

AMENDED IN SENATE APRIL 14, 2011

SENATE BILL

No. 252

Introduced by Senator Vargas

February 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 amended, 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~~ 2011. The bill would require a state agency that enters into a privatization contract, as defined, to report to the ~~Secretary of State~~ *Department of General Services* regarding those ~~that privatization contracts contract~~, and would require the ~~Secretary of State~~ *department* to compile, publish, and make these reports that

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

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

13 *SECTION 1.* Article 4.5 (commencing with Section 19135) is
14 added to Chapter 5 of Part 2 of Division 5 of Title 2 of the
15 Government Code, to read:

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20 19135. This article shall be known, and may be cited, as the
21 Government Oversight and Fiscal Accountability Review Act of
22 ~~2010~~ 2011.

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1 (a) “Agency” includes any executive office, department,
2 division, board, commission, or other office or officer in the
3 executive branch of the government.

4 (b) “Person” includes an individual, institution, federal, state,
5 or local government entity, or any other public or private entity.

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

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

18 (e) “Privatization contractor employee” includes a worker
19 directly employed by a privatization contractor, as well as an
20 employee of a subcontractor or an independent contractor that
21 provides supplies or services to a privatization contractor.

22 (f) “Services” includes, with respect to a privatization contractor,
23 all aspects of the provision of services provided by a privatization
24 contractor pursuant to a privatization contract, or any services
25 provided by a subcontractor of a privatization contractor under the
26 privatization contract.

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

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

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

39 (1) The name of each privatization contractor or subcontractor
40 that has entered into a privatization contract with the agency during

1 that year, the duration of that privatization contract, and the services
2 provided pursuant to that contract.

3 (2) The total cost of each privatization contract for the prior
4 year.

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

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

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

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

19 19138. (a) An agency that enters into a privatization contract
20 shall prepare and submit to the ~~Secretary of State~~ *Department of*
21 *General Services* on a quarterly basis a report containing both of
22 the following:

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

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

29 (b) An agency that enters into a privatization contract shall
30 prepare and submit to the ~~Secretary of State~~ *Department of General*
31 *Services* on an annual basis a report containing both of the
32 following:

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

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

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

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

1 (C) The cost of benefits paid by the agency for each privatization
2 employee for the current and previous year.
3 ~~(3) The Secretary of State~~
4 (c) *The Department of General Services* shall compile, publish,
5 and make available for public inspection all contracting reports he
6 or she has received in accordance with this article.

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