

Date of Hearing: July 1, 2015

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Brian Maienschein, Chair
SB 331 (Mendoza) – As Amended June 23, 2015

SENATE VOTE: 25-14

SUBJECT: Public contracts: local agencies: negotiations.

SUMMARY: Requires local agencies that have adopted a Civic Openness in Negotiations (COIN) ordinance for their labor contracts to use a similar process to evaluate, negotiate, and approve specified goods or services contracts valued at \$50,000 or more. Specifically, **this bill:**

- 1) Enacts the Civic Reporting Openness in Negotiations Efficiency Act, or CRONEY.
- 2) Provides that CRONEY applies only to a city, county, city and county, or special district that has adopted a COIN ordinance, which is effective and operative. CRONEY shall not apply if the city, county, city and county, or special district suspends, repeals, or revokes its COIN ordinance.
- 3) Provides that CRONEY shall apply to any contracts with a value of at least \$50,000, and to any contracts with a person or entity, or related person or entity, with a cumulative value of at least \$50,000 within the fiscal year of the city, county, city and county, or special district, being negotiated between the city, county, city and county, or special district, and any private person or entity that seeks to provide services or goods to the city, county, city and county, or special district, in the following areas: accounting, financing, hardware and software maintenance, healthcare, human resources, human services, information technology, telecommunications, janitorial maintenance, legal services, lobbying, marketing, office equipment maintenance, passenger vehicle maintenance, property leasing, public relations, public safety, social services, transportation, or waste removal.
- 4) Requires the city, county, city and county, or special district to designate an unbiased independent auditor to review the cost of any proposed contract, who must prepare a report on the cost of the contract and provide the report to all parties and make it available to the public before the governing body takes any action to approve or disapprove the contract.
- 5) Requires the report specified above to comply with the following:
 - a) The report shall include a recommendation regarding the viability of the contract, including any supplemental data upon which the report is based, and shall determine the fiscal impacts attributable to each term and condition of the contract;
 - b) The report shall be made available to the public at least 30 days before the issue can be heard before the governing body and at least 60 days before any action to approve or disapprove the contract by the governing body; and,

- c) Any proposed changes to the contract after it has been approved by the governing body shall adhere to the same approval requirements as the original contract. The changes shall not go into effect until all of the requirements of 4) and 5), above, are met.
- 6) Requires the city, county, city and county, or special district to disclose all offers and counteroffers to the public within 24 hours on its Internet Web site (website).
- 7) Requires, before approving any contract, the city, county, city and county, or special district to release a list of names of all persons in attendance, whether in person or by electronic means, during any negotiation session regarding the contract, the date of the session, the length of the session, the location where the session took place, and any pertinent facts regarding the negotiations that occurred in that session.
- 8) Requires representatives of the governing body to advise the governing body of all offers, counteroffers, information, or statements of position discussed by the contracting person or entity and city, county, city and county, or special district representatives participating in negotiations regarding any contract.
- 9) Requires each governing body member and staff members of governing body offices to disclose publicly all verbal, written, electronic, or other communications regarding a subject matter related to the negotiations or pending negotiations they have had with any official or unofficial representative of the private entity within 24 hours after the communication occurs.
- 10) Requires a final governing body determination regarding approval of any contract to be undertaken only after the matter has been heard at a minimum of two meetings of the governing body wherein the public has had the opportunity to review and comment on the matter.
- 11) Finds and declares that Section 1 of the bill furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies, and declares, pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, that the Legislature makes the following findings:

This act ensures that members of the public have the opportunity to be informed of, and meaningfully participate in, the negotiation and approval of contracts for goods and services by a city, county, city and county, or special district that has adopted a civic openness in negotiations (COIN) ordinance, thereby furthering the purposes of Section 3 of Article I of the California Constitution.
- 12) Provides that no reimbursement is required by this bill because the only costs that may be incurred by a local agency or school district under this bill would result from a legislative mandate that is within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.

