

PROPOSED AMENDMENTS

**RN 17 20920 04
09/08/17 11:51 AM
SUBSTANTIVE**

PROPOSED AMENDMENTS TO ASSEMBLY BILL NO. 1250

AMENDED IN SENATE SEPTEMBER 5, 2017

AMENDED IN SENATE JUNE 21, 2017

AMENDED IN ASSEMBLY MAY 30, 2017

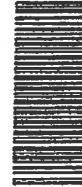
AMENDED IN ASSEMBLY MAY 30, 2017

AMENDED IN ASSEMBLY APRIL 25, 2017

AMENDED IN ASSEMBLY APRIL 17, 2017

AMENDED IN ASSEMBLY APRIL 4, 2017

CALIFORNIA LEGISLATURE—2017—18 REGULAR SESSION



RN1720920

ASSEMBLY BILL

No. 1250

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

February 17, 2017

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1250, as amended, Jones-Sawyer. Counties: contracts for personal services.

Existing law authorizes the board of supervisors of a county to contract for special services on behalf of various public entities with persons who are specially trained, experienced, expert, and competent to perform the special services, as prescribed. These services include financial, economic, accounting, engineering, legal, and other specified services.

PROPOSED AMENDMENTS

AB 1250

— 2 —

**RN 17 20920 04
09/08/17 11:51 AM
SUBSTANTIVE**

This bill would establish specific standards for the use of personal services contracts by counties. The bill would allow a county or county agency to contract for personal services currently or customarily performed by employees, as applicable, when specified conditions are met. Among other things, the bill would require the county to clearly demonstrate that the proposed contract will result in actual overall costs savings to the county and also to show that the contract does not cause the displacement of county workers. The bill would exempt certain types of contracts from its provisions, and would exempt a city and county from its provisions. By placing new duties on local government agencies, the bill would impose a state-mandated local program.

The bill also would provide that its provisions are severable.

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

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

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

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

Page 3

1 SECTION 1. Section 31000.10 is added to the Government
2 Code, to read:
3 31000.10. The purpose of this section is to establish standards
4 for the use of personal services contracts by counties.
5 (a) If otherwise permitted by law, a county or county agency
6 may contract for personal services currently or customarily
7 performed by that county's employees when all the following
8 conditions are met:
9 (1) The board of supervisors or county agency clearly
10 demonstrates that the proposed contract will result in actual overall
11 cost savings to the county for the duration of the entire contract
12 as compared with the county's actual costs of providing the same
13 services, provided that:

PROPOSED AMENDMENTS

**RN 17 20920 04
09/08/17 11:51 AM
SUBSTANTIVE**

Page 3 14 (A) In comparing costs, there shall be included the county's
15 additional cost of providing the same service as proposed by a
16 contractor. These additional costs shall include the salaries and
17 benefits of additional staff that would be needed and the cost of
18 additional space, equipment, and materials needed to perform the
19 function.

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

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

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

36 (3) The contract does not cause the displacement of county
37 employees. "Displacement" includes layoff, demotion, involuntary
38 transfer to a new class, involuntary transfer to a new location
1 requiring a change of residence, and time base reductions.
2 "Displacement" does not include changes in shifts or days off or
3 reassignment to other positions within the same class and general
4 location.

Page 4 5 (4) The contract does not cause vacant positions in county
6 employment to remain unfilled for positions in which employees
7 perform the same services.

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

14 (6) The amount of savings clearly justifies the size and duration
15 of the contracting agreement.

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

PROPOSED AMENDMENTS

AB 1250

— 4 —

**RN 17 20920 04
09/08/17 11:51 AM
SUBSTANTIVE**

Page 4 21 (8) The contract includes specific provisions pertaining to the
22 qualifications of the staff that will perform the work under the
23 contract, as well as assurance that the contractor's hiring practices
24 meet any applicable nondiscrimination, affirmative action
25 standards.

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

30 (10) The contract is with a firm. "Firm" means a corporation,
31 limited liability company, partnership, nonprofit organization, or
32 sole proprietorship.

Page 5 27 (b) ~~The contract~~ *Personal services contracts in excess of one*
+ *hundred thousand dollars (\$100,000) annually* shall provide that
28 the county is entitled to receive a copy of any records related to
29 the contractor's or any subcontractor's performance of the contract,
30 and that, in addition to records specifically requested by the county,
31 every month the contractor shall furnish the county with: (i) the
32 names of any subcontractors providing services under the contract;
33 (ii) the names of the employees of the contractor and any
34 subcontractors providing services pursuant to the contract and their
35 hourly rates; and (iii) the names of any workers providing services
36 pursuant to the contract as independent contractors and the
37 compensation rates for those workers. *Names need not be provided*

+ *for individuals participating in the address confidentiality program*
+ *pursuant to Chapter 3.1 (commencing with Section 6205) of*
+ *Division 7 who have requested that their names not be provided*
+ *or for individuals working as undercover investigators or in a*
+ *similar capacity. The contract shall provide that all records*

38 provided to the county by the contractor shall be subject to the
39 California Public Records Act (Chapter 3.5 (commencing with
40 Section 6250) of Division 7 of Title 1). In furtherance of this

Page 6 1 subdivision, contractors and any subcontractors shall maintain
2 records related to performance of the contract that ordinarily would
3 be maintained by the county in performing the same functions.

