



SOLANO COUNTY

Legislative Committee Meeting

Committee
Supervisor Erin Hannigan (Chair)
Supervisor John M. Vasquez

Staff
Michelle Heppner

June 19, 2017

1:30 p.m.

Solano County Administration Center
Sixth Floor Conference Center, Room 6003
675 Texas Street
Fairfield, CA 94533

AGENDA

- i. **Introductions** (Attendees)
- ii. **Public Comment** (Items not on the agenda)
- iii. **Federal Legislative Update** (Waterman & Associates)
 - Health reform update
 - FY 18 budget and appropriations
 - Infrastructure plan update
- iv. **Update from Solano County Legislative Delegation** (Representative and/or Staff)
- v. **Report on State Budget and Legislation and consider making a recommendation for a position on legislation** (Karen Lange)

Legislative Bills for Consideration

[AB 1250](#) ([Jones-Sawyer](#) D) Counties and cities: contracts for personal services.
Current Analysis: 05/30/2017 [Assembly Floor Analysis \(text 5/30/2017\)](#)

[SB 649](#) ([Hueso](#) D) Wireless telecommunications facilities.
Current Analysis: 05/30/2017 [Senate Floor Analyses \(text 5/2/2017\)](#)

State Budget Update

- FY2017/18 State Budget

Other

- Discuss 2018 State and Federal Legislative Platform Prep

- vi. **Next Meeting: To be determined.**
- vii. **Adjourn**

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

ASSEMBLY BILL

No. 1250

**Introduced by Assembly Member Jones-Sawyer
(Coauthor: Assembly Member Gonzalez Fletcher)**

February 17, 2017

An act to add Sections 31000.10 and 37103.1 to the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1250, as amended, Jones-Sawyer. Counties and cities: 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. Existing law also authorizes legislative bodies of 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.

This bill would establish specific standards for the use of personal services contracts by counties and cities. Beginning January 1, 2018, the bill would allow a county or county agency, or a city or city 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 or city to clearly demonstrate that the proposed contract will result in actual overall costs savings to the county or city and also to show that the contract does not cause the displacement of county or city workers. The bill would require a contract entered into under these provisions to specify that it may be terminated upon material breach, if notice is provided, as specified. Additionally, the bill would require the county or city to conduct an audit of the contract to determine whether cost savings have been realized and would require the contractor to reimburse the cost of the audit. The bill would impose additional disclosure requirements for contracts exceeding \$100,000 annually. The bill would exempt certain types of contracts from its provisions, and would exempt a ~~chapter~~ *charter* city 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, if the Commission on State Mandates determines that the bill contains costs 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:

- 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

1 performed by ~~county~~ *that county's* employees when all the
2 following conditions are met:

3 (1) The board of supervisors or county agency clearly
4 demonstrates that the proposed contract will result in actual overall
5 cost savings to the county for the duration of the entire contract
6 as compared with the county's actual costs of providing the same
7 services, provided that:

8 (A) In comparing costs, there shall be included the county's
9 additional cost of providing the same service as proposed by a
10 contractor. These additional costs shall include the salaries and
11 benefits of additional staff that would be needed and the cost of
12 additional space, equipment, and materials needed to perform the
13 function.

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

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

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

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

37 (4) The contract does not cause vacant positions in county
38 employment to remain unfilled.

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

1 (6) The savings shall be large enough to ensure that they will
2 not be eliminated by private sector and county cost fluctuations
3 that could normally be expected during the contracting period.

4 (7) The amount of savings clearly justifies the size and duration
5 of the contracting agreement.

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

9 (9) The contract includes specific provisions pertaining to the
10 qualifications of the staff that will perform the work under the
11 contract, as well as assurance that the contractor’s hiring practices
12 meet any applicable nondiscrimination, affirmative action
13 standards.

14 (10) The potential for future economic risk to the county from
15 potential contractor rate increases is minimal.

16 (11) The contract is with a firm. “Firm” means a corporation,
17 partnership, nonprofit organization, or sole proprietorship.

18 (12) The potential economic advantage of contracting is not
19 outweighed by the public’s interest in having a particular function
20 performed directly by county government.

21 (13) The contract shall provide that it may be terminated at any
22 time by the county without penalty if there is a material breach of
23 the contract and notice is provided at least 30 days before
24 termination.

25 (14) If the contract is for personal services in excess of one
26 hundred thousand dollars (\$100,000) annually, all of the following
27 shall occur:

28 (A) The county shall require the contractor to disclose all of the
29 following information as part of its bid, application, or answer to
30 a request for proposal:

31 (i) A description of all charges, claims, or complaints filed
32 against the contractor with any federal, state, or local administrative
33 agency during the prior 10 years.

34 (ii) A description of all civil complaints filed against the
35 contractor in any state or federal court during the prior 10 years.

36 (iii) A description of all state or federal criminal complaints or
37 indictments filed against the contractor, or any of its officers,
38 directors, or managers, at any time.

39 (iv) A description of any debarments of the contractor by any
40 public agency or licensing body at any time.

1 (v) The total compensation, including salaries and benefits, the
2 contractor provides to workers performing work similar to that to
3 be provided under the contract.

4 (vi) The total compensation, including salaries, benefits, options,
5 and any other form of compensation, provided to the five highest
6 compensated officers, directors, executives, or employees of the
7 contractor.

8 (vii) Any other information the county deems necessary to
9 ensure compliance with this section.

10 (B) The contract shall provide that the county is entitled to
11 receive a copy of any records related to the contractor's or any
12 subcontractor's performance of the contract, and that, in addition
13 to records specifically requested by the county, every month the
14 contractor shall furnish the county with: (i) the names of any
15 subcontractors providing services under the contract; (ii) the names
16 of the employees of the contractor and any subcontractors
17 providing services pursuant to the contract and their hourly rates;
18 and (iii) the names of any workers providing services pursuant to
19 the contract as independent contractors and the compensation rates
20 for those workers. The contract shall provide that all records
21 provided to the county by the contractor shall be subject to the
22 California Public Records Act (Chapter 3.5 (commencing with
23 Section 6250) of Division 7 of Title 1). In furtherance of this
24 subdivision, contractors and any subcontractors shall maintain
25 records related to performance of the contract that ordinarily would
26 be maintained by the county in performing the same functions.

27 (C) The county shall include in the contract specific, measurable
28 performance standards and provisions for a performance audit by
29 the county, or an independent auditor approved by the county, to
30 determine whether the performance standards are being met and
31 whether the contractor is in compliance with applicable laws and
32 regulations. The county shall not renew or extend the contract prior
33 to receiving and considering the audit report.

34 (D) The contract shall include provisions for an audit by the
35 county, or an independent auditor approved by the county, to
36 determine whether and to what extent the anticipated cost savings
37 have actually been realized. The county shall not renew or extend
38 the contract before receiving and considering the audit report. The
39 contractor shall reimburse the county for the cost of the audit.

1 Contractors shall be prohibited from factoring the costs of the audit
2 into the contract costs with the county.

3 (b) This section does not preclude a county from adopting more
4 restrictive rules regarding the contracting of public services.

5 (c) When otherwise permitted by law, the absence of any
6 requirement of subdivision (a) shall not prevent personal services
7 contracting when any of the following conditions are met:

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

11 (2) The contract is between the county and another government
12 entity for services to be performed by employees of the other
13 government entity.

14 (3) The services contracted cannot be performed satisfactorily
15 by county employees, or are of such a highly specialized or
16 technical nature that the necessary expert knowledge, experience,
17 and ability are not available among county employees.

