
THIRD READING

Bill No: AB 3068
Author: Daly (D), et al.
Amended: 4/16/18 in Assembly
Vote: 21

SENATE GOVERNANCE & FIN. COMMITTEE: 6-1, 6/20/18
AYES: McGuire, Nguyen, Beall, Hernandez, Hertzberg, Lara
NOES: Moorlach

SENATE JUDICIARY COMMITTEE: 5-2, 6/26/18
AYES: Jackson, Hertzberg, Monning, Stern, Wieckowski
NOES: Moorlach, Anderson

SENATE APPROPRIATIONS COMMITTEE: 7-0, 8/16/18
AYES: Portantino, Bates, Beall, Bradford, Hill, Nielsen, Wiener

ASSEMBLY FLOOR: 77-0, 5/30/18 - See last page for vote

SUBJECT: County government: contract legal counsel: auditor-controller

SOURCE: Auditor-Controller of Orange County

DIGEST: This bill requires county boards of supervisors to obtain independent legal counsel to assist a county auditor-controller if a county counsel or district attorney would have a conflict of interest in representing the auditor-controller.

ANALYSIS:

Existing law:

- 1) Provides for the following under the California Constitution:
 - a) Divides the state into 58 counties.

- b) Tasks the Legislature with developing uniform procedures for their formation, consolidation, and boundary changes.
 - c) Requires the Legislature to establish general laws providing for county powers, an elected county sheriff, an elected district attorney, an elected assessor, and an elected governing body in each county.
- 2) Provides that each general law county is governed by a five-member board of supervisors, in which is vested the exercise of the county's powers.
 - 3) Creates additional county officers, including a county auditor, and, if appointed by the board of supervisors, a county counsel that serves as the chief legal advisor to the county and is appointed by the board of supervisors for a four year term.
 - 4) Requires a county board of supervisors, at the request of the sheriff or assessor, to hire outside counsel where a conflict of interest exists for the county counsel.
 - 5) Allows the board of supervisors to ask a court to rule on:
 - a) If a conflict actually exists,
 - b) If an "ethical wall" may instead be established, and
 - c) If the request by the sheriff or assessor was brought frivolously.
 - 6) Requires, if the request was frivolous, the sheriff or assessor to pay their own legal costs.

This bill:

- 1) Adds auditor-controllers to the process established for sheriffs and assessors.
- 2) Requires the presiding judge to select the counsel to be employed by the board of supervisors if a conflict exists.
- 3) Allows the sheriff, auditor-controller, or assessor, as well as the board of supervisors, to recommend specific legal counsel to the presiding judge.
- 4) Requires the presiding judge must consider counsel compensation rates prevailing in the county for similar work.

Background

Board of Supervisors. The board of supervisors controls the exercise of the county's powers and the conduct of its officers. Under state law, the powers of a county can only be exercised by the board of supervisors or through officers acting under the authority of the board or authority conferred by law, and the board supervises the official conduct of all county officers, particularly as their activities pertain to the management and disbursement of public funds.

Auditor-controller. County auditors serve as the chief accounting officers for counties, allocating property tax revenues and performing audits on county departments, special districts, and joint powers authorities. Counties may also create the office of county controller, who is responsible for the county's bookkeeping and check writing. Absent a designation to the contrary, the office of county controller is held by the county auditor. State law permits counties to consolidate the two offices into the office of the county auditor-controller. County auditor-controllers must perform specified audits under state law, and the county boards of supervisors can also request other audits. Most county auditor-controllers are elected officials, but county supervisors can convert the position to an appointed one with majority voter approval.

Conflict of Interest. Under the Rules of Professional Conduct, a county counsel must represent the interests of the entire county, and state law specifically requires county counsel to prosecute or defend any action brought by or against the auditor-controller contesting the validity of a payment if the interest of the county is not adverse. Where the county counsel has an actual conflict of interest because he or she cannot ethically represent both sides in a disagreement between the board and county officers that have authority to act independently of the board—typically the constitutionally-created offices of sheriff and assessor—the county counsel acts as the legal advisor to the board of supervisors.

Orange County. Orange County's auditor-controller is elected. The combined auditor-controller office came into being in 1982, when the Board of Supervisors consolidated the formerly independent functions into a single Office of Auditor-Controller. Today, the county's Auditor-Controller is responsible for conducting independent audits of county departments, as well as basic bookkeeping and check writing.

In recent years, press reports have documented disputes between the Orange County Auditor-Controller and the board of supervisors, including:

- Whether internal audits should be assigned to the Auditor-Controller or the county's Internal Audit Department.
- A decision by the Auditor-Controller to withhold pension payments for a county supervisor that the Auditor-Controller deemed illegal.
- A 2016 decision by the Auditor-Controller to halt payment for mailers that the Auditor-Controller deemed in violation of Fair Political Practices Commission rules.

