



June 26, 2017

The Honorable Mike McGuire
Chair, Senate Governance and Finance Committee
State Capitol Building, Room 408
Sacramento, CA 95814

RE: **Assembly Bill 1250 (Jones-Sawyer). Counties: contracts for personal services.**
Oppose – As Amended June 21, 2017
Hearing Date: To be set – Senate Governance and Finance Committee

Dear Senator McGuire:

The California State Association of Counties (CSAC), Urban Counties of California (UCC), Rural County Representatives of California (RCRC) and the California Association of Joint Powers Authorities (CAJPA) respectfully oppose Assembly Bill 1250 (Jones-Sawyer), related to county contracts for services. This measure would establish burdensome, worrisome contract procurement and renewal requirements for 57 of California's 58 counties that are unlike any other imposed on any state or local agency in California. In addition, it creates hurdles for contractors that include non-profits, community based organizations, and private service providers that will create a chilling effect on county contracting opportunities. The impacts of this bill are far-reaching and hurt the most vulnerable Californians and at the same time tie the hands of counties in their most basic administrative functions. In doing so, residents, other local governments, and the State will suffer the consequences as county contracts for services increase in costs and services dwindle or simply stop.

Specifically, AB 1250 would establish requirements for a county (with the exception of the San Francisco, a city and county) before it may enter into a contract or renew or extend an existing contract after January 1, 2018 with a "firm" for personal services, with limited exceptions. The term "firm" is defined as corporation, partnership, nonprofit organization, or sole proprietorship. The term "personal services" is not defined in the relevant code sections or any of the cross-referenced code sections. Examples of services areas where AB 1250 would apply include general health services, mental and behavioral health services, criminal justice and public safety services, public works, environmental stewardship services, transportation, and essential government administration including legal services, information technology support, and records retention.

Counties rely on contracted service providers for many reasons. In some instances it is to bring in expertise. Other times it is the most effective way to reach residents who would otherwise not seek county assistance due to stigma or cultural beliefs. It also is a way for counties to maximize local resources and taxpayer dollars. Some counties may choose to contract with services providers because the benefits to their communities far outweigh a dollar and cents analysis.

We are deeply concerned that AB 1250 will create a de facto prohibition on county service contracts due to the onerous requirements and costs drivers. It will also create a chilling effect on a county's ability to attract interested parties to respond to contract proposals. Our concerns are outlined below.

AB 1250 does not Mirror State Contracting Rules for Counties

It is a gross misstatement to say that AB 1250 is simply applying state contracting law to counties. The proposed limitations on county contracting authority are unlike any other imposed on a state or local agency in California. The bill applies the general state contracting statute (Government Code Section 19130) to counties and then piles on additional hurdles and sets forth numerous requirements for contractors seeking to partner with counties. The differences include:

- The State may enter into contracts when it may result in vacant positions remaining unfilled. Counties may not under AB 1250.
- Contracts with the State are not automatically eligible for termination if there is a material breach.
- Contractors with the State are not required to pay for a cost-savings analysis with specific criteria to be met before the State may enter into a contract; pay for a performance review and cost-savings audit before extending or renewing a contract with the State; provide names and wages of their private employees, and their subcontractors' employees, on a monthly basis to the State and have their employees' name and wages subject to the California Public Records Act.
- Contractors with the State for contracts valued annually at \$100,000 or more are not required to provide:
 - 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.
 - A description of all civil complaints filed against the contractor in any state or federal court during the prior 10 years.
 - 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.
 - A description of any debarments of the contractor by any public agency or licensing body at any time.
 - The total compensation, including salaries and benefits, the contractor provides to workers performing work similar to that to be provided under the contract.
 - 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.

Finally, it also must be noted that the State itself has dozens of exemptions in the Health and Safety Code and Welfare and Institutions Code where the state may contract with public or private entities and are not required to follow GC 19130. Examples include contracting for perinatal services, electronic medical records maintenance, services for undocumented residents, child health and disability programs, and mental health and substance abuse disorder services. We are unaware of the logic behind AB 1250's seemingly random application of certain requirements to certain local agencies for some services or any solution these rigorous requirements will provide.

County Contracting Subject to Transparency Requirements

Describing AB 1250 as a contracting transparency measure is a disservice to the millions of Californians who rely daily on public services made possible through county agencies that in turn rely on contracted service providers. Counties are subject to two important transparency and accountability Acts: the Ralph M. Brown Act (Brown Act) for open meetings and the California Public Records Act (PRA), both of which ensure access to the decisions before local agencies. Our associations strongly support counties' faithful adherence to these important accountability measures.

