

ASSEMBLY BILL NO. 1250:
COUNTIES: CONTRACTS FOR PERSONAL SERVICES

August 18, 2017

SDCTA Position:

OPPOSE

Rationale for Position:

AB 1250 does not seem to provide a valid solution to high-cost or low-quality services. The additional cost and legal risk created by the regulations in AB 1250 could discourage counties from seeking outside professional service providers when necessary and could discourage contractors from bidding to provide services. Additionally, AB 1250 limits the ability of county officials to perform their duties and make judgments about how to best provide important services to their communities. This measure would greatly affect San Diego County, which relies heavily on contracting for services such as behavioral health.

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

Jurisdiction: State of California

Type: California State Assembly Bill

Vote: Majority vote of California Legislature

Status: Active Bill – In Senate Committee Process

Issue: Contracting in California Counties

Description: Prohibits counties from contracting for personal services currently or customarily performed by that county's employees unless the contract meets certain standards.

Fiscal Impact: This bill would create unknown but potentially significant compliance and implementation costs for local agencies. Additionally, should the bill result in an increase of in-house service provision at the county level, there could be corresponding increases to retirement obligations for county workers.

Background

California law currently allows county boards of supervisors to contract for specialized financial, economic, accounting, engineering, legal, medical, therapeutic, administrative, architectural, airport or building security, laundry, or linen services, and sometimes maintenance or custodial services. These private service providers must be specially trained and experienced to provide these services on behalf of the county.¹

¹ 3 California Gov. Code. Sec. 13000. 1978. *California Legislative Information*. Accessed 8 Aug. 2017. http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=31000

California law also currently establishes regulations for state agencies looking to contract for personal services.² These regulations address areas such as contractor performance measures, information sharing, bidding processes, and a demonstration of cost savings that would result from the proposed contract. The proponents of AB 1250 argue that insufficient regulations exist to govern such contracting at the local level.

The Proposal

Assembly Bill 1250 was authored and introduced by Assembly Member Reggie Jones-Sawyer and coauthored by Assembly Members Rob Bonta and Lorena Gonzalez Fletcher in February 2017. The bill would amend California law regarding contracting for personal services at the county level.

Contract Requirements

Beginning January 1, 2018, AB 1250 would require certain conditions to be met in order for counties and county agencies to contract out to a firm for personal services currently or customarily performed by county employees. Contracts must be awarded through a public competitive bidding process and may be terminated with notice provided if listed conditions are breached. These conditions include:

- The county must clearly demonstrate that actual significant cost savings over the duration of the proposed contract will be achieved. These savings cannot be eliminated by regular cost fluctuations over the period. Costs to be included are salary and benefits of new staff, as well as additional space, materials, and equipment needed.
- The county must clearly demonstrate that no displacement of county workers will be caused by the proposed contract. Displacement is defined as layoff, demotion, involuntary location or class transfer, and work schedule reductions.
- The potential economic advantage of awarding the contract cannot be outweighed by public interest in having the service provided by the county.
- Potential future contractor rate increases cannot pose significant economic risk to the county.
- Wages for proposed contractors must be at industry level and cannot significantly undercut county wage rates.
- The proposed contract cannot cause vacant county positions to remain vacant.
- The proposed contract cannot undermine county affirmative action or nondiscrimination efforts.
- The proposed contract must contain provisions about staff qualifications.

² 2 California Gov. Code. Sec. 19130. 2016. *California Legislative Information*. Accessed 8 Aug. 2017. http://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=19130.&lawCode=GOV

Contractor Requirements

For contracts in excess of \$100,000 annually, contractors must provide certain monthly information to the county, including subcontractor names, employee names and hourly rates, and independent contractors and their compensation. All of this information will be subject to the California Public Records Act, and thus must be made available upon request.

Contractors must also provide information about any charges, claims, or complaints filed against them with any government administrative agency over the past decade. They must also provide information about civil complaints filed against them in a state or federal court over the past decade, and any criminal complaints filed against the contractor or its officers at any time. Contractors must also disclose the total compensation of workers for the proposed work. A county can require further information to be provided if it deems so necessary.

The bill would also require counties to conduct an audit of such contracts, the cost of which is to be reimbursed by the contractor, in order to determine whether cost savings have been realized. Contracts cannot be renewed or extended until the results of this audit are considered.

If any of the provisions of the bill are found invalid, the remainder of the provisions will still apply. There are a number of exceptions listed in the bill that would allow counties to contract for personal services under various circumstances.

AB 1250 would create additional state-mandated requirements and costs for counties and county agencies. However, the Constitution of the State of California requires reimbursement to local agencies for any state-mandated costs. If the Commission on State Mandates views the bill as containing new state-mandated requirements, counties would be reimbursed for the cost of these new requirements.

Fiscal Impact

Costs created by AB 1250 include implementation and enforcement of auditing and reporting requirements, as well as staff time to review contracts. These costs would not likely be reimbursable by the state. It is possible that contractors may pass their increased regulatory costs on to counties in the form of higher contract costs.

Additionally, should the bill result in an increase of in-house service provision at the county level, there could be corresponding increases to retirement pension and medical obligations for county workers.

