

AMENDED IN SENATE JUNE 30, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 783

Introduced by Assembly Member Daly

February 25, 2015

An act to amend ~~Section 37105~~ of Sections 25303, 26881, and 53087.6 of, and to add Sections 25250.5 and 26915 to, the Government Code, and to amend Section 4108.5 of the Revenue and Taxation Code, relating to ~~local~~ county government.

LEGISLATIVE COUNSEL'S DIGEST

AB 783, as amended, Daly. ~~Cities: legislative bodies: subpoena power: County auditors.~~

(1) Existing law enumerates the officers of a county, including the office of the auditor, prescribes their duties, and permits a county board of supervisors to consolidate, separate, and reconsolidate their duties, as specified. Existing law requires the board of supervisors, at least biennially, to audit county financial accounts and records of all county officers responsible for the care, management, collection, or disbursement of county money, as specified. Existing law requires the board of supervisors to supervise the official conduct of all county officers, particularly with regard to the functions and duties of these county officers as they relate to the assessing, collecting, safekeeping, management, or disbursement of public funds.

This bill would require, in any county with both an elected auditor-controller and a population exceeding 3,000,000 people, that the auditor-controller, and not the board of supervisors, examine and

audit, or cause to be audited, the financial accounts and records of all officers having responsibility for the care, management, collection, or disbursement of county money, as described above. The bill would require this audit to be filed with the board of supervisors. The bill would require, in any county with both an elected auditor-controller and a population exceeding 3,000,000 people, that the authority of the board of supervisors to supervise the official conduct of county officers not be construed to affect the independent auditing and accounting functions of the auditor-controller and would prohibit the board of supervisors from obstructing his or her auditing and accounting functions. By increasing the duties of local officials in a county with the above-described characteristics, this bill would impose a state-mandated local program.

(2) Existing law generally prescribes the duties of the county auditor. Existing law requires the county auditor or auditor-controller, as specified, to be the chief accounting officer of the county. Upon order of the board of supervisors, existing law requires the auditor or auditor-controller to prescribe the accounting forms and methods of all offices under the control of the board of supervisors and to supervise generally practices in those offices, which includes the ability to review departmental and countywide internal controls.

This bill would require a county auditor or auditor-controller also to be the chief auditor of the county. The bill would grant the auditor or auditor-controller, as part of its supervisory powers, the authority to audit, rather than review, departmental and countywide internal controls. The bill would require, in reference to the duties of auditors, that the term “county auditor” include certain county offices that have been consolidated. The bill would prescribe requirements for the head of a county auditing unit. The bill would prohibit a board of supervisors from creating or operating a separate auditing unit outside of the county auditor, except if the separate auditing unit was established before 1981, and would prohibit the board from transferring any auditing unit away from the county auditor. By increasing the duties of local officials in a county with the above-described characteristics, this bill would impose a state-mandated local program.

(3) Existing law authorizes a county auditor or controller to establish and maintain a whistleblower hotline for receiving information regarding fraud, waste, or abuse by local government employees, subject to certain requirements.

This bill would require, in a county with an elected auditor-controller and a population exceeding 3,000,000, that the county auditor-controller be the sole county officer with the authority to maintain a whistleblower hotline, as described above. By increasing the duties of local officials in a county with the above-described characteristics, this bill would impose a state-mandated local program.

(4) Existing law authorizes tax-defaulted property to be redeemed until the right of redemption terminates. Existing law requires the audit of a tax collector’s records and accounts related to redemption of tax-defaulted property at least once every 3 years.

This bill would require, in a county with an elected auditor-controller and a population exceeding 3,000,000 people, that the auditor-controller either conduct the audit described above or retain the services of an independent certified public accountant or licensed public accountant to perform the audit, in accordance with specified standards. By increasing the duties of local officials in a county with the above-described characteristics, this bill would impose a state-mandated local program.

(5) 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 these statutory provisions.

~~Existing law authorizes the legislative body of a city to issue subpoenas requiring the attendance of witnesses or production of books or other documents for evidence or testimony in any action or proceeding pending before the legislative body. Existing law requires these subpoenas to be signed by the mayor and attested by the city clerk.~~

~~This bill would authorize a city attorney to attest to a subpoena signed by a mayor.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.

State-mandated local program: ~~no~~-yes.

