An act to add Sections 31000.10, 31000.11, 37103.1, 31000.10 and 37103.2 to the Government Code, relating to local government.

LEGISLATIVE COUNSEL’S DIGEST

AB 1250, as amended, Jones-Sawyer. Counties and cities: 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. Existing law also authorizes legislative bodies of cities to contract with any specially trained and experienced person, firm, or corporation for special services and advice in financial, economic, accounting, engineering, legal, or administrative matters.

This bill would establish specific standards for the use of personal services contracts by counties and cities. Beginning January 1, 2018, the bill would allow a county or county agency, or a city or city agency,
to contract for personal services currently or customarily performed by county employees, as applicable, when specified conditions are met. Among other things, the bill would require the county or city to clearly demonstrate that the proposed contract will result in actual overall cost savings to the county or city and also to show that the contract does not cause the displacement of county or city 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 or city to provide an orientation to employees of the contractor who would perform services pursuant to the contract, among other conditions. The bill would require that the county or city conduct a cost benefit analysis prior to entering into the contract and would require the prospective contractors to reimburse the cost of the analysis. The bill would also require the county or city to conduct an audit of the contract to determine whether cost savings have been realized and would require the contractor to reimburse the cost of the audit. The bill would impose additional disclosure requirements for contracts exceeding $5,000,000 annually. The bill would exempt certain types of contracts from its provisions, and would require each county or city to maintain on its Internet Web site a searchable database of all of its contracts exceeding $5,000,000. The bill would exempt a chapter city 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 people of the State of California do enact as follows:

1 SECTION 1. Section 31000.10 is added to the Government Code, to read:
31000.10. The purpose of this section and Section 31000.11
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 county 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.

(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 is awarded through a publicized, competitive
bidding process. The county shall reserve the right to reject any
and all bids or proposals.

(9) 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.

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

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

(12) The potential economic advantage of contracting is not
outweighed by the public’s interest in having a particular function
performed directly by county government. Before executing a
contract for personal services under this section, the county shall
demonstrate that outsourcing the particular functions at issue is in
the public interest, addressing the cost of the contract, the cost of
administering the contract, the effect on the quality of services
provided to the public, and any other relevant circumstances.

(13) 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) The county shall provide an orientation to employees of
the contractor who will perform services pursuant to the contract.
The orientation shall include, but is not limited to, all of the
following:
(A) A description of the services to be provided pursuant to the contract.

(B) A description of the function and goals of the public agency responsible for providing the services in the absence of the contract.

(C) Any applicable rules governing provision of the services and how the employee may report violations of applicable rules or contractual requirements.

(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) Prior to entering into the contract, the county shall conduct and make public a cost-benefit analysis considering the potential impact of outsourcing the work covered by the contract. The analysis shall include:

(i) The potential loss of employment opportunities within the county and resultant loss of income to workers.
(ii) The impact on local businesses if consumer spending power is reduced as a result of reduced wages under the contract.

(iii) The impact on the county’s ability to provide social services and the effect of any reduction in social services on county residents.

(iv) Potential impacts on the environment, if any.

(C) Prospective contractors shall reimburse the county for the cost of the cost-benefit analysis.

(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 any of those records shall be subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) 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.

(2) The contractor shall reimburse the county for the cost of the audit.

(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 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.

(3) 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, and ability are not available among county employees.

(4) 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.

(5) 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.

(6) 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.

(7) 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.

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

(9) 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.

(10) 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.

(11) 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) All persons who provide services to a county under conditions constituting an employment relationship shall be employed directly by the county.

(e) (1) This section does not apply to any contract for services described in Section 4525 or 4529.10.

(2) This section does not apply to any contract that is subject to Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(3) This section does not apply to a contract for public transit services, including paratransit services, if the county’s transit 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.
(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 contracts currently or customarily performed by county employees entered into, renewed, or extended on or after January 1, 2018.

SEC. 2. Section 31000.11 is added to the Government Code, to read:

31000.11. (a) Each county shall maintain on its Internet Web site a searchable database of all contracts of an annual value in excess of five million dollars ($5,000,000) entered into pursuant to Section 31000.10. The database shall include, but is not limited to, the following:

(1) A description of the services provided under the contract.

(2) The name of the agency, department, or division responsible for providing the service in the absence of the contract.

(3) The name of the contractor and any subcontractors providing services under the contract.

(4) The effective and expiration dates of the contract.

(5) The annual amount paid pursuant to the contract to the contractor in the past three fiscal years and the current fiscal year, including the funding source for all amounts paid.

(6) The annual amount expected to be paid pursuant to the contract to the contractor in the next three fiscal years.

(7) The total projected cost of the contract for all fiscal years and the funding source for all amounts to be paid.

(8) The names of the employees of the contractor and any subcontractors providing services pursuant to the contract and their hourly pay rates, and the total number of full time equivalent positions involved in performing the services under the contract.

(9) The names of any workers providing services pursuant to the contract as independent contractors and the compensation rates for such workers.

(b) The information identified in subdivision (a) shall be compiled in an annual service contractor expenditure budget
accompanying the county budget, reflecting all spending on personal services contracts by the county.

SEC. 2. Section 37103.1 is added to the Government Code, to read:

37103.1. The purpose of this section and Section 37103.2 is to establish standards for the use of personal services contracts by cities.

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

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

(A) In comparing costs, there shall be included the city’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 city’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 city 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 city costs that would be directly associated with the contracted function. These continuing city 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 city pay rates.