County contracts are awarded in public meetings that are subject to the Brown Act, which provides a 72-hour notice of the agenda, opportunities for public comment, and mandates that information presented during public meetings is made publicly available. The PRA also affords open access to county service contracts which means a person from any county, state or country may see who a county is contracting with, the amount of that contract and the scope of services provided. Should issues arise, the Brown Act contains several provisions to cure and correct possible missteps by a local agency. The PRA also offers remedies for when access may have been denied. If there is a persistent problem that is not sufficiently addressed in existing statute we would welcome the opportunity to collaboratively find a remedy. AB 1250 offers no such solution.

Litigation and Administrative Burdens Related to Personal Information

Counties are deeply concerned that opening up private employee data as required under AB 1250 and making it subject to the PRA, in which any person from any county, state or country can obtain access, will drain county resources. First, it will invite a new wave of data mining like was seen with public employee salary and pension information that will bog down county departments. California's local agencies do not have cost recovery provisions associated with PRA under Proposition 42 (2014) where all costs are placed squarely on the shoulders of county.

Second, it disregards constitutional privacy rights by requiring the publication of personal financial information about private employees. Information about total rates charged by an individual hired through a contract may be included in a contract subject to the PRA, since it can be relevant to the consideration or ultimate award of the contract. However, AB 1250 sets forth an intrusive requirement that offers no benefit to the public and will discourage contracting with counties, thereby reducing competition and driving up costs yet again.

Implementation Issues under AB 1250

AB 1250 suffers from imprecise language, undefined terms, and erroneous cross-references that will make implementation exceedingly difficult and could invite further litigation about contract awarding. Even with corrections to drafting, services will suffer due to delays in contracts being awarded and subsequently renewed following the initial analysis and later performance assessment and cost savings audits.

AB 1250 largely ignores the timing it often takes to place an item before the Board of Supervisors. If a one year contract could be extended, audits would likely begin after just six months to ensure they are completed in time to avoid service interruptions. The necessary time internal auditors would need to complete the audits for all of the county contracts would create a backlog, unless external services were hired to assist. Of course, those same contracted auditors needed would themselves be subject to the provisions of AB 1250.

This, however, is not simply an administrative inconvenience. AB 1250 would be detrimental to service continuity for sensitive populations. Programs that help at-risk youth or victims of sex trafficking, provide mental and behavioral treatment, or operate food banks cannot simply start and stop without having a real impact on vulnerable Californians who rely on the safety net of services provided by counties.

In closing, we must stress the very dangerous reality AB 1250 sets forth for counties and the very dangerous precedent it establishes for the State and other local agencies. AB 1250 will not improve services, reduce costs, or protect employees. Counties are not exaggerating when they say services will decrease or simply get cut, either where AB 1250 would be directly applied or in other program areas so that critical local programs and the most basic county administrative functions may continue.

We are unaware of a specific, current problem that AB 1250 would resolve or prevent. We are very much aware, however, of the very real harm AB 1250 would cause the residents of California. For the aforementioned reasons, we oppose AB 1250. If you should have any questions regarding our position, please contact Dorothy Johnson with CSAC at (916) 650-8133; Jolena Voorhis with UCC at (916) 327-7531; Paul A. Smith with RCRC at (916) 447-4806; or Faith Lane with CAJPA at (916) 441-5050.

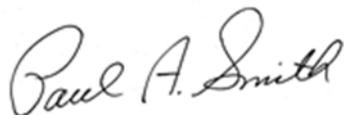
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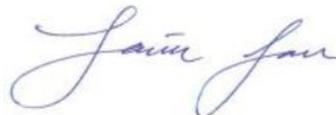
Dorothy Johnson, Legislative Representative
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Faith Lane, Legislative Advocate
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cc: The Honorable Reggie Jones-Sawyer, California State Assembly
The Honorable Lorena Gonzalez Fletcher, California State Assembly
The Honorable Rob Bonta, California State Assembly
Honorable Members, Senate Governance and Finance Committee
Jimmy MacDonald, Consultant, Senate Governance and Finance Committee
Ryan Eisberg, Consultant, Senate Republican Caucus
Tom Dyer, Chief Deputy Legislative Secretary, Office of Governor Brown