- 13) Defines “civic openness in negotiations ordinance” or “COIN ordinance” to mean an ordinance adopted by a city, county, city and county, or special district that requires any of the following as a part of any collective bargaining process undertaken pursuant to the Meyers-Milias-Brown Act (MMBA):
- a) The preparation of an independent economic analysis describing the fiscal costs of benefit and pay components currently provided to members of a recognized employee organization, as defined in existing law governing local public employee organizations;
 - b) The completion of the independent economic analysis prior to the presentation of an opening proposal by the public employer;
 - c) Availability for review by the public of the independent economic analysis before presentation of an opening proposal by the public employer;
 - d) Updating of the independent economic analysis to reflect the annual or cumulative costs of each proposal made by the public employer or recognized employee organization;
 - e) Updating of the independent economic analysis to reflect any absolute amount or change from the current actuarially computed unfunded liability associated with the pension or postretirement health benefits;
 - f) The report from a closed session of a meeting of the public employer’s governing body of offers, counteroffers, or supposals made by the public employer or the recognized employee organization and communicated during that closed session; or,
 - g) The report from a closed session of a meeting of the public employer’s governing body of any list of names of persons in attendance during any negotiations session, the date of the session, the length of the session, the location of the session, or pertinent facts regarding the negotiations that occurred during a session.

EXISTING LAW:

- 1) Authorizes the legislative body of any public or municipal corporation or district to contract with and employ any persons for the furnishing to the corporation or district special services and advice in financial, economic, accounting, engineering, legal, or administrative matters if the persons are specially trained and experienced and competent to perform the special services required.
- 2) Enacts the Meyers-Milias-Brown Act (MMBA), which governs the relations between local governments and their employees. The MMBA applies to counties, cities, and special districts.
- 3) Establishes, under the MMBA, the framework under which local agencies’ employees who are represented by unions can collectively bargain over wages, hours, and terms and conditions of employment through a specified meet and confer process.
- 4) Enacts the Ralph M. Brown Act (Brown Act), which requires local agencies' meetings to be "open and public," with specific exceptions.

- 5) Allows, under the Brown Act, local governments' legislative bodies to meet in closed sessions for some aspects of labor negotiations. For example, a legislative body may meet in closed session to instruct its bargaining representatives, which may be one or more of its members, on employee salaries and fringe benefits for both union and non-union employees.
- 6) Requires the approval of an agreement concluding labor negotiations with represented employees to be publicly reported after the agreement is final and has been accepted or ratified by the other party. The report must identify the item approved and the other party or parties to the negotiation.
- 7) Requires public agencies, pursuant to the California Public Records Act (CPRA), to make their records available for public inspection and, upon request, to provide a copy of a public record, unless the record is exempt from disclosure, and allows a public agency to charge to the requester the direct cost of producing the electronic public record.
- 8) Provides, pursuant to the California Constitution, that the people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.
- 9) Provides, pursuant to the California Constitution (as amended by Proposition 42 in 2014), that in order to ensure public access to the meetings of public bodies and the writings of public officials and agencies, each local agency is required to comply with the CPRA and the Brown Act, and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of the California Constitution that govern public access to the meetings of public bodies and the writings of public officials and agencies.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

- 1) **Bill Summary.** This bill requires local agencies that have adopted a COIN ordinance for their labor contracts to use a similar process to evaluate, negotiate, and approve goods or services contracts valued at \$50,000 or more in the following areas: accounting, financing, hardware and software maintenance, healthcare, human resources, human services, information technology, telecommunications, janitorial maintenance, legal services, lobbying, marketing, office equipment maintenance, passenger vehicle maintenance, property leasing, public relations, public safety, social services, transportation, or waste removal. This bill is sponsored by the American Federation of State, County and Municipal Employees, AFL-CIO, and the Orange County Employees Association.
- 2) **Background.** Several local governments have recently approved COIN ordinances in a stated attempt to increase public awareness and involvement in their labor contract negotiations. The City of Costa Mesa was the first jurisdiction to adopt a COIN ordinance, driven in part by its unfunded pension obligations. Orange County, the cities of Fullerton and Beverly Hills, and the East Bay Municipal Utility District (East Bay MUD) also have COIN ordinances in place.

