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KATHLEEN KRAUSE
Clerk of the Board of Supervisors
Kern County Administrative Center
1115 Truxtun Avenue, 5th Floor
Bakersfield, CA 93301
Telephone (661) 868-3585
TTY Relay (800) 735-2929

April 26, 2024

The Honorable Buffy Wicks
Chair, Assembly Appropriations Committee
1020 O Street, Suite 8220
Sacramento, CA 95814

Re: AB 2557 (Ortega), Revisions to contracting standards for local governments – OPPOSE

Dear Assembly Member Wicks,

I am writing on behalf of the Kern County Board of Supervisors, in lockstep with the California State Association of Counties, to express our strong opposition to AB 2557 (Ortega), which would create a de facto prohibition on county service contracts due to the onerous obligations and costs associated with its requirements, creating untenable circumstances for local agencies and disastrous consequences for the communities we serve.

Specifically, AB 2557 would require local agencies – at least 10 months prior to a procurement process to contract for special services that are currently or in the past 10 years provided by a member of an employee organization – to notify the employee organization affected by the contract of its determination to begin a procurement process by the governing body. The definitions of special services varies by agency type but cover a broad array of services provided by local agencies, from essential government administration services to medical and therapeutic services to legal and other technical services. This is an infeasible obligation, as local agencies often are unaware of a need for a procurement process 10 months prior. Such a situation could occur under any number of circumstances: from a labor dispute that results in a strike, a natural disaster, a global pandemic, emergency utility repairs, emergent and on-call situations, etc. Local agencies have proven their ability to be adaptable in times of need, but the 10-month timeframe and extensive range of services included in AB 2557 are both arbitrary and unworkable, impeding local agencies' capacity to respond to local needs.

AB 2557 would also require contractors to provide quarterly performance reports with a litany of required components, including personally identifiable information for its employees and subcontractors, that is then subject to the California Public Records Act. An entire local bureaucracy would have to be created at a considerable cost to comply with provisions that require these quarterly performance reports to be monitored to evaluate the quality of service. A particularly troubling provision would *require* the local agency to withhold payment to the contractor under any of the following circumstances that are deemed breach of contract:

(1) Three or more consecutive quarterly performance reports are deemed as underperforming by a representative of the governing body *or a representative of the exclusive bargaining unit*;

(2) The contractor fails to provide the quarterly reports required by this section or provides a report that is incomplete. Payment may only be made when a contractor submits a plan to achieve substantial compliance with the contract and this section, unless *the governing body, the employee organization, or assigned representatives* reject the plan as insufficient and explain the reasons for the rejection or, in the case of incomplete reports, all complete reports are provided unless *the governing body, the employee organization, or assigned representatives* reject the reports as incomplete.

These provisions would undoubtedly deter non-profit providers, community-based organizations, and other private service providers from engaging with local agencies, likely exacerbating existing demanding caseloads and workloads for our current staff and driving up costs. In addition, not only would private employee data be accessible to any member of the public via the California Public Records Act, but the measure disregards constitutional privacy rights by requiring the publication of personal financial information about private employees. Finally, these provisions elevate the employee organization to a decision-making entity for expenditure of local resources equal to that of the duly elected governing body that is directly accountable to voters. Authorizing an employee organization to decide to withhold payment to a contractor is not just an inconceivable policy proposal, but also raises serious constitutional questions about delegation of a public authority to a non-public entity.

In addition to the obligation of the contractor to provide quarterly performance reports every 90 days, AB 2557 requires a performance audit by an independent auditor (who would likely also be subject to the provisions of AB 2557) to determine whether performance standards are being met for contracts with terms exceeding two years *at the contractor's cost*. It is unclear to us what is intended to be learned from this performance audit as opposed to the quarterly performance reports that are proposed for review by the governing body *and* the employee organization. Four quarterly performance reports would be provided, then a performance audit would be started, while four additional quarterly performance reports would be provided presumably prior to completion of the performance audit. That is a total of *nine* reports over a period of 24 months.

This provision fails to reflect an understanding of the practical logistics of actually achieving this reporting and review in a timely manner, not to mention the additional burden placed on contractors, which would presumably be an additional deterrent to engaging with local agencies. Because a contract renewal or extension may only occur after a review in conference with a representative of the exclusive bargaining unit, this provision also provides the opportunity to defer or delay such a renewal or extension. No matter what, the abundance of reporting obligations outlined in AB 2557 is likely to come with considerable local costs and is unlikely to facilitate effective and efficient provision of local programs and services to our mutual constituencies.

All of the above provisions also apply to temporary employees working under a contract for temporary help. Temporary employees working under a contract for temporary help are routinely used for important local services. An example that we have previously shared with the Legislature are public and district hospitals, which often operate both hospitals and clinics, that must ensure they are adequately staffed to care for patients and meet the requirements of state law. It is no secret that California is in a statewide health care provider shortage, and as providers adjust to surges in patient volumes and fluctuations in staffing levels, they must have the tools available to bring on additional staff quickly to fill gaps.

It is important to note that local agencies are already subject to the statutory provisions of the Meyers Milius-Brown Act (MMBA), the Ralph C. Dills Act, and related provisions of state law. These laws already establish that local agencies cannot contract out bargaining unit work simply to save money and most contracting-out decisions are subject to meet-and-confer requirements. There are exceptions to the meet-and-confer requirement in cases of compelling necessity (like an emergency) or when there is an established past practice of contracting out particular work. AB 2557 does not incorporate either of these limitations. Our position is that these issues are better addressed at the bargaining table where local conditions can be appropriately considered.

In recent years, the Newsom Administration and the Legislature have directed local agencies to engage more with community partners to more effectively connect with vulnerable communities. There are countless examples of programs and policies that have specified components that are directed to be delivered by entities that have direct, lived experience and/or cultural familiarity. One need only look to efforts over the last few years with the state's Homeless Housing and Prevention (HHAP) program or the significant reforms to the Medi-Cal program contained in CalAIM or various criminal justice reforms, to name just a few. These efforts explicitly include a role for non-profit, community-based, and private sector providers. Without that partnership, local agencies will be less successful in meeting the expectations and outcomes the state has directed – a consequence of which could be penalties and fines – and, in doing so, will fall short in meeting the needs of those that we are jointly committed to serve and undermine general trust in government.

Counties are constantly challenged by the state to do more, to be more effective and efficient, to be accountable to the public for the resources that we are responsible for managing. Efforts like AB 2557 – along with a similar measure, AB 2489 by Assembly Member Ward – tie the hands of local agencies in their most basic administrative function. In doing so, the proposal sets local agencies up for failure – without reasonable tools to manage our constitutional and statutory obligations, there can be no expectation that local agencies make progress on the policy goals that the Legislature and Administration have set forth.

AB 2557 represents a sweeping change to the fundamental work of local governments, but we are unaware of a specific, current problem that this measure would resolve or prevent. We are keenly aware, though, of the very real harm that will result from this measure. AB 2557 will not improve services, reduce costs, or protect employees. For these reasons, the Kern County Board of Supervisors strongly opposes this legislation and respectfully requests that you vote **NO on AB 2557**.

Sincerely,



David Couch, Chairman
Kern County Board of Supervisors

cc: Honorable Members, Assembly Appropriations Committee
Honorable Members, Kern Legislative Delegation
California State Association of Counties
Shaw Yoder Antwih Schmelzer & Lange