18 (4) The services are incidental to a contract for the purchase or
19 lease of real or personal property. Contracts under this criterion,
20 known as “service agreements,” shall include, but not be limited
21 to, agreements to service or maintain office equipment or
22 computers that are leased or rented.

23 (5) The legislative, administrative, or legal goals and purposes
24 cannot be accomplished through the utilization of county
25 employees. Contracts are permissible under this criterion to protect
26 against a conflict of interest or to ensure independent and unbiased
27 findings in cases where there is a clear need for a different, outside
28 perspective. These contracts shall include, but not be limited to,
29 obtaining expert witnesses in litigation.

30 (6) The nature of the work is such that the standards of this part
31 for emergency appointments apply. These contracts shall conform
32 with Section 31000.4.

33 (7) Public entities or officials need private counsel because a
34 conflict of interest on the part of the county counsel’s office
35 prevents it from representing the public entity or official without
36 compromising its position. These contracts shall require the written
37 consent of the county counsel.

38 (8) The contractor will provide legal services to the county
39 solely on a contingency fee basis.

1 (9) The contractor will provide equipment, materials, facilities,
2 or support services that could not feasibly be provided by the
3 county in the location where the services are to be performed.

4 (10) The contractor will conduct training courses for which
5 appropriately qualified county employee instructors are not
6 available, provided that permanent instructor positions in academies
7 or similar settings shall be filled by county employees.

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

11 (d) This section shall apply to all counties, including counties
12 that have adopted a merit or civil service system.

13 ~~(e) (1) This section does not apply to any contract for services~~
14 ~~described in Section 4525 or 4529.10.~~

15 ~~(2) This section does not apply to any contract that is subject~~
16 ~~to Chapter 1 (commencing with Section 1720) of Part 7 of Division~~
17 ~~2 of the Labor Code.~~

18 ~~(3) This section does not apply to a contract for public transit~~
19 ~~services, including paratransit services, if the county's transit~~
20 ~~services are fully funded by Federal Transit Administration~~
21 ~~assistance and the county is thereby subject to the guidelines~~
22 ~~established in FTA Circular 4220.1F or any subsequent guidelines~~
23 ~~or revisions issued by the Federal Transit Administration.~~

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

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

26 *(2) A contract that is subject to Chapter 1 (commencing with*
27 *Section 1720) of Part 7 of Division 2 of the Labor Code.*

28 *(3) A contract for public transit services, including paratransit*
29 *services, if the county's transit services are fully funded by Federal*
30 *Transit Administration assistance and the county is thereby subject*
31 *to the guidelines established in FTA Circular 4220.1F or any*
32 *subsequent guidelines or revisions issued by the Federal Transit*
33 *Administration.*

34 *(4) A contract for street sweeping services.*

35 *(5) A contract for solid waste handling services authorized by*
36 *or made pursuant to Section 40059 of the Public Resources Code.*
37 *As used in this paragraph, "solid waste handling services" means*
38 *the collection, transportation, storage, transfer, conversion,*
39 *processing, recycling, composting, or disposal of solid wastes.*

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

8 (g) This section shall apply to contracts for personal services
 9 currently or customarily performed by ~~county employees~~ *the*
 10 *employees of a county* entered into, renewed, or extended on or
 11 after January 1, 2018.

12 SEC. 2. Section 37103.1 is added to the Government Code, to
 13 read:

14 37103.1. The purpose of this section is to establish standards
 15 for the use of personal services contracts by cities.

16 (a) If otherwise permitted by law, a city or city agency may
 17 contract for personal services currently or customarily performed
 18 by ~~city~~ *that city's* employees when all the following conditions
 19 are met:

20 (1) The city council or city agency clearly demonstrates that
 21 the proposed contract will result in actual overall cost savings to
 22 the city for the duration of the entire contract as compared with
 23 the city's actual costs of providing the same services, provided
 24 that:

25 (A) In comparing costs, there shall be included the city's
 26 additional cost of providing the same service as proposed by a
 27 contractor. These additional costs shall include the salaries and
 28 benefits of additional staff that would be needed and the cost of
 29 additional space, equipment, and materials needed to perform the
 30 function.

31 (B) In comparing costs, there shall not be included the city's
 32 indirect overhead costs unless these costs can be attributed solely
 33 to the function in question and would not exist if that function was
 34 not performed in city service. Indirect overhead costs shall mean
 35 the pro rata share of existing administrative salaries and benefits,
 36 rent, equipment costs, utilities, and materials.

37 (C) In comparing costs, there shall be included in the cost of a
 38 contractor providing a service any continuing city costs that would
 39 be directly associated with the contracted function. These

1 continuing city costs shall include, but not be limited to, those for
2 inspection, supervision, and monitoring.

3 (2) Proposals to contract out work shall not be approved solely
4 on the basis that savings will result from lower contractor pay rates
5 or benefits. Proposals to contract out work shall be eligible for
6 approval if the contractor's wages are at the industry's level and
7 do not significantly undercut city pay rates.

8 (3) The contract does not cause the displacement of city
9 employees. "Displacement" includes layoff, demotion, involuntary
10 transfer to a new class, involuntary transfer to a new location
11 requiring a change of residence, and time base reductions.
12 "Displacement" does not include changes in shifts or days off or
13 reassignment to other positions within the same class and general
14 location.

15 (4) The contract does not cause vacant positions in city
16 employment to remain unfilled.

17 (5) The contract does not adversely affect any of the city's
18 nondiscrimination, affirmative action efforts.

19 (6) The savings shall be large enough to ensure that they will
20 not be eliminated by private sector and city cost fluctuations that
21 could normally be expected during the contracting period.

22 (7) The amount of savings clearly justifies the size and duration
23 of the contracting agreement.

24 (8) The contract is awarded through a publicized, competitive
25 bidding process. The city shall reserve the right to reject any and
26 all bids or proposals.

27 (9) The contract includes specific provisions pertaining to the
28 qualifications of the staff that will perform the work under the
29 contract, as well as assurance that the contractor's hiring practices
30 meet any applicable nondiscrimination, affirmative action
31 standards.

32 (10) The potential for future economic risk to the city from
33 potential contractor rate increases is minimal.

34 (11) The contract is with a firm. "Firm" means a corporation,
35 partnership, nonprofit organization, or sole proprietorship.

36 (12) The potential economic advantage of contracting is not
37 outweighed by the public's interest in having a particular function
38 performed directly by city government.

1 (13) The contract shall provide that it may be terminated at any
2 time by the city without penalty if there is a material breach of the
3 contract and notice is provided at least 30 days before termination.
4 (14) If the contract is for personal services in excess of one
5 hundred thousand dollars (\$100,000) annually, all of the following
6 shall occur:
7 (A) The city shall require the contractor to disclose all of the
8 following information as part of its bid, application, or answer to
9 a request for proposal:
10 (i) A description of all charges, claims, or complaints filed
11 against the contractor with any federal, state, or local administrative
12 agency during the prior 10 years.
13 (ii) A description of all civil complaints filed against the
14 contractor in any state or federal court during the prior 10 years.
15 (iii) A description of all state or federal criminal complaints or
16 indictments filed against the contractor, or any of its officers,
17 directors, or managers, at any time.
18 (iv) A description of any debarments of the contractor by any
19 public agency or licensing body at any time.
20 (v) The total compensation, including salaries and benefits, the
21 contractor provides to workers performing work similar to that to
22 be provided under the contract.
23 (vi) The total compensation, including salaries, benefits, options,
24 and any other form of compensation, provided to the five highest
25 compensated officers, directors, executives, or employees of the
26 contractor.
27 (vii) Any other information the city deems necessary to ensure
28 compliance with this section.
29 (B) The contract shall provide that the city is entitled to receive
30 a copy of any records related to the contractor's or any
31 subcontractor's performance of the contract, and that, in addition
32 to records specifically requested by the city, every month the
33 contractor shall furnish the county with: (i) the names of any
34 subcontractors providing services under the contract; (ii) the names
35 of the employees of the contractor and any subcontractors
36 providing services pursuant to the contract and their hourly rates;
37 and (iii) the names of any workers providing services pursuant to
38 the contract as independent contractors and the compensation rates
39 for those workers. The contract shall provide that all records
40 provided to the city by the contractor shall be subject to the

1 California Public Records Act (Chapter 3.5 (commencing with
2 Section 6250) of Division 7 of Title 1). In furtherance of this
3 subdivision, contractors and any subcontractors shall maintain
4 records related to performance of the contract that ordinarily would
5 be maintained by the city in performing the same functions.

