

ASSEMBLY THIRD READING

AB 1250 (Jones-Sawyer)

As Amended May 30, 2017

Majority vote

Committee	Votes	Ayes	Noes
Public Employees	3-3	Rodriguez, Cooper, O'Donnell	Travis Allen, Gallagher, Cooley
Public Employees	4-1	Rodriguez, Bonta, Cooper, O'Donnell	Travis Allen
Appropriations	9-5	Gonzalez Fletcher, Bloom, Bocanegra, Bonta, Calderon, McCarty, Quirk, Eduardo Garcia, Reyes	Bigelow, Brough, Fong, Gallagher, Obernolte

SUMMARY: Establishes standards for the use of personal service contracts by counties and cities. Specifically, **this bill:**

- 1) Authorizes a county, county agency, city, or city agency to contract for personal services currently or customarily performed by county or city employees when the following conditions are met:
 - a) The board of supervisors, county agency, city council, or city agency clearly demonstrate that the proposed contract will result in actual cost savings to the county or city for the duration of the contract as compared with the county's actual costs of providing the same services, provided that, in comparing costs:
 - i) The additional cost of providing the same service as proposed by the contract to be included, and specifies that the required costs to be included are the salaries and benefits of additional staff, space, equipment, and materials needed to perform the function.
 - ii) Indirect overhead costs are not to be included, and defines "indirect overhead costs" to mean the pro rata share of existing administrative salaries and benefits, rent, equipment costs, utilities, and materials.
 - iii) Requires the cost of a contractor providing a service that would be directly associated with the contracted function to be included, and specifies such costs to include, but not limited to, those for inspection, supervision and monitoring.
 - b) Requires that proposals to contract out work must not be approved solely on the basis that savings would result from lower contractor pay rates or benefits, and that proposals must be eligible for approval if the contractor's wages are at the industry's level and do not significantly undercut county or city pay rates.
 - c) The contract does not cause the displacement of county or city employees, and specifies "displacement" to include layoff, demotion, involuntary transfer to a new location requiring a change of residence, and time base reductions, and not include changes in

shifts, days off, reassignment to other positions within the same class, and general location.

- d) The contract does not cause vacant positions in county or city employment to remain unfilled, and does not adversely affect the county's nondiscrimination, affirmative action efforts.
- e) The savings must be large enough to ensure against their elimination by private sector and county or city cost fluctuations that could normally be expected during the contracting period, and the savings clearly justify the size and duration of the contracting agreement.
- f) The contract is awarded through a publicized, competitive building process, while granting the county's or city's right to reject bids or proposals, and that the contract includes specific provisions related to the qualifications of the staff that will perform the work under the contract, and assurance as to the contractor's hiring practices related to nondiscrimination, affirmative action standards.
- g) The potential for future economic risk is minimal in relation to rate increases by the potential contractor, and that the contract is with a firm, and defines "firm" to mean a corporation, partnership, nonprofit organization, or sole proprietorship.
- h) The potential economic advantage of contracting is not outweighed by the public's interest in having a particular function performed directly by county or city government.
- i) The contract must include provisions for termination at any time by the county or city without penalty if there is a material breach, and that notice is provided at least 30 days prior to termination.
- j) The contract must provide that the county or city is entitled to receive records related to the performance of the contractor or subcontractor, and that in addition to other records requested by the city or county, the contractor must furnish each month, the following information for those providing services under the contract: (i) the names of subcontractors, (ii) the names of employees of the contractor and subcontractor and their hourly rates of pay, and (iii) the names of any workers who are independent contractors and the compensation rates for those workers.

Specifies that the contract must provide that all records provided to the city or county by the contractor are subject to the California Public Records Act, and that contractors must maintain records related to performance of the contract that ordinarily would be maintained by the county or city performing the same functions.

- k) The county or city must include in the contract specific and measureable performance standards, and provisions for audit for purposes of ensuring that performance standards are met, and compliance with applicable laws and regulations.

