Sawyer  
(Coauthors: Assembly Members Bonta and Gonzalez Fletcher)

February 17, 2017

An act to add Section 31000.10 to the Government Code, relating to local government.

LEGISLATIVE COUNSEL’S DIGEST

AB 1250, as amended, Jones-Sawyer. Counties: contracts for personal services. Existing law authorizes the board of supervisors of a county to contract for special services on behalf of various public entities with persons who are specially trained, experienced, expert, and competent to perform the special services, as prescribed. These services include financial, economic, accounting, engineering, legal, and other specified services. This bill would establish specific standards for the use of personal services contracts by counties. Beginning January 1, 2018, the bill...
would allow a county or county agency to contract for personal services currently or customarily performed by employees, as applicable, when specified conditions are met. Among other things, the bill would require the county to clearly demonstrate that the proposed contract will result in actual overall costs savings to the county and also to show that the contract does not cause the displacement of county workers. The bill would require a contract entered into under these provisions to specify that it may be terminated upon material breach, if notice is provided, as specified. Additionally, the bill would require the county to conduct an audit of contracts for personal services in excess of $100,000 annually to determine whether cost savings have been realized and would require the contractor to reimburse the county for the cost of the audit. The bill also would impose additional disclosure requirements for contracts exceeding $100,000 annually. The bill would exempt certain types of contracts from its provisions, and would exempt a city and county from its provisions. By placing new duties on local government agencies, the bill would impose a state-mandated local program.

The bill also would provide that its provisions are severable.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 31000.10 is added to the Government Code, to read:

31000.10. The purpose of this section is to establish standards for the use of personal services contracts by counties.

(a) If otherwise permitted by law, a county or county agency may contract for personal services currently or customarily performed by that county’s employees when all the following conditions are met:

(1) The board of supervisors or county agency clearly demonstrates that the proposed contract will result in actual overall cost savings to the county for the duration of the entire contract as compared with the county’s actual costs of providing the same services, provided that:

(A) In comparing costs, there shall be included the county’s additional cost of providing the same service as proposed by a contractor. These additional costs shall include the salaries and benefits of additional staff that would be needed and the cost of additional space, equipment, and materials needed to perform the function.

(B) In comparing costs, there shall not be included the county’s indirect overhead costs unless these costs can be attributed solely to the function in question and would not exist if that function was not performed in county service. Indirect overhead costs shall mean the pro rata share of existing administrative salaries and benefits, rent, equipment costs, utilities, and materials.

(C) In comparing costs, there shall be included in the cost of a contractor providing a service any continuing county costs that would be directly associated with the contracted function. These continuing county costs shall include, but not be limited to, those for inspection, supervision, and monitoring.

(2) Proposals to contract out work shall not be approved solely on the basis that savings will result from lower contractor pay rates or benefits. Proposals to contract out work shall be eligible for approval if the contractor’s wages are at the industry’s level and do not significantly undercut county pay rates.

(3) The contract does not cause the displacement of county employees. “Displacement” includes layoff, demotion, involuntary transfer to a new class, involuntary transfer to a new location
requiring a change of residence, and time base reductions.

“Displacement” does not include changes in shifts or days off or reassignment to other positions within the same class and general location.

(4) The contract does not cause vacant positions in county employment to remain unfilled:

unfilled for positions in which employees perform the same services.

(5) The contract does not adversely affect any of the county’s nondiscrimination, affirmative action efforts.

(6) The savings shall be large enough to ensure that they will not be eliminated by private sector and county cost fluctuations that could normally be expected during the contracting period.

(7) The amount of savings clearly justifies the size and duration of the contracting agreement.

(8) The contract includes specific provisions pertaining to the qualifications of the staff that will perform the work under the contract, as well as assurance that the contractor’s hiring practices meet any applicable nondiscrimination, affirmative action standards.

(9) The potential for future economic risk to the county from potential contractor rate increases is minimal.

(10) The contract is with a firm. “Firm” means a corporation, limited liability company, partnership, nonprofit organization, or sole proprietorship.

(11) The potential economic advantage of contracting is not outweighed by the public’s interest in having a particular function performed directly by county government.

(12) The contract shall provide that it may be terminated at any time by the county without penalty if there is a material breach of the contract and notice is provided at least 30 days before termination.
(14) If the contract is for personal services in excess of one hundred thousand dollars ($100,000) annually, all of the following shall occur:

(A) The county shall require the contractor to disclose all of the following information as part of its bid, application, or answer to a request for proposal:
   (i) A description of all charges, claims, or complaints filed against the contractor with any federal, state, or local administrative agency during the prior 10 years:
   (ii) A description of all civil complaints filed against the contractor in any state or federal court during the prior 10 years:
   (iii) A description of all state or federal criminal complaints or indictments filed against the contractor, or any of its officers, directors, or managers, at any time:
   (iv) A description of any debarments of the contractor by any public agency or licensing body at any time:
   (v) The total compensation, including salaries and benefits, the contractor provides to workers performing work similar to that to be provided under the contract:
   (vi) The total compensation, including salaries, benefits, options, and any other form of compensation, provided to the five highest compensated officers, directors, executives, or employees of the contractor:
   (vii) Any other information the county deems necessary to ensure compliance with this section:

(B) The contract shall provide that the county is entitled to receive a copy of any records related to the contractor’s or any subcontractor’s performance of the contract, and that, in addition to records specifically requested by the county, every month the contractor shall furnish the county with: (i) the names of any subcontractors providing services under the contract; (ii) the names of the employees of the contractor and any subcontractors providing services pursuant to the contract and their hourly rates; and (iii) the names of any workers providing services pursuant to the contract as independent contractors and the compensation rates for those workers. The contract shall provide that all records provided to the county by the contractor shall be subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1). In furtherance of this
subdivision, contractors and any subcontractors shall maintain
records related to performance of the contract that ordinarily would
be maintained by the county in performing the same functions.