6 (C) (1) The city shall include in the contract specific,
7 measurable performance standards and provisions for a
8 performance audit by the city, or an independent auditor approved
9 by the city, to determine whether the performance standards are
10 being met and whether the contractor is in compliance with
11 applicable laws and regulations. The legislative body shall not
12 renew or extend the contract prior to receiving and considering
13 the audit report.

14 (2) The contractor shall reimburse the city for the cost of the
15 audit.

16 (D) The contract shall include provisions for an audit by the
17 city, or an independent auditor approved by the city, to determine
18 whether and to what extent the anticipated cost savings have
19 actually been realized. The city shall not renew or extend the
20 contract before receiving and considering the audit report. The
21 contractor shall reimburse the city for the cost of the audit.
22 Contractors shall be prohibited from factoring the costs of the audit
23 into their contract costs with the city.

24 (b) This section does not preclude a city from adopting more
25 restrictive rules regarding the contracting of public services.

26 (c) When otherwise permitted by law, the absence of any
27 requirement of subdivision (a) shall not prevent personal services
28 contracting when any of the following conditions are met:

29 (1) The contract is for a new city function and the Legislature
30 has specifically mandated or authorized the performance of the
31 work by independent contractors.

32 (2) The contract is between a city and other government entity
33 for services to be performed by employees of the other government
34 entity.

35 (3) The services contracted cannot be performed satisfactorily
36 by city employees, or are of such a highly specialized or technical
37 nature that the necessary expert knowledge, experience, and ability
38 are not available among city employees.

39 (4) The services are incidental to a contract for the purchase or
40 lease of real or personal property. Contracts under this criterion,

1 known as “service agreements,” shall include, but not be limited
2 to, agreements to service or maintain office equipment or
3 computers that are leased or rented.

4 (5) The legislative, administrative, or legal goals and purposes
5 cannot be accomplished through the utilization of city employees.
6 Contracts are permissible under this criterion to protect against a
7 conflict of interest or to ensure independent and unbiased findings
8 in cases where there is a clear need for a different, outside
9 perspective. These contracts shall include, but not be limited to,
10 obtaining expert witnesses in litigation.

11 (6) The nature of the work is such that the standards of this title
12 for emergency appointments apply. These contracts shall conform
13 with Section 45080.

14 (7) Public entities or officials need private counsel because a
15 conflict of interest on the part of the city attorney’s office prevents
16 it from representing the public entity or official without
17 compromising its position. These contracts shall require the written
18 consent of the city attorney.

19 (8) The contract will provide legal services to the city solely on
20 a contingency fee basis.

21 (9) The contractor will provide equipment, materials, facilities,
22 or support services that could not feasibly be provided by the city
23 in the location where the services are to be performed.

24 (10) The contractor will conduct training courses for which
25 appropriately qualified city employee instructors are not available,
26 provided that permanent instructor positions in academies or similar
27 settings shall be filled by city employees.

28 (11) The services are of such an urgent, temporary, or occasional
29 nature that the delay incumbent in their implementation by city
30 employees would frustrate their very purpose.

31 (d) (1) Except as provided in paragraph (2), this section shall
32 apply to all cities, including cities that have adopted a merit or
33 civil service system.

34 (2) This section does not apply to a charter city formed pursuant
35 to Section 3 of Article XI of the California Constitution.

36 ~~(e) (1) This section does not apply to any contract for services~~
37 ~~described in Section 4525 or 4529.10.~~

38 ~~(2) This section does not apply to any contract that is subject~~
39 ~~to Chapter 1 (commencing with Section 1720) of Part 7 of Division~~
40 ~~2 of the Labor Code.~~

1 ~~(3) This section does not apply to a contract for public transit~~
2 ~~services, including paratransit services, if the county's transit~~
3 ~~services are fully funded by Federal Transit Administration~~
4 ~~assistance and the county is thereby subject to the guidelines~~
5 ~~established in FTA Circular 4220.1F or any subsequent guidelines~~
6 ~~or revisions issued by the Federal Transit Administration.~~

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

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

9 *(2) A contract that is subject to Chapter 1 (commencing with*
10 *Section 1720) of Part 7 of Division 2 of the Labor Code.*

11 *(3) A contract for public transit services, including paratransit*
12 *services, if the city's transit services are fully funded by Federal*
13 *Transit Administration assistance and the city is thereby subject*
14 *to the guidelines established in FTA Circular 4220.1F or any*
15 *subsequent guidelines or revisions issued by the Federal Transit*
16 *Administration.*

17 *(4) A contract for street sweeping services.*

18 *(5) A contract for solid waste handling services authorized by*
19 *or made pursuant to Section 40059 of the Public Resources Code.*
20 *As used in this paragraph, "solid waste handling services" means*
21 *the collection, transportation, storage, transfer, conversion,*
22 *processing, recycling, composting, or disposal of solid wastes.*

23 *(f) This section shall not be construed to authorize or otherwise*
24 *permit the contracting out of fire protection services other than the*
25 *contracts between public agencies that are explicitly authorized*
26 *by Chapter 4 (commencing with Section 55600) of Part 2 of*
27 *Division 2 of Title 5 of this code or by Article 4 (commencing*
28 *with Section 4141) of Chapter 1 of Part 2 of Division 4 of the*
29 *Public Resources Code.*

30 *(g) This section shall apply to contracts for personal services*
31 *currently or customarily performed by city employees entered into,*
32 *renewed, or extended on or after January 1, 2018: not apply to the*
33 *renewal of existing contracts or awards of contracts to perform*
34 *the same services as other contractors, if those contracts cause*
35 *neither the displacement of city employees nor the reduction of*
36 *city employee positions.*

37 SEC. 3. The provisions of this act are severable. If any
38 provision of this act or its application is held invalid, that invalidity
39 shall not affect other provisions or applications that can be given
40 effect without the invalid provision or application.

1 SEC. 4. If the Commission on State Mandates determines that
2 this act contains costs mandated by the state, reimbursement to
3 local agencies and school districts for those costs shall be made
4 pursuant to Part 7 (commencing with Section 17500) of Division
5 4 of Title 2 of the Government Code.