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

- 1 **SECTION 1.** *Section 25250.5 is added to the Government Code,*
- 2 *to read:*

1 25250.5. *Notwithstanding Section 25250, in any county with*
2 *both an elected auditor-controller and a population exceeding*
3 *3,000,000 people, at least biennially, the county auditor-controller*
4 *shall examine and audit, or cause to be audited, the financial*
5 *accounts and records of all officers having responsibility for the*
6 *care, management, collection, or disbursement of money belonging*
7 *to the county or money received or disbursed by them under*
8 *authority of law. The audit shall encompass the immediately*
9 *preceding two-year period, or any portion thereof not included in*
10 *a prior audit. This financial examination or audit may be*
11 *performed in coordination with the investigations conducted by*
12 *the grand jury under Section 925 of the Penal Code, or the*
13 *auditor-controller may elect to accept reports delivered pursuant*
14 *to Section 933 of the Penal Code in lieu of its own separate*
15 *examination if these reports are found to fulfill some or all of the*
16 *requirements of this section. In connection with the requirements*
17 *of this section and Section 25253, the county auditor-controller*
18 *may employ the services of an independent certified public*
19 *accountant or licensed public accountant to perform an*
20 *examination of the financial statements in accordance with*
21 *generally accepted auditing standards. The audit shall be filed*
22 *with the board of supervisors to enable the board to supervise*
23 *county officers and county fiscal affairs.*

24 *SEC. 2. Section 25303 of the Government Code is amended to*
25 *read:*

26 25303. (a) The board of supervisors shall supervise the official
27 conduct of all county officers, and officers of all districts and other
28 subdivisions of the county, and particularly insofar as the functions
29 and duties of such county officers and officers of all districts and
30 subdivisions of the county relate to the assessing, collecting,
31 safekeeping, management, or disbursement of public funds. It shall
32 see that they faithfully perform their duties, direct prosecutions
33 for delinquencies, and when necessary, require them to renew their
34 official bond, make reports and present their books and accounts
35 for inspection.

36 (b) *In any county with both an elected auditor-controller and*
37 *a population exceeding 3,000,000 people:*

38 (1) *This section shall not be construed to affect the independent*
39 *and statutorily designated auditing and accounting functions of*
40 *the county auditor-controller.*

1 (2) *The board of supervisors shall not obstruct the auditing and*
2 *accounting functions of the elected county auditor-controller.*

3 **This**

4 (c) *This section shall not be construed to affect the independent*
5 *and constitutionally and statutorily designated investigative and*
6 *prosecutorial functions of the sheriff and district attorney of a*
7 *county. The board of supervisors shall not obstruct the investigative*
8 *function of the sheriff of the county nor shall it obstruct the*
9 *investigative and prosecutorial function of the district attorney of*
10 *a county.*

11 **Nothing**

12 (d) *Nothing* contained herein shall be construed to limit the
13 budgetary authority of the board of supervisors over the district
14 attorney or sheriff.

15 *SEC. 3. Section 26881 of the Government Code is amended to*
16 *read:*

17 26881. The county auditor, or in counties that have the office
18 of controller, the auditor-controller shall be the chief accounting
19 officer of the ~~county~~ *county and the chief auditor of the county.*
20 Upon order of the board of supervisors, the auditor or
21 auditor-controller shall prescribe, and shall exercise a general
22 supervision, including the ability to ~~review~~ *audit* departmental and
23 countywide internal controls, over the accounting forms and the
24 method of keeping the accounts of all offices, departments and
25 institutions under the control of the board of supervisors and of
26 all districts whose funds are kept in the county treasury.

27 *SEC. 4. Section 26915 is added to the Government Code, to*
28 *read:*

29 26915. (a) *Any reference to “county auditor” shall also mean*
30 *county auditor-controller, county auditor-recorder, county*
31 *clerk-auditor-recorder, county clerk-auditor, county*
32 *auditor-controller-treasurer-tax collector, any office consolidated*
33 *under Section 24300.5, and any office into which the office of*
34 *county auditor is consolidated.*

35 (b) *The head of any county auditing unit, division, branch, or*
36 *group shall be one of the following:*

37 (1) *The county auditor.*

38 (2) *A person who shall be answerable directly to the county*
39 *auditor, shall have direct access to the county auditor, and shall*
40 *report the audit results to the county auditor.*

1 (c) A board of supervisors shall not create or operate a separate
2 auditing unit, division, branch, or group outside of the county
3 auditor, except if the separate auditing unit, division, branch, or
4 group was established before 1981. A board of supervisors shall
5 not transfer any auditing unit, division, branch, or group away
6 from the county auditor.

7 SEC. 5. Section 53087.6 of the Government Code is amended
8 to read:

9 53087.6. (a) (1) A city, county, or city and county auditor or
10 controller who is elected to office may maintain a whistleblower
11 hotline to receive calls from persons who have information
12 regarding fraud, waste, or abuse by local government employees.

13 (2) A city, county, or city and county auditor or controller who
14 is appointed by, or is an employee of, a legislative body or the
15 government agency that is governed by the city, county, or city
16 and county, shall obtain approval of that legislative body or the
17 government agency, as the case may be, prior to establishing the
18 whistleblower hotline.