Governance Impact

The author states that AB 1250 is intended to limit wasted taxpayer dollars spent on contractor failure, as well as increase accountability and transparency for personal services contracts entered into by California counties.

Similar restrictions currently exist for state departments who contract out for personal services in California law. As with law regarding state contracting, AB 1250 would require contractors to

include overhead in cost calculations but would not require the same to be done by the county when it calculates costs for comparison unless those overhead costs are directly attributable to the service in question and would not exist otherwise. AB 1250 would impose further regulations on the contract procurement process for counties, especially with auditing and reporting requirements. Notably, contractors may typically be used more often at the county level as state funding is often funneled to counties to provide specialized services that are often performed by contractors, such as with behavioral health services.

Ambiguity exists in certain phrases of the bill, such as references to “economic risk,” “economic advantage,” and the weight of public interest. It could be argued that as this ambiguity could lead to legal risk, counties may be more likely to avoid going through the process of seeking outside contractors who may be more qualified than county employees to perform a given service. The absence of a competitive bidding process can increase the price and decrease the quality of services.

AB 1250 applies regulations to all counties in California regardless of their individual characteristics. It could be argued that, as different counties face different needs, the regulations created can have a negative effect on some counties more than others. For example, a county with a small population may have a greater need for outside specialists to perform community services.

This bill requires that a county demonstrate cost savings before entering into a personal services contract regardless of whether the purpose of the contract was to create cost savings. If it can be argued that a certain service could be “performed satisfactorily by county employees,” a contract may not be adopted so as to protect employment of county workers.

Related Legislation

SB 1419, authored by Senator Richard Alarcon in 2002, created similar restrictions as are being introduced in AB 1250 for school and community college districts.³ AB 428, authored by Assembly Member Das Williams in 2011, and AB 583, authored by Assembly Member Jimmy Gomez in 2013, also created similar restrictions for contracting in free libraries within counties.^{4 5}

According to the California Senate Committee on Governance and Finance analysis of AB 1250, since these three bills were adopted into law, no county free library has entered into a contract with a private firm for library services and school district contracting has been limited.⁶

³ Senator Richard Alarcon. “SB 1419 - An act to add Sections 45103.1 and 88003.1 to the Education Code, relating to personal services contracting” *California Legislature*. September 26, 2002.

⁴ Assembly Member Gomez, Jimmy. “AB 583 - An act to amend Sections 19104.5 and 19116 of the Education Code, relating to libraries.” *California Legislature*. August 28, 2013.

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201320140AB583

⁵ Assembly Member Williams, Das. “AB 438 - An act to amend Sections 19104 and 19116 of, and to add and repeal Section 19104.5 of, the Education Code, relating to libraries.” *California Legislature*. October 8, 2011.

http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201120120AB438

⁶ “Senate Committee on Governance and Finance Analysis.” *California State Senate Committee on Governance and Finance*. July 7, 2017.

Proponents (as of 6/30/17)

American Federation of State, County and Municipal Employees, AFL-CIO (Sponsor); California State Council of the Service Employees International Union (Sponsor); Association for Los Angeles Deputy Sheriffs; California Association of Professional Employees; California Compost Coalition; California Labor Federation; California Professional Firefighters; California School Employees Association; California Teachers Association; California Teamster Public Affairs Council; International Longshore and Warehouse Union; International Union of Operating Engineers; Los Angeles County Probation Officers Union; LIUNA, Locals 777 & 792; Orange County Employees Association; Professional and Technical Engineers, Local 21; San Diego County Court Employees Association; San Luis Obispo County Employees Association; State Building and Construction Trades Council; The Los Angeles County Professional Peace Officers Association; The Organization of SMUD Employees; UNITE; Utility Workers Union of America.

Opponents (as of 6/30/17)

Advent Group Ministries; Alameda County Community Food Bank; Alameda County Industries; Alliance Supporting Persons with Intellectual and Developmental Disabilities; Alternative Family Services, Amador Valley Industries; American Staffing Association; Aspirnet; Associated Builders and Contractors Inc., Association of Community Human Service Agencies; Aviva Family and Children's Services; Barry E Knight Speaks; Central Valley Chapter; Associated Builders and Contractors Inc., San Diego Chapter; Associated Builders and Contractors Inc., Southern California Chapter; Association for Los Angeles Deputy Sheriffs; Athens Services; Bay Counties SMaRT; Behavioral Health Contractors' Association; BLT Enterprises; Blue Line Transfer, Inc.; BMS Technologies; Bondurant Enterprises, Inc., DBA, Probar a Women; California Alliance of Child and Family Services; California Alternative Payment Program Association; California Ambulance Association; California Association of Alcohol and Drug Program Executives; California Association of Collectors; California Association of Food Banks; California Association of Joint Powers Authorities; California Association for Local Economic Development; California Association of Nonprofits; California Association of Professional Employees; California Association of Public Hospitals and Health Systems; California Business Properties Association; California Building Industry Association; California Business Properties Association; California Catholic Conference, Inc.; California Council of Community Behavioral Health Agencies; California Coalition for Youth; California Court Appointed Special Advocate Association; California District Attorneys Association; California Hospital Association; California Manufacturers and Technology Association; California Manufacturers and Technology Council; California Retailers Association; California Staffing Professionals; California State Association of Counties; California State Sheriff's Association; California Trucking Association; California Workforce Association; CASC Engineering and Consulting, Inc.; Centro la Familia Advocacy Services; Chambers of Commerce: California Chamber of Commerce, Alliance Ventura and Santa Barbara Counties, Camarillo, Cerritos, Culver City, Fresno, Fresno Area, Garden Grove,