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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

FN: 0000924



AB-1250 Counties and cities: contracts for personal services. (2017-2018)

Date	Result	Location	Ayes	Noes	NVR	Motion
06/01/17	(PASS)	Assembly Floor	45	30	5	AB 1250 JONES-SAWYER Assembly Third Reading
		Ayes: Aguiar-Curry, Arambula, Berman, Bloom, Bocanegra, Bonta, Burke, Calderon, Cervantes, Chau, Chiu, Chu, Cooley, Cooper, Dababneh, Daly, Friedman, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gomez, Gonzalez Fletcher, Holden, Jones-Sawyer, Kalra, Limón, Low, McCarty, Medina, Mullin, Nazarian, Quirk, Quirk-Silva, Reyes, Ridley-Thomas, Rodriguez, Rubio, Santiago, Mark Stone, Thurmond, Ting, Weber, Wood, Rendon				
		Noes: Acosta, Travis Allen, Baker, Bigelow, Brough, Caballero, Chávez, Chen, Cunningham, Dahle, Flora, Fong, Frazier, Gallagher, Gray, Grayson, Harper, Irwin, Kiley, Lackey, Levine, Maienschein, Mathis, Mayes, Melendez, Obernolte, Patterson, Steinorth, Voepel, Waldron				
		No Votes Recorded: Choi, Eggman, Muratsuchi, O'Donnell, Salas				
05/26/17	(PASS)	Asm Appropriations	9	5	3	Do pass as amended.
		Ayes: Bloom, Bocanegra, Bonta, Calderon, Eduardo Garcia, Gonzalez Fletcher, McCarty, Quirk, Reyes				
		Noes: Bigelow, Brough, Fong, Gallagher, Obernolte				
		No Votes Recorded: Friedman, Gray, Muratsuchi				
04/27/17	(PASS)	Asm Public Employees, Retirement/Soc Sec	4	1	2	Do pass and be re-referred to the Committee on [Appropriations]
		Ayes: Bonta, Cooper, O'Donnell, Rodriguez				
		Noes: Travis Allen				
		No Votes Recorded: Brough, Cervantes				
04/19/17	(FAIL)	Asm Public Employees, Retirement/Soc Sec	3	3	1	Do pass and be re-referred to the Committee on [Appropriations]
		Ayes: Cooper, O'Donnell, Rodriguez				
		Noes: Travis Allen, Cooley, Gallagher				
		No Votes Recorded: Cervantes				

AMENDED IN SENATE MAY 2, 2017
AMENDED IN SENATE MARCH 28, 2017

SENATE BILL

No. 649

Introduced by Senator Hueso
(Principal coauthor: Assembly Member Quirk)
(Coauthor: Senator Dodd)

February 17, 2017

An act to amend Section 65964 of, and to add Section 65964.2 to, the Government Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

SB 649, as amended, Hueso. Wireless telecommunications facilities. Under existing law, a wireless telecommunications collocation facility, as specified, is subject to a city or county discretionary permit and is required to comply with specified criteria, but a collocation facility, which is the placement or installation of wireless facilities, including antennas and related equipment, on or immediately adjacent to that wireless telecommunications collocation facility, is a permitted use not subject to a city or county discretionary permit.

This bill would provide that a small cell is a permitted use, ~~not~~ subject *only* to a *specified permitting process adopted by a city or county* ~~discretionary permit, county~~, if the small cell meets specified requirements. By imposing new duties on local agencies, this bill would impose a state-mandated local program. The bill would authorize a city or county to require an ~~administrative permit~~ *encroachment permit or a building permit, and any additional ministerial permits*, for a small cell, as specified. The bill would define the term "small cell" for these purposes.

Under existing law, a city or county, as a condition of approval of an application for a permit for construction or reconstruction of a development project for a wireless telecommunications facility, may not require an escrow deposit for removal of a wireless telecommunications facility or any component thereof, unreasonably limit the duration of any permit for a wireless telecommunications facility, or require that all wireless telecommunications facilities be limited to sites owned by particular parties within the jurisdiction of the city or county, as specified.

This bill would require permits for these facilities to be renewed for equivalent durations, as specified.

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 no reimbursement is required by this act for a specified reason.

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

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

- 1 SECTION 1. The Legislature finds and declares that, to ensure
2 that communities across the state have access to the most advanced
3 wireless communications technologies and the transformative
4 solutions that robust wireless connectivity enables, such as Smart
5 Communities and the Internet of Things, California should work
6 in coordination with federal, state, and local officials to create a
7 statewide framework for the deployment of advanced wireless
8 communications infrastructure in California that does all of the
9 following:
- 10 (a) Reaffirms local governments' historic role and authority
11 with respect to wireless communications infrastructure siting and
12 construction generally.
- 13 (b) Reaffirms that deployment of telecommunications facilities
14 in the rights-of-way is a matter of statewide concern, subject to a
15 statewide franchise, and that expeditious deployment of
16 telecommunications networks generally is a matter of both
17 statewide and national concern.
- 18 (c) Recognizes that the impact on local interests from individual
19 small wireless facilities will be sufficiently minor and that such

1 deployments should be a permitted use statewide and should not
2 be subject to discretionary zoning review.

3 (d) Requires expiring permits for these facilities to be renewed
4 so long as the site maintains compliance with use conditions
5 adopted at the time the site was originally approved.

6 (e) Requires providers to obtain all applicable building or
7 encroachment permits and comply with all related health, safety,
8 and objective aesthetic requirements for small wireless facility
9 deployments on a ministerial basis.

10 (f) Grants providers fair, reasonable, nondiscriminatory, and
11 nonexclusive access to locally owned utility poles, ~~street lights,~~
12 *streetlights*, and other suitable host infrastructure located within
13 the public right-of-way and in other local public places such as
14 stadiums, parks, campuses, hospitals, transit stations, and public
15 buildings consistent with all applicable health and safety
16 requirements, including Public Utilities Commission General Order
17 95.

18 (g) Provides for full recovery by local governments of the costs
19 of attaching small wireless facilities to utility poles, ~~street lights,~~
20 *streetlights*, and other suitable host infrastructure in a manner that
21 is consistent with existing federal and state laws governing utility
22 pole attachments generally.

23 (h) Permits local governments to charge wireless permit fees
24 that are fair, reasonable, nondiscriminatory, and cost based.

25 (i) Advances technological and competitive neutrality while not
26 adding new requirements on competing providers that do not exist
27 today.

28 SEC. 2. Section 65964 of the Government Code is amended
29 to read:

30 65964. As a condition of approval of an application for a permit
31 for construction or reconstruction for a development project for a
32 wireless telecommunications facility, as defined in Section 65850.6,
33 a city or county shall not do any of the following:

34 (a) Require an escrow deposit for removal of a wireless
35 telecommunications facility or any component thereof. However,
36 a performance bond or other surety or another form of security
37 may be required, so long as the amount of the bond security is
38 rationally related to the cost of removal. In establishing the amount
39 of the security, the city or county shall take into consideration

1 information provided by the permit applicant regarding the cost
2 of removal.

3 (b) Unreasonably limit the duration of any permit for a wireless
4 telecommunications facility. Limits of less than 10 years are
5 presumed to be unreasonable absent public safety reasons or
6 substantial land use reasons. However, cities and counties may
7 establish a build-out period for a site. A permit shall be renewed
8 for an equivalent duration unless the city or county makes a finding
9 that the wireless telecommunications facility does not comply with
10 the codes and permit conditions applicable at the time the permit
11 was initially approved.

12 (c) Require that all wireless telecommunications facilities be
13 limited to sites owned by particular parties within the jurisdiction
14 of the city or county.

15 SEC. 3. Section 65964.2 is added to the Government Code, to
16 read:

17 65964.2. (a) A small cell shall be a permitted use ~~not~~ subject
18 *only to a permitting process adopted by a city or county*
19 ~~discretionary permit pursuant to subdivision (b)~~ if it satisfies the
20 following requirements:

21 (1) The small cell is located in the public right-of-way in any
22 zone or in any zone that includes a commercial or industrial use.