(3) The contract does not cause the displacement of city 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 city
employment to remain unfilled.
(5) The contract does not adversely affect any of the city’s
nondiscrimination, affirmative action efforts.
(6) The savings shall be large enough to ensure that they will
not be eliminated by private sector and city 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 is awarded through a publicized, competitive
bidding process. The city shall reserve the right to reject any and
all bids or proposals.
(9) 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.
(10) The potential for future economic risk to the city from
potential contractor rate increases is minimal.
(11) The contract is with a firm. “Firm” means a corporation,
partnership, nonprofit organization, or sole proprietorship.
(12) The potential economic advantage of contracting is not
outweighed by the public’s interest in having a particular function
performed directly by city government. Before executing a contract
for personal services under this section, the city shall demonstrate
that outsourcing the particular functions at issue is in the public
interest, addressing the cost of the contract, the cost of
administering the contract, the effect on the quality of services
provided to the public, and any other relevant circumstances.
(13) The contract shall provide that it may be terminated at any
time by the city without penalty if there is a material breach of the
contract and notice is provided at least 30 days before termination.
(14) The city shall provide an orientation to employees of the
contractor who will perform services pursuant to the contract. The
orientation shall include, but is not limited to, all of the following:
(A) A description of the services to be provided pursuant to the contract.
(B) A description of the function and goals of the public agency responsible for providing the services in the absence of the contract.
(C) Any applicable rules governing provision of the services and how the employee may report violations of applicable rules or contractual requirements.

(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 city 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 city deems necessary to ensure compliance with this section.

(B) Prior to entering into the contract, the city shall conduct and make public a cost-benefit analysis considering the potential impact of outsourcing the work covered by the contract. The analysis shall include:

(i) The potential loss of employment opportunities within the city and resultant loss of income to workers.
(ii) The impact on local businesses if consumer spending power is reduced as a result of reduced wages under the contract.

(iii) The impact on the city’s ability to provide social services and the effect of any reduction in social services on city residents.

(iv) Potential impacts on the environment, if any.

(C) Prospective contractors shall reimburse the city for the cost of the cost-benefit analysis.

(D)

(B) The contract shall provide that the city is entitled to receive a copy of any records related to the contractor’s or any subcontractor’s performance of the contract, and that any such records shall be subject to the California Public Records Act (Chapter 5 (commencing with Section 6250) of Division 7 of Title 1). That, in addition to records specifically requested by the city, 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 city 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 city in performing the same functions.

(E)(1) The city shall include in the contract specific, measurable performance standards and provisions for a performance audit by the city, or an independent auditor approved by the city, to determine whether the performance standards are being met and whether the contractor is in compliance with applicable laws and regulations. The legislative body shall not renew or extend the contract prior to receiving and considering the audit report.

(2) The contractor shall reimburse the city for the cost of the audit.

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

(b) This section does not preclude a city 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 when any of the following conditions are met:

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

(2) The contract is between a city and other government entity for services to be performed by employees of the other government entity.

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

(4) 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.

(5) The legislative, administrative, or legal goals and purposes cannot be accomplished through the utilization of city 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.
(6) The nature of the work is such that the standards of this title for emergency appointments apply. These contracts shall conform with Section 45080.

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

(8) The contract will provide legal services to the city solely on a contingency fee basis.

(9) The contractor will provide equipment, materials, facilities, or support services that could not feasibly be provided by the city in the location where the services are to be performed.

(10) The contractor will conduct training courses for which appropriately qualified city employee instructors are not available, provided that permanent instructor positions in academies or similar settings shall be filled by city employees.

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

(d) All persons who provide services to a city under conditions constituting an employment relationship shall be employed directly by the city.

(e) (1) Except as provided in paragraph (2), this section shall apply to all cities, including cities that have adopted a merit or civil service system.

(2) This section does not apply to a charter city formed pursuant to Section 3 of Article XI of the California Constitution.

(f) (1) This section does not apply to any contract for services described in Section 4525 or 4529.10.

(2) This section does not apply to any contract that is subject to Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.
(3) This section does not apply to 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.

(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 city employees entered into, renewed, or extended on or after January 1, 2018.

SEC. 4. Section 37103.2 is added to the Government Code, to read:

37103.2. (a) Each city shall maintain on its Internet Web site a searchable database of all contracts of an annual value in excess of five million dollars ($5,000,000) entered into pursuant to Section 37103.1. The database shall include, but is not limited to, the following:

(1) A description of the services provided under the contract.
(2) The name of the agency, department, or division responsible for providing the service in the absence of the contract.
(3) The name of the contractor and any subcontractors providing services under the contract.
(4) The effective and expiration dates of the contract.
(5) The annual amount paid pursuant to the contract to the contractor in the past three fiscal years and the current fiscal year, including the funding source for all amounts paid.
(6) The annual amount expected to be paid pursuant to the contract to the contractor in the next three fiscal years.
(7) The total projected cost of the contract for all fiscal years and the funding source for all amounts to be paid.
(8) The names of the employees of the contractor and any subcontractors providing services pursuant to the contract and their hourly pay rates, and the total number of full-time equivalent positions involved in performing the services under the contract.
(9) The names of any workers providing services pursuant to
the contract as independent contractors and the compensation rates
for such workers.

(b) The information identified in subdivision (a) shall be
compiled in an annual service contractor expenditure budget
accompanying the county budget, reflecting all spending on
personal services contracts by the county.

SEC. 5.

SEC. 3. 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. 6.

SEC. 4. 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.