21 (c) When otherwise permitted by law, personal services
23 contracting shall also be permissible when any of the following
24 conditions are met:

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

Amendment 1

Amendment 2

PROPOSED AMENDMENTS

**RN 17 20920 04
09/08/17 11:51 AM
SUBSTANTIVE**

Page 6 28 (2) The contract is between the county and another government
29 entity for services to be performed by employees of the other
30 government entity. An entity established pursuant to Section 9400
31 of the Welfare and Institutions Code shall be deemed a government
32 entity for purposes of this section when contracting with the county
33 to provide for the delivery of in-home supportive services pursuant
34 to Section 12301.6 of the Welfare and Institutions Code.

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

Page 7 1 (4) The services contracted cannot be performed satisfactorily
2 by county employees, or are of such a highly specialized or
3 technical nature that the necessary expert knowledge, experience,
4 workforce sufficiency, and ability are not available among county
5 employees.

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

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

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

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

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

PROPOSED AMENDMENTS

AB 1250

- 6 -

RN 17 20920 04

09/08/17 11:51 AM

SUBSTANTIVE

Page 7 34 (10) The contractor will provide legal services to the county
35 solely on a contingency fee or hourly basis.

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

Page 8 1 (12) The contractor will conduct training courses for which
2 appropriately qualified county employee instructors are not
3 available, provided that permanent instructor positions in academies
4 or similar settings shall be filled by county employees.

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

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

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

13 (1) A contract for services described in Section 4525 or 4529.10.

14 (2) A contract for construction, alteration, demolition,
15 installation, repair, or maintenance work that is subject to Chapter
16 1 (commencing with Section 1720) of Part 7 of Division 2 of the
17 Labor Code or a contract for highly specialized data, software, or
18 services related to that construction, alteration, demolition,
19 installation, repair, or maintenance work.

20 (3) A contract for public transit services, including paratransit
21 services, if the county's transit services are fully funded by Federal
22 Transit Administration assistance and the county is thereby subject
23 to the guidelines established in FTA Circular 4220.1F or any
24 subsequent guidelines or revisions issued by the Federal Transit
25 Administration.

26 (4) A contract for street sweeping services.

27 (5) A contract for solid waste handling services authorized by
28 or made pursuant to Section 40059 of the Public Resources Code.
29 As used in this paragraph, "solid waste handling services" means
30 the collection, transportation, storage, transfer, conversion,
31 processing, recycling, composting, or disposal of solid wastes.

32 (6) Any contract, regardless of funding source, with a contractor
33 that provides health services to any department, agency, unit, or
34 other component of a county's integrated health and hospital
35 system, including, but not limited to, hospitals and clinics, public
36 health, health plans, substance abuse treatment, emergency medical

PROPOSED AMENDMENTS

**RN 17 20920 04
09/08/17 11:51 AM
SUBSTANTIVE**

Page 8 37 services, or behavioral and mental health. This paragraph shall
 38 broadly apply to those contractors, including contracts with those
 39 contractors for other services by departments, agencies, units, or
 40 components separate from a county’s integrated health and hospital
 Page 9 1 system. This paragraph shall only apply to a county that, on July
 2 1, 2017, operated a health plan as part of the Covered California
 3 exchange established pursuant to Title 22 (commencing with
 4 Section 100500). This paragraph shall not apply to contracts that
 5 would cause the displacement of county employee or loss of county
 6 employee positions. For the purposes of this paragraph,
 7 “displacement” shall have the same meaning as in paragraph (3)
 8 of subdivision (a).

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

+ (g) *This section shall apply to personal services contracts*
 + *entered into on or after January 1, 2018. This section shall not*
 + *apply to the renewal of a personal services contract on or after*
 + *January 1, 2018, if the contract was entered into before January*
 + *1, 2018, regardless of whether the contract is renewed or rebid*
 + *with the existing contractor or with a new contractor, or is*
 + *amended in nonmaterial ways.*

Amendment 3

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

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

PROPOSED AMENDMENTS

AB 1250

— 8 —

**RN 17 20920 04
09/08/17 11:51 AM
SUBSTANTIVE**

Page 9 37 by the state or otherwise be subject to Section 6 of Article XIII B
38 of the California Constitution.
39 However, if the Commission on State Mandates determines that
40 this act contains other costs mandated by the state, reimbursement
Page 10 1 to local agencies and school districts for those costs shall be made
2 pursuant to Part 7 (commencing with Section 17500) of Division
3 4 of Title 2 of the Government Code.

O