23 (2) The small cell complies with all applicable ~~state federal,~~
24 ~~state,~~ and local health and safety ~~regulations.~~ *regulations, including*
25 *compliance with the federal Americans with Disabilities Act of*
26 *1990 (42 U.S.C. Sec. 12101 et seq.).*

27 (3) The small cell is not located on a fire department facility.

28 (b) (1) A city or county may require that the small cell be
29 approved pursuant to ~~a single administrative permit~~ *a building*
30 *permit or its functional equivalent in connection with placement*
31 *outside of the public right-of-way or an encroachment permit or*
32 *its functional equivalent issued consistent with Sections 7901 and*
33 *7901.1 of the Public Utilities Code for the placement in public*
34 *rights-of-way, and any additional ministerial permits, provided*
35 ~~that the permit is~~ *all permits are* issued within the ~~time frames~~
36 *timeframes* required by state and federal law.

37 (2) ~~An administrative permit~~ *Permits issued pursuant to this*
38 *subdivision* may be subject to the following:

39 (A) The same administrative permit requirements as *for* similar
40 construction projects *and* applied in a nondiscriminatory manner.

1 (B) ~~The submission of~~ *A requirement to submit* additional
2 information showing that the small cell complies *with* the Federal
3 Communications Commission’s regulations concerning radio
4 frequency emissions referenced in Section 332(c)(7)(B)(iv) of
5 Title 47 of the United States Code.

6 (C) *A condition that the applicable permit may be rescinded if*
7 *construction is not substantially commenced within one year.*
8 *Absent a showing of good cause, an applicant under this section*
9 *may not renew the permit or resubmit an application to develop*
10 *a small cell at the same location within six months of rescision.*

11 (D) *A condition that small cells no longer used to provide*
12 *service shall be removed at no cost to the city or county.*

13 (E) *Compliance with building codes, including building code*
14 *structural requirements.*

15 (F) *A condition that the applicant pay all electricity costs*
16 *associated with the operation of the small cell.*

17 (G) *A condition to comply with feasible design and collocation*
18 *standards on a small cell to be installed on property not in the*
19 *right-of-way.*

20 (3) ~~The administrative permit~~ *Permits issued pursuant to this*
21 *subdivision shall not be subject to:*

22 (A) *Requirements to provide additional services, directly or*
23 *indirectly, including, but not limited to, in-kind contributions*
24 *from the applicant such as reserving fiber, conduit, or pole space.*

25 (B) *The submission of any additional information other than*
26 *that required of similar construction projects, except as specifically*
27 *provided in this section.*

28 (C) *Limitations on routine maintenance or the replacement of*
29 *small cells with small cells that are substantially similar, the same*
30 *size or smaller.*

31 (D) ~~The regulation of any antennas~~ *micro wireless facilities*
32 *mounted on cable strands: a span of wire.*

33 (c) ~~A city or county shall not preclude the leasing or licensing~~
34 ~~of its vertical infrastructure located in public right-of-way or public~~
35 ~~utility easements under the terms set forth in this paragraph.~~
36 ~~Vertical infrastructure shall be made available for the placement~~
37 ~~of small cells under fair and reasonable fees, terms, and conditions~~
38 ~~and offered on a nondiscriminatory basis for small cells. Fees shall~~
39 ~~be cost-based, and shall not exceed the lesser of either of the~~
40 ~~following:~~ *conditions, which may include feasible design and*

1 *collocation standards. A city or county may reserve capacity on*
 2 *vertical infrastructure if the city or county adopts a resolution*
 3 *finding, based on substantial evidence in the record, that the*
 4 *capacity is needed for projected city or county uses. Fees shall be*
 5 *tiered or flat and within a range of \$100 to \$850 per small cell*
 6 *per year, indexed for inflation from the effective date of this section.*

7 ~~(1) The costs of ownership of the percentage of the volume of~~
 8 ~~the capacity of the vertical infrastructure rendered unusable by a~~
 9 ~~small cell.~~

10 ~~(2) The rate produced by applying the formula adopted by the~~
 11 ~~Federal Communications Commission for telecommunications~~
 12 ~~pole attachments in Section 1.1409(c)(2) of Part 47 of the Code~~
 13 ~~of Federal Regulations.~~

14 (d) A city or county shall not ~~unreasonably~~ discriminate in the
 15 ~~leasing or licensing of~~ *against the deployment of a small cell on*
 16 *property owned by the city or county and shall make space*
 17 *available on property not located in the public right-of-way owned*
 18 *or operated by the city or county for installation of a small cell. A*
 19 *city or county shall authorize the installation of a small cell on*
 20 *property owned or controlled by the city or county not located*
 21 *within the public right-of-way to the same extent the city or county*
 22 *permits access to that property for under terms and conditions that*
 23 *are no less favorable than the terms and conditions under which*
 24 *the space is made available for comparable commercial projects*
 25 *or uses. These installations shall be subject to reasonable and*
 26 *nondiscriminatory rates, terms, and conditions. conditions, which*
 27 *may include feasible design and collocation standards.*

28 (e) *Nothing in this section shall be construed to alter, modify,*
 29 *or amend any franchise or franchise requirements under state or*
 30 *federal law.*

31 ~~(e)~~

32 (f) For purposes of this section, the following terms have the
 33 following meanings:

34 (1) (A) “Small cell” means a wireless telecommunications
 35 facility, as defined in Section 65850.6, using licensed or unlicensed
 36 spectrum that meets the following qualifications:

37 (i) ~~Any individual antenna, All antennas on the structure,~~
 38 ~~excluding the associated equipment, is individually no more than~~
 39 ~~three cubic feet in volume, and all antennas on the structure total~~

1 no more than six cubic feet in volume, whether in a single array
2 or separate.

3 (ii) (I) The associated equipment on pole structures does not
4 exceed 21 cubic feet for poles that can support fewer than three
5 providers or 28 cubic feet for pole collocations that can support at
6 least three providers, or the associated equipment on nonpole
7 structures does not exceed 28 cubic feet for collocations that can
8 support fewer than three providers or 35 cubic feet for collocations
9 that can support at least three providers. *provided that any*
10 *individual piece of associated equipment or pole structures do not*
11 *exceed nine cubic feet.*

12 (II) The following types of associated ancillary equipment are
13 not included in the calculation of equipment volume:

- 14 (ia) Electric meters and any required pedestal.
- 15 (ib) Concealment elements.
- 16 (ic) Any telecommunications demarcation box.
- 17 (id) Grounding equipment.
- 18 (ie) Power transfer switch.
- 19 (if) ~~Cut-off~~ Cutoff switch.
- 20 (ig) Vertical cable runs for the connection of power and other
21 services.

22 (B) *“Small cell” includes a micro wireless facility that is no*
23 *larger than 24 inches long, 15 inches in width, 12 inches in height,*
24 *and that has an exterior antenna, if any, no longer than 11 inches.*

25 ~~(B)~~
26 (C) *“Small cell” does not include communications infrastructure*
27 *extending beyond the telecommunications demarcation box. either*
28 *of the following:*

- 29 (i) *Coaxial or fiber optic cables that do not exclusively provide*
30 *service to that small cell.*
- 31 (ii) *Wireless facilities placed in any historic district listed in*
32 *the National Park Service Certified State or Local Historic*
33 *Districts or in any historical district listed on the California*
34 *Register of Historical Resources or placed in coastal zones subject*
35 *to the jurisdiction of the California Coastal Commission.*

36 (2) (A) *“Vertical infrastructure” means all poles or similar*
37 *facilities owned or controlled by a city or county that are in the*
38 *public right-of-way or public utility easements and meant for, or*
39 *used in whole or in part for, communications service, electric*
40 *service, lighting, traffic control, signage, or similar functions.*

1 (B) For purposes of this paragraph, the term “controlled”
2 means having the right to allow subleases or sublicensing. A city
3 or county may impose feasible design or collocation standards for
4 small cells placed on vertical infrastructure, including the
5 placement of associated equipment on the vertical infrastructure
6 or the ground.