(C) The county shall include in the contract specific, measurable
performance standards and provisions for a performance audit by
the county, or an independent auditor approved by the county, to
determine whether the performance standards are being met and
whether the contractor is in compliance with applicable laws and
regulations. The county shall not renew or extend the contract prior
to receiving and considering the audit report.

(D) The contract shall include provisions for an audit by the
county, or an independent auditor approved by the county, to
determine whether and to what extent the anticipated cost savings
have actually been realized. The county shall not renew or extend
the contract before receiving and considering the audit report. The
contractor shall reimburse the county for the cost of the audit.
Contractors shall be prohibited from factoring the costs of the audit
into the contract costs with the county.

(b) This section does not preclude a county from adopting more
restrictive rules regarding the contracting of public services.

(c) When otherwise permitted by law, the absence of any
requirement of subdivision (a) shall not prevent personal services
contracting shall also be permissible when any of the following
conditions are met:

(1) The contract is for a new county function and the Legislature
has specifically mandated or authorized the performance of the
work by independent contractors.

(2) The contract is between the county and another government
entity for services to be performed by employees of the other
government entity. An entity established pursuant to Section 9400
of the Welfare and Institutions Code shall be deemed a government
entity for purposes of this section when contracting with the county
to provide for the delivery of in-home supportive services pursuant
to Section 12301.6 of the Welfare and Institutions Code.

(3) The contract is between the county and a local health care
district, within the meaning of Section 32001 of the Health and
Safety Code, for services to be provided by the local health care
district.

(3)
(4) The services contracted cannot be performed satisfactorily by county employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, workforce sufficiency, and ability are not available among county employees.

(5) The services are incidental to a contract for the purchase or lease of real or personal property. Contracts under this criterion, known as “service agreements,” shall include, but not be limited to, agreements to service or maintain office equipment or computers that are leased or rented.

(6) The legislative, administrative, or legal goals and purposes cannot be accomplished through the utilization of county employees. Contracts are permissible under this criterion to protect against a conflict of interest or to ensure independent and unbiased findings in cases where there is a clear need for a different, outside perspective. These contracts shall include, but not be limited to, obtaining expert witnesses in litigation.

(7) A contract paid exclusively with taxes, assessments, fees, or charges imposed or levied by a county solely for the county’s purposes.

(8) The nature of the work is such that the standards of this part for emergency appointments apply. These contracts shall conform with Section 31000.4.

(9) Public entities or officials need private counsel because a conflict of interest on the part of the county counsel’s office prevents it from representing the public entity or official without compromising its position. These contracts shall require the written consent of the county counsel.

(10) The contractor will provide legal services to the county solely on a contingency fee or hourly basis.

(11) The contractor will provide equipment, materials, facilities, or support services that could not feasibly be provided by the county in the location where the services are to be performed.
(12) The contractor will conduct training courses for which appropriately qualified county employee instructors are not available, provided that permanent instructor positions in academies or similar settings shall be filled by county employees.

(13) The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation by county employees would frustrate their very purpose.

(d) This section shall apply to all counties, including counties that have adopted a merit or civil service system, but shall not apply to a city and county.

(e) This section does not apply to any of the following contracts:

1. A contract for services described in Section 4525 or 4529.10.
2. A contract for construction, alteration, demolition, installation, repair, or maintenance work that is subject to Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code. Code or a contract for highly specialized data, software, or services related to that construction, alteration, demolition, installation, repair, or maintenance work.
3. A contract for public transit services, including paratransit services, if the county’s transit services are fully funded by Federal Transit Administration assistance and the county is thereby subject to the guidelines established in FTA Circular 4220.1F or any subsequent guidelines or revisions issued by the Federal Transit Administration.
4. A contract for street sweeping services.
5. A contract for solid waste handling services authorized by or made pursuant to Section 40059 of the Public Resources Code.

As used in this paragraph, “solid waste handling services” means the collection, transportation, storage, transfer, conversion, processing, recycling, composting, or disposal of solid wastes.

6. Any contract, regardless of funding source, with a contractor that provides health services to any department, agency, unit, or other component of a county’s integrated health and hospital system, including, but not limited to, hospitals and clinics, public health, health plans, substance abuse treatment, emergency medical services, or behavioral and mental health. This paragraph shall broadly apply to those contractors, including contracts with those contractors for other services by departments, agencies, units, or components separate from a county’s integrated health and
hospital system. This paragraph shall only apply to a county that, on July 1, 2017, operated a health plan as part of the Covered California exchange established pursuant to Title 22 (commencing with Section 100500). This paragraph shall not apply to contracts that would cause the displacement of county employee or loss of county employee positions. For the purposes of this paragraph, “displacement” shall have the same meaning as in paragraph (3) of subdivision (a).

(f) This section shall not be construed to authorize or otherwise permit the contracting out of fire protection services, other than the contracts between public agencies that are explicitly authorized by Chapter 4 (commencing with Section 55600) of Part 2 of Division 2 of Title 5 of this code or by Article 4 (commencing with Section 4141) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code.

(g) This section shall apply to contracts for personal services currently or customarily performed by the employees of a county entered into, renewed, or extended on or after January 1, 2018.

SEC. 2. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 3. To the extent that this act has an overall effect of increasing certain costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation within the meaning of Section 36 of Article XIII of the California Constitution, it shall apply to local agencies only to the extent that the state provides annual funding for the cost increase. Any new program or higher level of service provided by a local agency pursuant to this act above the level for which funding has been provided shall not require a subvention of funds by the state or otherwise be subject to Section 6 of Article XIII-B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement
to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.