Greater Irvine, Greater Lakewood, Greater Riverside, Hesperia, Lodi, Long Beach, Los Angeles Area, North Orange County, Oxnard, Palm Desert Area, Pleasant Hill, Rancho Cordova, Redondo Beach and Tourist Bureau, Santa Maria, Santa Barbara Region, Simi Valley, South Bay, Torrance, Vacaville, Visalia; Chief Probation Officers of California; Child Abuse Prevention Council of Contra Costa County; Child Advocates of Silicon Valley; Community Action Partnership of San Luis Obispo County; Community Bridges; Community Pantry; Computing Technology Industry Association; Contra Costa Health Services; Contra Costa Crisis Center; Counties: Alameda, Alpine, Amador, Butte, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn; Humboldt, Imperial, Kern, Kings, Lassen, Los Angeles, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Napa, Nevada, Orange, Placer, Riverside, Sacramento, San Bernardino, San Diego, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Tulare, Tuolumne, Ventura, Yolo, Yuba; County Behavioral Health Directors Association of California; County Health Executives Association of California; County of Kern Sheriff's Office; County of Los Angeles Department of Public Social Services; County Welfare Directors Association of California; CR&R, Inc.; David and Margaret Youth and Family Services; Desert Valley Disposal, Inc., East Bay Sanitary District; EDCO; Edgewood Center for Children and Families; Eminence Healthcare, Inc.; Emergency Food Bank Stockton/San Joaquin; Emergency Medical Directors Association of California; Emergency Medical Services Administrators Association of California; Escondido Disposal, Inc.; Extraordinary Families; Family Health and Support Network, Inc.; Families in Transition of Santa Cruz County; Family Care Network, Inc.; Firest 5 Association of California; First Place for Youth; Food Bank of Contra Costa and Solano; Food for People Inc; Fresno County Economic Development Corporation; Garaventa Enterprises; Gateway Chamber Alliance; Glenn County Health and Human Services Agency; Hathaway-Sycamores Child and Family Services; HdL Companies; Hillsides; Hillview Mental Health Center Inc.; Howard Jarvis Taxpayers Association; Humboldt County Sheriff's Office; Information Technology Alliance for Public Sector; Inland Empire Disposal Association; Jarvis Fay Doporto & Gibson, LLP; Kern County Behavioral Health and Recovery Services; Kern Refuse Disposal, Inc.; Library Systems Services; Los Angeles County Business Federation; Los Angeles Regional Food Bank; Marin County Council of Mayors and Councilmembers; Mental Health America of Los Angeles; Maryvale; Mendocino County Health Centers; Monarch Services in Santa Cruz County; Monterey County Sheriff's Office; Mt. Diablo Resource Recovery; Muniservices, LLC.; National Federation and Independent Business; OC Food Bank; Olive Crest; Optimist Youth Homes & Family Services; Orange County Business Council; Orange County Sanitation District; Penny Lane Centers; Reading and Beyond; Rebekah Children's Services; Recology, Inc.; Redwood Community Services, Inc.; Redwood Empire Food Bank; Regional Access Project Foundation; Republic Services, Inc.; Rural County Representatives of California; SafeHouse; San Bernardino County Sheriff's Department; San Diego Food Bank; San Francisco CASA; Second Harvest Food Bank; Seneca Family of Agencies; SF-Marin Food Bank; Shasta Health Assessment and Redesign Collaborative; Silicon Valley Council of Nonprofits; Smiles and Tears Children and Family Services, Inc.; Soft-Pak Integrated Software Solutions; South San Francisco Scavenger Company, Inc.; Southern Humboldt Community Park; Southwest California Legislative Council; StarVista; State Association of County Auditors; State Humane Association of California; Tarzana Treatment Centers; TechNet; Tehama County Social Services; The Child Abuse Prevention Center; The Heart Matters Foster Family Agency; The Riverside Area Rape Crisis Center; The Silicon Valley Organization; The Transportation Agency for Monterey County; Trinity County Health and



Human Services, Turlock Scavenger; Turlock Transfer; Turning Point of Central California; United Advocates for Children and Families; United Ways of California; Uplift Family Services; Urban Counties of California; Valley Industry and Commerce Association; Varner Bros., Inc.; Ventura Council of Governments; Victor Treatment Centers; Vista Del Mar Child and Family Services; VT Accounting Associates, LLP; Walden Family Services; WestCoast Children's Clinic; Without Permission; Whole Person Learning.

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3 California Gov. Code. Sec. 13000. 1978. *California Legislative Information*. Accessed 8 Aug. 2017.
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