Introduce by Assembly Member Jones-Sawyer

February 17, 2017

An act to add Sections 31000.10, 31000.11, 37103.1, 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, 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 costs 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, and
would establish liability provisions for employment law violations and
torts committed in the course of providing services under contract,
among other conditions. The bill would impose additional disclosure
requirements for contracts exceeding $100,000 annually, 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 $100,000. 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.

State-mandated local program: yes.

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 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 the county’s 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 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.

(15) The county shall be jointly and severally liable with the contractor and any of its subcontractors for:
(A) Employment law violations arising from performance of the contract, unless otherwise provided by a bona fide collective bargaining agreement covering the affected employees.

(B) Torts committed by the contractor or its subcontractors in the course of providing services under the contract.

(16) 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 study of the potential impact of outsourcing the work covered by the contract, including, but not limited to:

(i) The potential loss of employment opportunities within the county and resultant loss of income to workers.

(ii) The economic 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) Any environmental impact caused by contracting for the services at issue.

(C) 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). 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.

(D) 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.

(E) 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.

(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 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.

3. 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.
(4) 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.
(5) 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.
(6) 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.
(7) 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.
(8) 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.
(9) 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) Except as provided in paragraph (2), this section shall
apply to all counties, including counties that have adopted a merit
or civil service system.
(2) This section does not apply to a charter county 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.

(g) This section shall apply to personal services contracts 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 one hundred thousand dollars ($100,000) 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. 3. 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
(4) The contract does not cause vacant positions in city employment to remain unfilled.

(5) The contract does not adversely affect the city’s 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 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.

(15) The city shall be jointly and severally liable with the contractor and any of its subcontractors for:

(A) Employment law violations arising from performance of the contract, unless otherwise provided by a bona fide collective bargaining agreement covering the affected employees.

(B) Torts committed by the contractor or any of its subcontractors in the course of providing services under the contract.

(16) 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 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.
Prior to entering into the contract, the city shall conduct, and make public, a study of the potential impact of outsourcing the work covered by the contract, including, but not limited to:

(i) The potential loss of employment opportunities within the city and resultant loss of income to workers.

(ii) The economic 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) Any environmental impact caused by contracting for the services at issue.

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). 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.

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.

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.

This section does not preclude a city from adopting more restrictive rules regarding the contracting of public services.

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 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.

(3) 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.

(4) 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.

(5) The nature of the work is such that the standards of this title for emergency appointments apply. These contracts shall conform with Section 45080.

(6) 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.

(7) 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.

(8) 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.

(9) 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.
(g) This section shall apply to personal services contracts 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 one hundred thousand dollars ($100,000) 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. 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. 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.