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**AB-3068 County government: contract legal counsel: auditor-controller.** (2017-2018)

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**Assembly Bill No. 3068**

**CHAPTER 307**

An act to amend Section 31000.6 of the Government Code, relating to local government.

[ Approved by Governor September 07, 2018. Filed with Secretary of State September 07, 2018. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 3068, Daly. County government: contract legal counsel: auditor-controller.

(1) Existing law requires a county board of supervisors, upon request of the county assessor or sheriff, to contract with legal counsel to assist the assessor or sheriff with duties for which the district attorney or county counsel would have a conflict of interest in representing the assessor or sheriff. In the event the board of supervisors does not concur with the assessor or sheriff that a conflict of interest exists, existing law authorizes the county assessor or sheriff to initiate an ex parte proceeding before the presiding judge of the superior court, as provided.

This bill would extend these provisions to additionally require the board of supervisors to contract with legal counsel to assist the auditor-controller, as described above. The bill would also, if the presiding judge determines that a conflict exists and the creation of an ethical wall within the county counsel's or district attorney's office is inappropriate, require the presiding judge to select the legal counsel that the board of supervisors employs for the assessor, auditor-controller, or sheriff, as provided.

By adding to the duties of county boards of supervisors with respect to contracts for legal counsel, this bill would impose a state-mandated local program.

(2) 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 the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 31000.6 of the Government Code is amended to read:

**31000.6.** (a) Upon request of the assessor, auditor-controller, or the sheriff of the county, the board of supervisors shall contract with and employ legal counsel to assist the assessor, auditor-controller, or the sheriff in the performance of his or her duties in any case where the county counsel or the district attorney would have a conflict of interest in representing the assessor, auditor-controller, or the sheriff.

(b) In the event that the board of supervisors does not concur with the assessor, auditor-controller, or the sheriff that a conflict of interest exists, the assessor, auditor-controller, or the sheriff, after giving notice to the county counsel or the district attorney, may initiate an ex parte proceeding before the presiding judge of the superior court. The county counsel or district attorney may file an affidavit in the proceeding in opposition to, or in support of, the assessor's, auditor-controller's, or the sheriff's position.

(c) The presiding superior court judge that determines in any ex parte proceeding that a conflict actually exists, must, if requested by one of the parties, also rule whether representation by the county counsel or district attorney through the creation of an "ethical wall" is appropriate. The factors to be considered in this determination of whether an "ethical wall" should be created are: (1) equal representation, (2) level of support, (3) access to resources, (4) zealous representation, or (5) any other consideration that relates to proper representation.

(d) If a court determines that the action brought by the assessor, auditor-controller, or sheriff is frivolous and in bad faith, the assessor's office, auditor-controller's office, or sheriff's office shall pay their own legal costs and all costs incurred in the action by the opposing party. As used in this section, "bad faith" and "frivolous" have the meaning given in Section 128.5 of the Code of Civil Procedure.

(e) If the presiding judge determines that a conflict of interest does exist, and that representation by the county counsel or district attorney through the creation of an ethical wall is inappropriate, the board of supervisors shall immediately employ legal counsel selected by the presiding judge to assist the assessor, the auditor-controller, or the sheriff. The assessor, the auditor-controller, or the sheriff may recommend specific legal counsel for selection by the presiding judge. The board of supervisors may also separately recommend specific legal counsel for selection by the presiding judge. When selecting counsel pursuant to this section, the presiding judge shall consider the counsel compensation rates prevailing in the county for similar work.

(f) As used in this section, "conflict of interest" means a conflict of interest as defined in Rule 3-310 of the Rules of Professional Conduct of the State Bar of California, as construed for public attorneys.

(g) This section shall also apply to any matter brought after an assessor, auditor-controller, or sheriff leaves office if the matter giving rise to the need for independent legal counsel was within the scope of the duties of the assessor, auditor-controller, or sheriff while in office, and the assessor, auditor-controller, or sheriff would have been authorized under this section to request the appointment of independent legal counsel.

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