A COIN ordinance usually requires the local government to do several things in the course of its labor contract negotiations, including:

- a) Hiring an independent negotiator;
- b) Obtaining an independent analysis of the costs of contract proposals;
- c) Requiring public disclosure, within 24 hours, of offers and counter-offers made during negotiations;
- d) Disclosing communications between elected local government officials and representatives of recognized employee organizations; and,
- e) Disclosing a proposed contract before it is placed on an agenda for approval by a local legislative body.

Proponents of COIN ordinances argue that these requirements are necessary to provide opportunities for the public to be informed about labor contract negotiations before they are approved by their elected officials.

Opponents of COIN ordinances argue that these ordinances unfairly focus only on labor contracts, while failing to extend similar provisions to local governments' contract negotiations for goods and services provided by private third-parties.

- 3) **Author's Statement.** According to the author, "SB 331 will increase transparency in public contracting by establishing the Civic Reporting Openness in Negotiations Efficiency Act. The bill applies to local jurisdictions where a Civic Openness in Negotiations Ordinances (COIN) has been approved and will ensure that the same openness requirements apply to all contracts whether they are labor contracts or contracts with private entities for goods and services.

"Orange County, Costa Mesa, Fullerton, East Bay MUD, and the City of Beverly Hills have adopted what they call COIN ordinances requiring that certain aspects of collective bargaining engaged in by the city, county, or city and county to be open to the public... Under the bill, a local jurisdiction where a COIN ordinance exists will be required to expand transparency to all contracts with private entities for goods and services... Transparency in public contracting is needed in ALL public contracting, and can't be effectively directed at just one interest group."

- 4) **COIN in Orange County.** Orange County's COIN ordinance was proposed and approved last year amid heated controversy. Proponents argued that there was a long history of labor negotiations being held in closed session and then contracts being approved immediately thereafter, depriving constituents and voters of any input into the County's labor contracts. Opponents criticized Orange County's Board of Supervisors for failing to have the COIN ordinance cover all government contracting, including contracts with private companies. They cited an Orange County Grand Jury report, entitled "Improving the County of Orange Government's Multi-Billion Dollar Contracting Operations," which found that most of the county's budget, or \$3.1 billion out of \$5.4 billion, is spent on private sector contracts. In

response, proponents of COIN noted that the process and dollar amounts for labor contracts are dramatically different from negotiations for other kinds of contracts. The Association of Orange County Deputy Sheriff's also alleged that the ordinance was unconstitutional and that its language and timing constituted an unfair labor practice.

- 5) **COIN Case at the Public Employment Relations Board.** In July of 2014, three of Orange County's recognized employee organizations filed unfair practice charges with California's Public Employment Relations Board (PERB). In November 2014, PERB issued complaints in all three cases alleging that Orange County's adoption of its COIN ordinance violated the MMBA and PERB regulations. PERB issued its proposed decision on June 16, 2015, finding that some components of Orange County's COIN ordinance, as well as the process by which it was introduced and adopted, violate the MMBA and PERB regulations. PERB ordered Orange County to rescind from its COIN ordinance those components found to violate the MMBA and PERB regulations; cease and desist from activities found to violate the MMBA and PERB regulations; and, post notices of PERB's orders.

PERB's proposed decision becomes final, unless a party files a statement of exceptions with PERB within 20 days of service of the decision. This time period has not yet expired, and it is unknown whether any party to the case will exercise this appeal option.

- 6) **Proposition 42.** Proposition 42, approved by voters on June 3, 2014, amended the California Constitution by requiring all local governments to comply with the CPRA and the Brown Act, and with any subsequent changes to those Acts. Proposition 42 also eliminated reimbursement to local agencies for the costs of complying with the CPRA and the Brown Act.

This bill contains language stating that the Legislature finds and declares that Section 1 of the bill furthers the purpose of the California Constitution as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. The bill also includes a finding, pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the Constitution (which was added by Proposition 42), that states, "This act ensures that members of the public have the opportunity to be informed of, and meaningfully participate in, the negotiation and approval of contracts for goods and services by a city, county, city and county, or special district that has adopted a civic openness in negotiations (COIN) ordinance, thereby furthering the purposes of Section 3 of Article I of the California Constitution."

Section 3 of the bill specifies that no reimbursement for local agencies to implement the bill's provisions is necessary because "the only costs that may be incurred by a local agency or school district...would result from a legislative mandate that is within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution."