7 (g) Existing agreements regarding the leasing or licensing of
8 vertical infrastructure entered into prior to the effective date of
9 this section remain in effect, subject to applicable termination
10 provisions. The operator of a small cell may accept the rates of
11 this section for small cells that are the subject of an application
12 submitted after the agreement is terminated pursuant to the terms
13 of the agreement.

14 (h) Nothing in this section shall be construed to impose an
15 obligation to charge a use fee different than those authorized by
16 Part 2 (commencing with Section 9510) of Division 4.8 of the
17 Public Utilities Code on a local publicly owned electric utility.

18 (f)

19 (i) The Legislature finds and declares that small cells, as defined
20 in this section, have a significant economic impact in California
21 and are not a municipal affair as that term is used in Section 5 of
22 Article XI of the California Constitution, but are a matter of
23 statewide concern.

24 SEC. 4. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 a local agency or school district has the authority to levy service
27 charges, fees, or assessments sufficient to pay for the program or
28 level of service mandated by this act, within the meaning of Section
29 17556 of the Government Code.

O

THIRD READING

Bill No: SB 649
Author: Hueso (D), et al.
Amended: 5/2/17
Vote: 21

SENATE ENERGY, U. & C. COMMITTEE: 11-0, 4/4/17
AYES: Hueso, Morrell, Bradford, Cannella, Hertzberg, Hill, McGuire, Skinner,
Stern, Vidak, Wiener

SENATE GOVERNANCE & FIN. COMMITTEE: 7-0, 4/26/17
AYES: McGuire, Nguyen, Beall, Hernandez, Hertzberg, Lara, Moorlach

SENATE APPROPRIATIONS COMMITTEE: 6-0, 5/25/17
AYES: Lara, Beall, Bradford, Hill, Nielsen, Wiener
NO VOTE RECORDED: Bates

SUBJECT: Wireless telecommunications facilities

SOURCE: CTIA

DIGEST: This bill establishes a statewide framework for streamlining the permit siting process of small cell wireless facilities that meet specified requirements. Specifically, this bill requires an administrative permit in lieu of a discretionary permit, limits fees to between \$100 and \$850 for small cell installations in the utility right-of-way, ensures access to most vertical infrastructure in the utility right-of-way and also within a commercial or industrial zone. This bill also requires permits for wireless telecommunications facilities would be automatically renewed for equivalent durations, as specified.

ANALYSIS:

Existing law:

- 1) Establishes specified limitations, preemptions and preservation of local zoning authority in relation to the siting of personal wireless service facilities as part of the many provisions of the Federal Telecommunication Act of 1996. (Other provisions, see Policy Committee Analyses) (47 United States Code §332)
- 2) Limits the consideration of the environmental effects of radio frequency emissions by the city or county to that authorized by Section 332(c)(7) of Title 47 of the United States Code, as specified. (California Government Code §65850.6)
- 3) Provides that no state or local statute or regulation, or other state or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. (47 United States Code §253)
- 4) Provides that a state or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such a tower or base station. (47 United States Code §1455 (a))
- 5) Establishes a framework, process, and procedures governing the attachment of telecommunications facilities to investor-owned utility poles, providing the California Public Utilities Commission (CPUC) to establish and enforce rates, terms and conditions for pole attachments. (Public Utilities Code §767.5)
- 6) Establishes a framework, process, fees, and procedures governing the attachment of telecommunications facilities to municipal utility poles, providing for safety and reasonable terms and conditions. (Public Utilities Code §9510 et seq.)
- 7) Provides that a wireless telecommunications collocation facility shall be a permitted use not subject to a city or county discretionary permit if it satisfies several requirements, as specified. (California Government Code §65850.6)

This bill:

- 1) Defines a “small cell” as a wireless telecommunications facility that meets the following qualifications:

- a) All antennas on the structure, excluding associated equipment total no more than six cubic feet in volume, whether in a single or separate array.
 - b) The associated equipment on pole structures does not exceed 21 cubic feet, provided any individual piece does not exceed nine cubic feet. The calculation of equipment volume excludes specified ancillary equipment.
- 2) Specifies that a small cell includes a micro wireless facility that is no larger than 24 inches long, 15 inches wide, and 12 inches high, and that has an exterior antenna no longer than 11 inches.
 - 3) Specifies that a small cell does not include coaxial or fiber optic cables that do not exclusively provide service to the cell, or wireless facilities placed in a specified historic district or coastal zone.
 - 4) Requires a small cell to be a permitted use, subject only to specified requirements or conditions, if it satisfies the following requirements:
 - a) The small cell is located in the public right-of-way in any zone or in any zone that includes a commercial or industrial use.
 - b) The small cell complies with all applicable federal, state, and local health and safety regulations, as specified.
 - c) The small cell is not located on a fire department facility.
 - 5) Authorizes a city or county to require that the small cell be approved pursuant to a building permit in connection with placement outside the public right of way, or a specified encroachment permit, and any additional ministerial permits, provided all permits are issued within specified timeframes.
 - 6) Prohibits permits from being subject to:
 - a) Provision of additional services, including in-kind contributions from the applicant such as reserving fiber, conduit, or pole space.
 - b) The submission of any additional information other than that required of similar construction projects, except as otherwise provided in the bill.
 - c) Limitations on routine maintenance or the replacement of small cells with small cells that are substantially similar, the same size, or smaller.
 - d) The regulation of any micro wireless facilities mounted on a span of wire.
 - 7) Prohibits a city or county from precluding the leasing or licensing of its vertical infrastructure located in the public right of way or public utility

- easements. Vertical infrastructure is defined as all poles or similar facilities owned or controlled by a city or county that are in the public right of way or utility easements and meant for communications service, electric service, lighting, traffic control, or similar functions.
- 8) Requires a city or county to make its vertical infrastructure available for the placement of small cells under fair and reasonable fees, terms, and conditions, which may include feasible design and collocation standards.
 - 9) Authorizes a city or county to reserve capacity on vertical infrastructure if it adopts a resolution that capacity is needed for projected city or county use.
 - 10) Requires fees to be tiered or flat and within a range of \$100 to \$850 per small cell per year, indexed for inflation from this bill's effective date.
 - 11) Prohibits a city or county from discriminating against the deployment of a small cell on property owned by the city or county, and require it to make space available on terms that are at least as favorable as those provided for comparable commercial projects or uses.
 - 12) Specifies that nothing in the bill would alter, modify, or amend any franchise or franchise requirements under state or federal law.
 - 13) Specifies that existing agreements regarding the leasing or licensing of vertical infrastructure remain in effect, subject to applicable termination provisions.
 - 14) Requires automatic renewal of permits for telecommunications facilities, unless a city or county makes a finding that the facility does not comply with codes and conditions in place at the time the permit was originally approved.

Background

Over the past decade, there has been an explosion of wireless devices in the marketplace, from cell phones, tablets, health monitors, and smart appliances. Satisfying the consumer demand for efficient and reliable wireless communications is largely dependent on infrastructure that has required a network of large macro cell towers (most over 200 feet tall). These large structures have dotted the landscape in various shapes and forms, from a very noticeable large antenna to something disguised as a palm tree.