Comments

- 1) *Purpose of the bill.* Auditor-controllers are the financial watchdogs of the county. In their auditor role, they investigate financial malfeasance and identify improper or inefficient expenditures. These activities can put an elected auditor-controller at odds with county supervisors, as illustrated by recent events in Orange County. But the auditor-controller may not hire outside counsel without the approval of the board of supervisors, even though county counsel is the legal advisor to the board of supervisors under state law and thus may not be able to fairly represent the auditor-controller. AB 3068 addresses this conflict in existing law by allowing auditor-controllers to hire outside counsel where a conflict of interest exists, just as is already allowed for sheriffs and assessors. It also lets sheriffs, assessors, and auditor-controllers recommend specific counsel to the presiding judge, while allowing the board of supervisors to do the same. This allows auditor-controllers to mount an appropriate legal defense when necessary, while striking an appropriate balance of power among county offices. By addressing these issues, AB 3068 enables elected auditor-controllers, as well as the sheriff and assessor, to more effectively carry out their responsibilities. This ultimately protects the fiscal health of counties.
- 2) *Home rule.* AB 3068 emerges from a series of disputes within Orange County, but modifies the authority for auditor-controllers statewide. Yet local avenues exist for resolving these conflicts. County charters provide the voters in an individual county the opportunity to modify the powers and duties of their county officers, and the board of supervisors is ultimately accountable to local voters for their actions. Moreover, the particular conflicts giving rise to this bill appear to have been resolved because the disputed charges were ultimately paid. Accordingly, the issues raised by this bill may be best resolved at the local level instead of through a statewide bill.

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

According to the Senate Appropriations Committee, unknown, potentially significant reimbursable county costs to provide outside counsel to the auditor-controller, to the extent that the Commission on State Mandates determines that this measure imposes a state-mandated local program. Actual costs in a given year would depend upon the number of instances in which independent counsel must be hired by counties, the complexity of the issues, the length of the services required, and whether or not the matters include litigation. (General Fund)

SUPPORT: (Verified 8/17/18)

Auditor-Controller of Orange County (source)
Association of Local Government Auditors
Auditor-Controller of Amador County
Auditor-Controller of Calaveras County
Auditor-Controller of Colusa County
Auditor-Controller of Del Norte County
Auditor-Controller of El Dorado County
Auditor-Controller of Humboldt County
Auditor-Controller of Imperial County
Auditor-Controller of Kern County
Auditor-Controller of Lassen County
Auditor-Controller of Madera County
Auditor-Controller of Mariposa County
Auditor-Controller of Mendocino County
Auditor-Controller of Merced County
Auditor-Controller of Monterey County
Auditor-Controller of Nevada County
Auditor-Controller of Riverside County
Auditor-Controller of Santa Barbara County
Auditor-Controller of Sierra County
Auditor-Controller of Siskiyou County
Auditor-Controller of Solano County
Auditor-Controller of Stanislaus County
Auditor-Controller of Sutter County
Auditor-Controller of Tehama County
Auditor-Controller of Trinity County
Auditor-Controller of Tulare County
Auditor-Controller of Tuolumne County
Auditor-Controller of Ventura County

Auditor-Controller of Yuba County
Auditor-Controller/Treasurer/Tax Collector of San Bernardino County
Colusa County Sheriff
Elected members of the State Association of County Auditors
Orange County Sheriff
One individual

OPPOSITION: (Verified 8/17/18)

None received

ASSEMBLY FLOOR: 77-0, 5/30/18

AYES: Acosta, Aguiar-Curry, Travis Allen, Arambula, Baker, Berman, Bigelow, Bloom, Bonta, Brough, Burke, Caballero, Calderon, Carrillo, Cervantes, Chau, Chávez, Chen, Chiu, Choi, Chu, Cooley, Cooper, Cunningham, Dahle, Daly, Eggman, Flora, Fong, Frazier, Friedman, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez Fletcher, Gray, Grayson, Harper, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager-Dove, Kiley, Lackey, Levine, Limón, Low, Maienschein, Mathis, Mayes, McCarty, Melendez, Mullin, Muratsuchi, Nazarian, Obernolte, O'Donnell, Patterson, Quirk, Quirk-Silva, Reyes, Rodriguez, Rubio, Salas, Santiago, Steinorth, Mark Stone, Thurmond, Ting, Voepel, Waldron, Weber, Wood, Rendon

NO VOTE RECORDED: Medina

Prepared by: Anton Favorini-Csorba / GOV. & F. / (916) 651-4119
8/18/18 13:58:59

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