Prohibits counties and cities from renewing or extending the contract prior to receiving and considering the audit report, and permits them to adopt more restrictive rules related to contracting of public services.

Provides that the costs of the audit are to be reimbursed to the county or city by the contractor, and prohibits the contractor from factoring the costs of the audit into its contract costs.

- 2) Provides that, in the absence of meeting the specified requirements, contracting for personal services is permitted under limited circumstances, including a contract between a county or city and other government entity for services to be performed by employees of the other government entity.
- 3) Specifies that these provisions apply to all counties and cities that have adopted a merit or civil service system, and exempts contracts for:
 - a) Public transit services, if they are fully funded by Federal Transit Administration (FTA) assistance and the county or city is subject to guidelines issued by the FTA.
 - b) Private architects, engineering, land surveying, construction management firms, and public works projects.
 - c) Street sweeping services, or authorized solid waste handling services provided by means of nonexclusive franchise, partially exclusive or wholly exclusive franchise, contract, license, permit, or other, including with or without competitive bid.
 - i) Defines "solid waste handling services" to mean the collection, transportation, storage, transfer, conversion, processing, recycling, composting, or disposal of solid waste.
- 4) Exempts contracts by cities that renew existing contracts or award of contracts to perform the same services to other contractors, where the contract will not cause the displacement of city employees, nor reduce the number of employee positions.
- 5) Specifies that these provisions are not to be construed to authorize or permit the contracting out of fire protection services, other than contracts between public agencies that are explicitly authorized.
- 6) Provides that these provisions do not apply to a charter city, but do apply to a charter county.
- 7) Makes its provisions severable if this measure's application or any of its provisions are held to be invalid.
- 8) Provides that if the Commission on State Mandates determines that the measure contains costs mandated by the state, reimbursement to local agencies and school districts are required.

EXISTING LAW:

- 1) Authorizes a county board of supervisors to contract for special services on behalf of the county, county officers or departments, and district courts in the county, and requires that the contract be with persons specially trained, experienced, and have expertise and competence to perform the special services, among other provisions.

Requires that special services consist of services, advice, education or training for financial, economic, accounting (including the preparation and issuance of payroll checks or warrants),

engineering, legal, medical, therapeutic, administrative, architectural, airport or building security matters, laundry services, or linen services.

Additional special services may include maintenance or custodial matters if the board finds that the site is remote from available county employees, and contracting better serves the county's economic interests, among other provisions.

- 2) Authorizes 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.
- 3) Authorizes the legislative body of any public or municipal corporation to contract with, and employ any persons for district special services and advice in financial, economic, accounting, engineering, legal, or administrative matters if such persons are specially trained, experienced and competent to perform the special services required, among other provisions.
- 4) Authorizes the state, school districts and community college districts to enter into personal services contracts, and establishes the conditions that must be met when procuring such contracts.
- 5) Authorizes the board of trustees, common council, or other legislative body of a city or the board of trustees of a library district in which a withdrawal from the county free library system becomes effective on or after January 1, 2012, must comply with specified conditions prior to entering into a contract to operate the city's or district's library or libraries with a private contractor that will employ library staff.

FISCAL EFFECT: According to the Assembly Appropriations Committee, this bill has unknown costs to local agencies to comply with the provisions of this bill. Costs would depend on how often affected cities and counties utilize these contracts, and these costs are not likely to be reimbursable.

COMMENTS:

Please see the policy committee analysis for a full discussion of this bill.

Prior legislation:

AB 583 (Gomez), Chapter 196, Statutes of 2013

AB 438 (Williams), Chapter 611, Statutes of 2011

SB 906 (Alarcon) of 2003, failed passage by the Assembly

SB 1419 (Alarcon), Chapter 894, Statutes of 2002

Analysis Prepared by: Michael Bolden / P.E., R., & S.S. / (916) 319-3957

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