Small Cell. Small cells are low-powered wireless base stations that function like cells in a mobile wireless network, typically covering targeted indoor or localized outdoor areas ranging in size from homes and offices to stadiums, shopping malls, hospitals, and metropolitan outdoor spaces. Wireless service providers often use small cells to provide connectivity to their subscribers in areas that present capacity and coverage challenges to traditional wide-area macrocell networks, such as coverage gaps created by buildings, tower siting difficulties, and challenging terrain. Each small cell can only work with a corresponding wireless service provider. Unlike larger macrocell large towers, small cells will need to be deployed at greater volumes in more concentrated areas. These smaller wireless facilities can augment the capacity of the wireless bandwidth of the macrocell towers.

Planning and Zoning. Existing law, the Planning and Zoning Law, requires cities and counties to adopt a general plan and provides for the adoption of zoning ordinance that regulate the use of buildings, structures, and land, among other things. The Permit Streamlining Act requires public agencies to act fairly and promptly on applications for development permits. Providers of wireless telecommunications services must apply to cities and counties for permits to build structures that support wireless telecommunications equipment, like antennae and related devices. Similarly, wireless carriers must seek local approval to place additional telecommunications equipment on structures and facilities where that equipment already exists, which are referred to as collocations.

Existing law, as enacted by SB 1627 (Kehoe, Chapter 676, Statutes of 2006), requires local governments to approve collocations through ministerial processes, and prohibits local governments from limiting the duration of permits for wireless sites to less than 10 years, absent good reason. Existing law, as enacted by AB 57 (Quirk, Chapter 684, Statutes of 2015), specifies that a collocation or siting application for a wireless telecommunications facility is deemed approved if a local government does not act on a permit application within reasonable time periods specified in federal regulations.

Telecommunications companies have the right to access utility poles in the public right-of-way, governed by a set of state and federal regulations. State law establishes a framework, process, and procedures governing the attachment of telecommunications facilities to investor-owned utility poles and municipal utility poles, providing the CPUC the authority to establish and enforce rates, terms and conditions for pole attachments. Telecommunications companies are authorized to erect poles and attach to investor-owned and municipal utility poles under specified cost-based rates. Local governments may not block utility pole attachments, but existing law authorizes them to regulate the time, manner, and

place of pole attachments in the public right-of-way. In addition, investor owned utilities and municipal utilities can only charge cost-based rates for attaching to their utility poles.

These restrictions do not apply to other publicly-owned infrastructure in the right-of-way, such as light poles and streetlights, or outside of the right of way. In those cases, local governments can continue to impose conditions on many types of wireless facilities and negotiate payments for the use of their infrastructure. Since the number of small cells needed to cover an area is much higher than for traditional wireless facilities, carriers and cities have negotiated agreements and streamlined permit processes for the deployment of small cells that require lease payments to use city infrastructure. Currently, these agreements are negotiated on an ad hoc basis, and, as such, lease rates can vary significantly among cities from a hundred dollars to thousands of dollars.

Home Rule. Local officials' first duty is to protect the interests of their constituents. They have broad authority to regulate activities to preserve the public welfare, and they have developed processes in accordance with that duty for permitting wireless telecommunications facilities. Some jurisdictions impose more conditions than others due to specific local circumstances, and the FCC has recognized this need. By making small cells permitted uses, SB 649 extends by-right development to small cells, and it prohibits local governments from establishing discretionary permitting processes in rights of way and commercial and industrial zones. SB 649 requires local governments to offer up their vertical infrastructure in the rights of way and commercial and industrial zones for use by other entities and removes their ability to charge fair rent by capping lease fees for vertical infrastructure to an amount that is between \$100 and \$850.

Environmental Health Effects. Some of the opponents of this bill have raised concerns regarding the health impacts from radio frequency/microwave radiation associated with wireless communications. These commenters present several studies, as well as a California Medical Association resolution supporting efforts to reevaluate microwave safety exposure and efforts to implement new safety exposure limits for wireless devices to a level that do not cause harm. While these comments raise very serious concerns, federal law, limits the consideration of the environmental effects of radio frequency emissions by states and local governments in so far as a proposed project is in compliance with FCC requirements. However, those who oppose this bill out of concern for the health impacts of wireless technologies are not likely to be satisfied with the standards the FCC has established.

Merits Correction. The language in the bill related to the maximum size of the small cell equipment attached to a pole merits additional language related to the maximum size of the associated equipment not on the pole. The author has agreed to work with the Committee on Governance and Finance to make this correction should the bill move forward.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee, unknown, potentially reimbursable mandate costs, to the extent that the Commission on State Mandates determines that certain costs incurred by local governments are not recoverable by fees. Existing law, as enacted by AB 1027 (Buchanan, Chapter 580, Statutes of 2011) requires a publicly owned utility to make appropriate space and capacity on its utility poles and support structures available for use by a communication provider. That measure authorized local entities to charge an annual fee for use of a pole, and limited the fee to the annual cost of ownership of the proportion of the pole dedicated to the telecommunications equipment. Any costs incurred by a public utility that exceeded the amount of fees charged for pole attachments could be passed on to utility customers.

Cities and counties currently negotiate lease rates for small cell attachments on publicly owned vertical infrastructure that is market based, and many local governments may use excess lease revenues to pay for other public services or to subsidize the extension of wireless service in underserved areas. This bill limits the fees that a city or county may charge for the installation of a small cell telecommunications facility on publicly owned vertical infrastructure to a range of \$100 to \$850 per small cell per year. Since these rates are much lower than what some current agreements provide, many local governments will lose significant discretionary revenues. Staff notes that loss of local revenues does not, on its own, constitute a reimbursable mandate.

To the extent that the Commission on State Mandates determines that this bill imposes a higher level of service on cities and counties, and the fees specified in the bill are insufficient to fully offset a city or county's costs to accommodate the attachment of small cells to vertical infrastructure, this bill may be deemed a reimbursable mandate. This bill would require cities and counties to negotiate lease rates with wireless service providers (currently an optional activity), draft master agreements, and determine actual annual costs associated with leasing space on a particular pole or set of poles.

SUPPORT: (Verified 5/30/17)

CTIA (source)

59DaysOfCode

American Indian Chamber of Commerce of California

Asian Pacific Islander American Public Affairs Assn.

Asian Resources Inc.

AT&T

Berkeley Chamber of Commerce

Black Business Association

California Asian Chamber of Commerce

California Asian Pacific Chamber of Commerce

California Foundation for Independent Living Centers

California Friday Night Live Partnership

California Hispanic Chamber of Commerce

California Manufacturers & Technology Association

California Probation, Parole and Correctional Assn

California State Conference of the National Association
of Advancement of Colored People