- 7) **Policy Considerations.** The Committee may wish to consider the following:
- a) **Pending Litigation.** As noted above, a COIN ordinance case is pending with PERB. The Committee may wish to consider whether it is premature to enact legislation affecting this issue before this case is finalized, and whether a more appropriate remedy at that time might be to prohibit COIN ordinances from containing any provisions that PERB found to violate the MMRA and PERB regulations.

b) **Applying COIN Provisions to Non-Labor Contracts.** The Senate Governance and Finance Committee analysis of this bill notes, "In theory, applying roughly similar transparency requirements to all local government contract negotiations may seem fair. However, in practice, it is problematic to apply one-size-fits-all requirements to a wide variety of contract negotiations that are not alike. The exemptions from statutory open meeting requirements that state law grants to labor contract negotiations do not apply to most other types of local government contracts for goods and services. This is not to suggest that favoritism, payoffs, or bad judgment can't influence local governments' contract awards for goods and services. But, the problems with those contract negotiations may not relate to a lack of public notice or discussion in public hearings. For example, in contrast with the collective bargaining process, the details of solicitations for public works contracts are circulated well in advance of the bidding process and contracts are typically awarded to the lowest responsible bidder through a public process, with minimal opportunities to alter the details of the contract. By applying similar openness requirements on all local government contracts, SB 331 may only achieve parity in form, while failing to address the different policy responses that may be necessary to respond to different types of undesirable contract negotiation practices."

8) **Previous Legislation.** AB 1333 (R. Hernández) of 2013 would have required a local legislative body to adopt a resolution to either exercise, or decline to exercise, an option to rescind an "evergreen" contract or memorandum of understanding with a total annual value of \$250,000. AB 1333 was held in the Senate Governance and Finance Committee.

AB 834 (Hernández) of 2011 was similar to AB 1333. AB 834 failed passage on the Assembly floor.

9) **Arguments in Support.** The American Federation of State, County and Municipal Employees, AFL-CIO, co-sponsor of this measure, writes, "While some transparency measures are already present during many of the labor contracts in California, even in the absence of COIN, private companies contracting with cities and counties for public dollars are rarely held to the same standard. If municipalities are contracting with private entities for public services, then taxpayers have a right to know how their money is being used in private contracts; if taxpayers are going to trust a for-profit company to provide vital services, that company should be able to prove it can be trusted. SB 331 is a piece of municipal legislation that would bring maximum transparency to contract negotiations with private entities for public services, which have a long-standing and increasing history of being done outside of public view."

10) **Arguments in Opposition.** The Orange County Board of Supervisors, in opposition, states, "SB 331 imposes far greater restrictions on the Board's ability to conduct its business than what is required of collective bargaining under COIN, the most egregious of which would prohibit approval of any contracts for no less than sixty days. This proposed state mandate on a local government would essentially stifle the Board's primary responsibility to fund critical contracts that keep county operations functioning...The mandates proposed in SB 331 will only lead to increased costs due to delays in the contracting process and unreasonable administrative burdens. Most importantly, this bill punishes two groups: the people who work here, and the people relying on the timely provision of County

services. While transparency is a worthy policy goal, the size, scope and structure of this bill demonstrates that it is more about retribution than it is a sweeping policy aimed at transparency and openness."

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation of State, County and Municipal Employees, AFL-CIO [CO-SPONSOR]
Orange County Employees Association [CO-SPONSOR]
AFSCME District Council 36
Association of Deputy District Attorneys
Association of Orange County Deputy Sheriffs
California Association of Professional Employees
California Professional Firefighters
California Teachers Association
Glendale City Employees Association
In the Public Interest
International Union of Operating Engineers, Local 501
LIUNA Locals 777 and 792
Orange County Professional Firefighters Local 3631
Organization of SMUD Employees
Peace Officers Research Association of California
San Bernardino Public Employees Association
San Diego County Court Employees Association
San Luis Obispo County Employees Association
UDW/AFSCME Local 3930

Opposition

California Chamber of Commerce
League of California Cities, Orange County Division
Orange County Board of Supervisors
Sandra Hutchens, Sheriff-Coroner, Orange County Sheriff's Department

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