19 (3) *In any county with both an elected auditor-controller and*
20 *a population exceeding 3,000,000 people, the county*
21 *auditor-controller shall be the sole county officer with the authority*
22 *to maintain a whistleblower hotline to receive calls from persons*
23 *who have information regarding fraud, waste, or abuse by county*
24 *government employees.*

25 (b) The auditor or controller may refer calls received on the
26 whistleblower hotline to the appropriate government authority for
27 review and possible investigation.

28 (c) During the initial review of a call received pursuant to
29 subdivision (a), the auditor or controller, or other appropriate
30 governmental agency, shall hold in confidence information
31 disclosed through the whistleblower hotline, including the identity
32 of the caller disclosing the information and the parties identified
33 by the caller.

34 (d) A call made to the whistleblower hotline pursuant to
35 subdivision (a), or its referral to an appropriate agency under
36 subdivision (b), may not be the sole basis for a time period under
37 a statute of limitation to commence. This section does not change
38 existing law relating to statutes of limitation.

39 (e) (1) Upon receiving specific information that an employee
40 or local government has engaged in an improper government

1 activity, as defined by paragraph (2) of subdivision (f), a city or
2 county auditor or controller may conduct an investigative audit of
3 the matter. The identity of the person providing the information
4 that initiated the investigative audit shall not be disclosed without
5 the written permission of that person, unless the disclosure is to a
6 law enforcement agency that is conducting a criminal investigation.
7 If the specific information is in regard to improper government
8 activity that occurred under the jurisdiction of another city, county,
9 or city and county, the information shall be forwarded to the
10 appropriate auditor or controller for that city, county, or city and
11 county.

12 (2) Any investigative audit conducted pursuant to this
13 subdivision shall be kept confidential, except to issue any report
14 of an investigation that has been substantiated, or to release any
15 findings resulting from a completed investigation that are deemed
16 necessary to serve the interests of the public. In any event, the
17 identity of the individual or individuals reporting the improper
18 government activity, and the subject employee or employees shall
19 be kept confidential.

20 (3) Notwithstanding paragraph (2), the auditor or controller may
21 provide a copy of a substantiated audit report that includes the
22 identities of the subject employee or employees and other pertinent
23 information concerning the investigation to the appropriate
24 appointing authority for disciplinary purposes. The substantiated
25 audit report, any subsequent investigatory materials or information,
26 and the disposition of any resulting disciplinary proceedings are
27 subject to the confidentiality provisions of applicable local, state,
28 and federal statutes, rules, and regulations.

29 (f) (1) For purposes of this section, “employee” means any
30 individual employed by any county, city, or city and county,
31 including any charter city or county, and any school district,
32 community college district, municipal or public corporation, or
33 political subdivision that falls under the auditor’s or controller’s
34 jurisdiction.

35 (2) For purposes of this section, “fraud, waste, or abuse” means
36 any activity by a local agency or employee that is undertaken in
37 the performance of the employee’s official duties, including
38 activities deemed to be outside the scope of his or her employment,
39 that is in violation of any local, state, or federal law or regulation
40 relating to corruption, malfeasance, bribery, theft of government

1 property, fraudulent claims, fraud, coercion, conversion, malicious
2 prosecution, misuse of government property, or willful omission
3 to perform duty, is economically wasteful, or involves gross
4 misconduct.

5 *SEC. 6. Section 4108.5 of the Revenue and Taxation Code is*
6 *amended to read:*

7 4108.5. (a) The records and accounts of the tax collector
8 pursuant to this part shall be audited at least once each three years.

9 (b) ~~This section shall become inoperative on July 1, 1993, and~~
10 ~~shall remain inoperative until July 1, 1994, on which date this~~
11 ~~section shall become operative. In any county with both an elected~~
12 ~~auditor-controller and a population exceeding 3,000,000 people,~~
13 ~~the county auditor-controller shall either conduct the audit~~
14 ~~required by this section or shall employ the services of an~~
15 ~~independent certified public accountant or licensed public~~
16 ~~accountant to perform the audit required by this section in~~
17 ~~accordance with the general and specified standards prescribed~~
18 ~~by the Institute of Internal Auditors or the Government Auditing~~
19 ~~Standards issued by the Comptroller General of the United States,~~
20 ~~as appropriate.~~

21 *SEC. 7. If the Commission on State Mandates determines that*
22 *this act contains costs mandated by the state, reimbursement to*
23 *local agencies and school districts for those costs shall be made*
24 *pursuant to Part 7 (commencing with Section 17500) of Division*
25 *4 of Title 2 of the Government Code.*

26 ~~SECTION 1. Section 37105 of the Government Code is~~
27 ~~amended to read:~~

28 ~~37105. Subpoenas shall be signed by the mayor and attested~~
29 ~~by the city clerk or the city attorney. They may be served as~~
30 ~~subpoenas are served in civil actions.~~