California State Sheriffs' Association

California Urban Partnership

California Utilities Emergency Association

CALinnovates

Carlsbad Chamber of Commerce

Carmel Valley Chamber of Commerce

Cerritos Regional Chamber of Commerce

Chinese American Association of Solano County

Community Technology Network

Community Women Vital Voices

Concerned Citizens Community Involvement

Congress of California Seniors

Council of Asian Pacific Islanders Together for
Advocacy and Leadership

Council on American-Islamic Relations, California

Disability Rights Education and Defense Fund

Downtown San Diego Partnership

East Bay Leadership Council

Elderly Foundation

El Dorado County Chamber of Commerce

Eskaton Foundation

Exceptional Parents Unlimited

Fresno Area Hispanic Foundation
Fresno Center for New Americans
Fresno Metro Black Chamber of Commerce
Fundacion Pro Joven Talento Salvadoreno
Gateway Chambers Alliance
Greater Coachella Valley Chamber of Commerce
Greater Los Angeles African American Chamber of Commerce
Greater Sacramento Urban League
Hacker Lab
Hispanic Chamber of e-Commerce
Hispanic Heritage Foundation
I/O Labs
Imagine H2O
InBiz Latino-North County Hispanic Chamber
Invictus Foundation
Jobs and Housing Coalition
Krimson and Kreme, Inc.
Lake County Sheriff
Latin Business Association
Latino Council
Latino Environmental Advancement & Policy Project
Lifestyle Stroke Foundation
Lighthouse Counseling & Family Resource Center
LIME Foundation
Lincoln Area Chamber of Commerce
Long Beach Area Chamber of Commerce
Los Angeles Urban League
Marjaree Mason Center
Meeting of the Minds
Modesto Chamber of Commerce
Monterey County Business Council
Museum of the African Diaspora
National Association of Advancement of Colored People
– Eureka
National Association of Advancement of Colored People
– Inglewood/South Bay
National Association of Advancement of Colored People
– Los Angeles
National Association of Advancement of Colored People
– North San Diego

National Association of Advancement of Colored People
– Riverside
National Association of Hispanic Real Estate
Professionals – Sacramento
National City Public Safety Foundation
National Latina Business Women Association of Los Angeles
Oakland Metropolitan Chamber of Commerce
Oceanside Chamber of Commerce
Orange County Business Council
Orange County Hispanic Chamber of Commerce
Organization of Chinese Americans
Pacific Grove Chamber of Commerce Board of Director
Peace Officers Research Association of California
Puertas Abiertas Community Resource Center
PulsePoint
Rancho Cordova Chamber of Commerce
Russian American Media
Sabio Enterprises Inc.
Sacramento Asian Pacific Chamber of Commerce
Sacramento Black Chamber of Commerce
Sacramento Hispanic Chamber of Commerce
Sacramento Metropolitan Chamber of Commerce
Sacramento Regional Conservation Corps
Salvadoran American Leadership and Educational Fund
San Diego County Hispanic Chamber of Commerce
San Diego North Economic Development Council
San Diego Regional Economic Development Corp
San Joaquin Pride Center
San Ysidro Chamber of Commerce
Santa Ana Chamber of Commerce
Silicon Valley Leadership Group
Slavic American Chamber
Society for the Blind
Solano Community College Educational Foundation
South Bay Association of Chamber of Commerce
Southeast Community Development Corporation
Southern California Hispanic Chamber of Commerce
Southern Christian Leadership Conference of Southern California
Sprint
T-Mobile US

The East Los Angeles Community Union
The Arc California
The National Association of Hispanic Real Estate Professional
The Observer Media Group
The Urban Hive
Torrance Area Chamber of Commerce
Tulare Kings Hispanic Chamber of Commerce
United Policyholders
Urban Corps of San Diego County
Urban League of San Diego County
Verizon
Veteran's Association of North County
Voluntary Organizations Active in a Disaster
Volunteers of America Southwest
WEAVE, Inc.
Wireless Infrastructure Association
Women's Intercultural Network

OPPOSITION: (Verified 5/30/17)

Association of Environmental Professionals
California Chapter of the American Planning Association
California Chapters of the American Public Works
Association
California Municipal Utilities Association
California State Association of Counties
City and County of San Francisco
Cities of Albany, Arcadia, Azusa, Bakersfield, Benicia, Beverly Hills, Big Bear
Lake, Buena Park, Burbank, Camarillo, Campbell, Capitola, Carpinteria, Chino
Hills, Citrus Heights, Claremont, Cloverdale, Concord, Corona, Coronado,
Culver City, Diamond Bar, Dublin, Eastvale, El Centro, Elk Grove, Emeryville,
Encinitas, Fontana Fountain Valley, Fremont, Fullerton, Hayward, Hermosa
Beach, Hesperia, Huntington Beach, Indio, Indian Wells, Inglewood, Irvine, La
Cañada, La Habra, La Quinta, La Verne, Lafayette, Laguna Beach, Laguna Hills,
Lake Elsinore, Lake Forest, Lakeport, Lakewood, Lodi, Long Beach, Los
Alamitos, Lomita, Manteca, Merced, Mission Viejo, Modesto, Monterey,
Moorpark, Moreno Valley, Morgan Hill, Murrieta, National City, Nevada City,
Newport Beach, Norwalk, Oakley, Oceanside, Palm Desert, Palmdale, Palos
Verdes Estates, Pasadena, Piedmont, Pismo Beach, Placentia, Point Arena,
Rancho Cucamonga, Rancho Palos Verdes, Richmond, Riverside, Rocklin,

Rosemead, Roseville, Sacramento, San Carlos, San Jose, San Leandro, San Marcos, San Mateo, San Pablo, San Rafael, Santa Ana, Santa Clara, Santa Clarita, Santa Monica, Santee, Signal Hill, Sunnyvale, Thousand Oaks, Torrance, Tulare, Ukiah, Union City, Vallejo, Ventura, Vista, Walnut, West Covina, West Hollywood, and Whittier
County of Ventura
Ecological Options Network
EMF Safety Network
Kern County
League of California Cities
Marin County Council of Mayors and Councilmembers
Northern California Power Agency
Orange County Board of Supervisors
Protect our Local Streets Coalition
Rural County Representatives of California
Santa Barbara County Board of Supervisors
Santa Clara County Board of Supervisors
Scientists for Wired Technology
Southern California Public Power Authority
The Utility Reform Network
Towns of Danville, Hillsborough, Mammoth Lakes, and Portola Valley
Urban Counties of California
Ventura Council of Governments
Several Individuals

Prepared by: Nidia Bautista / E., U., & C. / (916) 651-4107
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SB-649 Wireless telecommunications facilities. (2017-2018)

Date	Result	Location	Ayes	Noes	NVR	Motion
05/31/17	(PASS)	Senate Floor	32	1	7	Senate 3rd Reading SB649 Hueso et al.
		Ayes: Anderson, Atkins, Bates, Berryhill, Bradford, Cannella, De León, Dodd, Fuller, Gaines, Galgiani, Hernandez, Hertzberg, Hill, Hueso, Lara, Leyva, McGuire, Mendoza, Mitchell, Moorlach, Morrell, Nguyen, Nielsen, Pan, Roth, Skinner, Stern, Stone, Vidak, Wiener, Wilk				
		Noes: Glazer				
		No Votes Recorded: Allen, Beall, Jackson, Monning, Newman, Portantino, Wieckowski				
05/25/17	(PASS)	Sen Appropriations	6	0	1	Do pass
		Ayes: Beall, Bradford, Hill, Lara, Nielsen, Wiener				
		Noes:				
		No Votes Recorded: Bates				
05/15/17	(PASS)	Sen Appropriations	7	0	0	Placed on suspense file
		Ayes: Bates, Beall, Bradford, Hill, Lara, Nielsen, Wiener				
		Noes:				
		No Votes Recorded:				
04/26/17	(PASS)	Sen Governance and Finance	7	0	0	Do pass as amended, but first amend, and re-refer to the Committee on [Appropriations]
		Ayes: Beall, Hernandez, Hertzberg, Lara, McGuire, Moorlach, Nguyen				
		Noes:				
		No Votes Recorded:				
04/04/17	(PASS)	Sen Energy, Utilities and Communications	11	0	0	Do pass, but first be re-referred to the Committee on [Governance and Finance]
		Ayes: Bradford, Cannella, Hertzberg, Hill, Hueso, McGuire, Morrell, Skinner, Stern, Vidak, Wiener				
		Noes:				
		No Votes Recorded:				