

Introduced by Senator VargasFebruary 10, 2011

An act to add Article 4.5 (commencing with Section 19135) to Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 252, as introduced, Vargas. Public contracts: personal services.

The California Constitution provides that the civil service includes every officer and employee of the state, except as otherwise provided. The California courts have interpreted the California Constitution as generally restricting the contracting out of state activities or tasks to the private sector, if those activities or tasks may be adequately and competently performed by state employees. Existing statutory law codifies certain judicially created exceptions to that constitutional provision, and authorizes the state to enter into personal services contracts when specified conditions are met.

The California Public Records Act requires each state and local agency to make its records available for public inspection during office hours and, upon request of any person, to make copies available upon payment of fees, unless the records are exempt by law from disclosure.

This bill would enact the Government Oversight and Fiscal Accountability Review Act of 2010. The bill would require a state agency that enters into a privatization contract, as defined, to report to the Secretary of State regarding those privatization contracts, and would require the Secretary of State to compile, publish, and make these reports available for public inspection. The bill would also provide that a subcontract executed under a privatization contract is a public record, and would require the contractor to submit these subcontracts to the

contracting agency, which would in turn be required to make the records available to the public pursuant to the California Public Records Act. State agencies would also be required to prepare, as part of their budget requests, a document that contains specified information relating to their use of private contractors. The bill also makes privatization contracts subject to audit or review by the Bureau of State Audits, at the discretion of the State Auditor.

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

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

1 SECTION 1. The Legislature finds and declares that using
2 private contractors to provide public services normally provided
3 by public employees does not always promote the public interest.
4 To ensure that citizens of this state receive high quality public
5 services at low costs, with due regard for the taxpayers of this state
6 and the service recipients, the Legislature finds it necessary to
7 ensure that access to public information guaranteed by the
8 California Public Records Act (Chapter 3.5 (commencing with
9 Section 6250) of Division 7 of Title 1 of the Government Code)
10 is not in any way hindered when public services are provided by
11 private contractors.

12 SEC. 2. Article 4.5 (commencing with Section 19135) is added
13 to Chapter 5 of Part 2 of Division 5 of Title 2 of the Government
14 Code, to read:

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16 Article 4.5. Government Oversight and Fiscal Accountability
17 Review
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19 19135. This article shall be known, and may be cited, as the
20 Government Oversight and Fiscal Accountability Review Act of
21 2010.

22 19136. For purposes of this article:

23 (a) "Agency" includes any executive office, department,
24 division, board, commission, or other office or officer in the
25 executive branch of the government.

26 (b) "Person" includes an individual, institution, federal, state,
27 or local government entity, or any other public or private entity.

1 (c) “Privatization contract” means an agreement or combination
2 or series of agreements, including, but not limited to, a personal
3 services contract, by which a privatization contractor agrees with
4 an agency to provide services valued at one hundred thousand
5 dollars (\$100,000) or more, that are substantially similar to, and
6 in lieu of, services provided, in whole or in part, by civil service
7 employees of the agency.

8 (d) “Privatization contractor” means any contractor, consultant,
9 subcontractor, independent contractor, or private business owner
10 that contracts with an agency to perform services that are
11 substantially similar to, and in lieu of, services provided, in whole
12 or in part, by civil service employees of the agency.

13 (e) “Privatization contractor employee” includes a worker
14 directly employed by a privatization contractor, as well as an
15 employee of a subcontractor or an independent contractor that
16 provides supplies or services to a privatization contractor.

17 (f) “Services” includes, with respect to a privatization contractor,
18 all aspects of the provision of services provided by a privatization
19 contractor pursuant to a privatization contract, or any services
20 provided by a subcontractor of a privatization contractor under the
21 privatization contract.

22 19137. (a) A privatization contractor shall file with the
23 contracting agency a copy of each subcontract or amendment to a
24 subcontract executed under a privatization contract. The agency
25 shall maintain the subcontract or amendment to the subcontract as
26 a public record, as defined in the California Public Records Act
27 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
28 Title 1 of the Government Code).

29 (b) A privatization contract shall include language that provides
30 for public access to the completed contract.

31 (c) As part of the budgetary process, an agency shall provide
32 an addendum to its submitted budget request that includes all of
33 the following information:

34 (1) The name of each privatization contractor or subcontractor
35 that has entered into a privatization contract with the agency during
36 that year, the duration of that privatization contract, and the services
37 provided pursuant to that contract.

38 (2) The total cost of each privatization contract for the prior
39 year.

1 (3) The projected number of privatization contracts for the
2 current and upcoming year and the estimated cost of each contract
3 for the current and upcoming year.

4 (4) For each privatization contract, the number of privatization
5 contractor employees and consultants, reflected as full-time
6 equivalent positions, and their hourly wage rates for the current
7 and previous fiscal year.

8 (d) The addendum provided pursuant to subdivision (c) shall
9 be a public record.

10 (e) A privatization contract shall be subject to audit or review,
11 as defined by the American Institute of Certified Public
12 Accountants, by the Bureau of State Audits at the discretion of the
13 State Auditor. An audit or review shall be conducted in compliance
14 with generally accepted auditing standards.

15 19138. (a) An agency that enters into a privatization contract
16 shall prepare and submit to the Secretary of State on a quarterly
17 basis a report containing both of the following:

18 (1) The name of any person who performed legal, medical,
19 accounting, engineering, or any other professional, technical, or
20 consultant service for the agency on a contractual basis during the
21 previous quarter.

22 (2) The amount of compensation received by each person for
23 the services described in paragraph (1) during the previous quarter.

24 (b) An agency that enters into a privatization contract shall
25 prepare and submit to the Secretary of State on an annual basis a
26 report containing both of the following:

27 (1) A copy of each privatization contract for that year.

28 (2) A budget analysis of each privatization contract reported
29 pursuant to paragraph (1) that contains all of the following:

30 (A) The cost of each privatization contract for the prior, current,
31 and next year.

32 (B) The number of privatization contractor employees, reflected
33 as full-time equivalent positions, and their hourly wage rates.

34 (C) The cost of benefits paid by the agency for each privatization
35 employee for the current and previous year.

36 (3) The Secretary of State shall compile, publish, and make
37 available for public inspection all contracting reports he or she has
38 received in accordance with this article.

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