



ASSEMBLY BILL 1250 (JONES-SAWYER) COUNTIES: CONTRACTS FOR LOCAL SERVICES

Guest Commentary

By: Clare Gibson, an attorney at Jarvis, Fay, Doporto & Gibson, LLP

As an attorney who specializes in California public contract law for cities and other local agencies, I am sometimes asked to provide expert analysis of pending legislation, most recently for AB 1250 (Jones-Saywer), which would restrict county contracts for personal services. AB 1250 is deeply flawed. It would impose novel, complex and burdensome restrictions on county service contracts in a manner that is simply unprecedented under existing law.

This bill purports to promote cost savings. But it will actually increase public costs - substantially - to provide routine and essential county services. For example, the procurement procedures for a small professional service agreement would be more complicated and costly than the any bidding procedures that currently apply to multi-million dollar infrastructure projects.

Counties must rely on service contracts instead of a permanent workforce when 1) the services require special expertise and training; 2) the services are too limited to support permanent staffing; and/or 3) the services can be provided at a lower cost on a contract basis. Laws that have been on the books for decades recognize the importance of flexibility for providing services based on local needs and local resources. But AB 1250 is designed to make contracting for services so difficult and costly that counties will be forced to increase expenditures for permanent employees, reduce services, or both.

Counties are already burdened with escalating pension costs and unfunded liability. If a county cannot afford to contract out under AB 1250 or to expand permanent payroll and pension costs, the only choice will be a blanket reduction in community services - including health and safety services. The impact on poor and rural communities with more limited financial and workforce resources will be especially harsh.

AB 1250 will also generate costly legal challenges, all at the public expense. It will require years of litigation just to determine the scope and reach of AB 1250. Many of its provisions, including core terms, are vague and ambiguous and open to conflicting interpretations. Fundamental terms are undefined, including the key term "personal services contracts." Similarly, there is no objective basis to determine which services are the "same services" that are "customarily" performed by county employees. These are but two examples. AB 1250 is riddled with ambiguities that will result in costly disputes.

Proponents of AB 1250 claim the bill promotes transparency. But public contracting is already very transparent. California's open meeting laws (the Brown Act) and Public Records Act already ensure that the public has full information regarding public service contracts. AB 1250 does not increase this transparency. Instead, it requires private parties to publicly disclose private financial information, including names and salaries of individuals who are not directly involved in providing services. This adds no public benefit. It will only discourage consultants and businesses from contracting with counties.

By making it costly and difficult to enter into county service contracts, this bill will affect small and local businesses that have relied upon county contracts. Counties, in turn, rely upon qualified, experienced service providers for economical delivery of high quality services that cannot be provided by staff. Communities will ultimately bear the burden of reduced and lower quality services. AB 1250 should be opposed because it will increase costs and reduce delivery of essential public services with no offsetting benefit to the public

AB 1250, opposed by MuniServices, has been referred to the Senate Governance and Finance Committee. MuniServices retained the expertise of Ms. Clare Gibson an attorney at Jarvis, Fay, Doporto & Gibson, LLP, who specializes in public contract and procurement law for California cities and local agencies, to help guide the firm's advocacy efforts in opposing the bill. Although recent amendments have carved cities out of the bill's scope (language is pending), the same concerns are applicable to county jurisdictions. Ms. Gibson can be reached at (510) 238-1400 or via email at cgibson@jarvisfay.com.