

AMENDED IN ASSEMBLY JUNE 14, 2004

AMENDED IN SENATE APRIL 14, 2004

SENATE BILL

No. 1892

Introduced by Senator Burton

March 3, 2004

An act to amend Section 19130 of, and to repeal and add Sections 19131 and 19132 of, the Government Code, and to repeal and add Section 10337 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1892, as amended, Burton. Personal ~~service~~ *services* contracts.

Existing law permits state agencies to enter into specified personal services contracts to achieve cost savings when certain conditions are met. Among these conditions is a requirement that a state agency that proposes to enter into such a contract notify the State Personnel Board of its intention to do so. Upon receipt of this notification, the board is required to notify organizations that represent state employees that perform the types of work described in the contract. These organizations may request the board to review the proposed contract to determine whether the purpose of entering into the personal services contract is to achieve cost savings.

Existing law also authorizes state agencies to enter into other types of personal services contracts, including an urgent personal ~~service~~ *services* contract, as specified, without notifying the board of its intention to do so. An employee organization that represents state employees may request the board to determine whether these types of contracts are permitted by law.

This bill would require these types of contracts to contain a provision stating that, in the event the board determines that the contract is not in compliance with the requirements that apply to personal services contracts, the contract will be terminated and the contractor will be liable for a penalty equal to the amount paid by the state agency to the subcontractor prior to the termination of the contract.

This bill would revise and recast current provisions to require a state agency that proposes to execute any type of the specified personal ~~service~~ *services* contracts, except urgent personal services contracts, to notify the board of its intention to do so, and to provide to the board a written justification for the contract. This bill would require the board to transmit copies of the notice and written justification to organizations that represent state employees that perform the types of work described in the contract, and authorize these organizations to request that the board determine whether the contract is a permissible personal services contract. This bill would prohibit any expenditure of money or any work from being performed under these types of contracts until the board has approved or disapproved the contract.

This bill would exempt from these notice and justification requirements urgent personal services contracts, but would authorize an employee organization that represents state employees to request the board to determine whether these types of contracts are permitted under law. If a contract of this type is being performed or has been performed, and the board subsequently disapproves the contract, this bill would authorize any person to bring a court action to recover for the state's General Fund any money paid to the contractor under the contract.

This bill would also authorize the board to review any of these specified personal services contracts, if the board has reason to believe that the contract is not permitted by law.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

- 1 SECTION 1. Section 19130 of the Government Code is
- 2 amended to read:
- 3 19130. The purpose of this article is to establish standards for
- 4 the use of personal services contracts.
- 5 (a) Personal services contracting is permissible to achieve cost
- 6 savings when all the following conditions are met:



1 (1) The contracting agency clearly demonstrates that the
2 proposed contract will result in actual overall cost savings to the
3 state, provided that:

4 (A) In comparing costs, there shall be included the state's
5 additional cost of providing the same service as proposed by a
6 contractor. These additional costs shall include the salaries and
7 benefits of additional staff that would be needed and the cost of
8 additional space, equipment, and materials needed to perform the
9 function.

10 (B) In comparing costs, the state's indirect overhead costs may
11 not be included, unless these costs can be attributed solely to the
12 function in question and would not exist if that function was not
13 performed in state service. Indirect overhead costs shall mean the
14 pro rata share of existing administrative salaries and benefits, rent,
15 equipment costs, utilities, and materials.

16 (C) In comparing costs, there shall be included in the cost of a
17 contractor providing a service any continuing state costs that
18 would be directly associated with the contracted function. These
19 continuing state costs shall include, but not be limited to, those for
20 inspection, supervision, and monitoring.

21 (2) Proposals to contract out work may not be approved solely
22 on the basis that savings will result from lower contractor pay rates
23 or benefits. Proposals to contract out work shall be eligible for
24 approval if the contractor's wages are at the industry's level and
25 do not significantly undercut state pay rates.

26 (3) The contract does not cause the displacement of civil
27 service employees. The term "displacement" includes layoff,
28 demotion, involuntary transfer to a new class, involuntary transfer
29 to a new location requiring a change of residence, and time base
30 reductions. Displacement does not include changes in shifts or
31 days off, nor does it include reassignment to other positions within
32 the same class and general location.

33 (4) The contract does not adversely affect the state's
34 affirmative action efforts.

35 (5) The savings shall be large enough to ensure that they will
36 not be eliminated by private sector and state cost fluctuations that
37 could normally be expected during the contracting period.

38 (6) The amount of savings clearly justify the size and duration
39 of the contracting agreement.



1 (7) The contract is awarded through a publicized, competitive
2 bidding process.

3 (8) The contract includes specific provisions pertaining to the
4 qualifications of the staff that will perform the work under the
5 contract, as well as assurance that the contractor’s hiring practices
6 meet applicable nondiscrimination, affirmative action standards.

7 ~~(9) The contract provides that in the event the State Personnel
8 Board determines that the contract is not in compliance with the
9 provisions of this section, the contract shall be terminated and the
10 contractor shall be liable for a penalty equal to the amount paid by
11 the state agency to the subcontractor prior to the termination of the
12 contract.~~

13 ~~(10)~~

14 (9) The potential for future economic risk to the state from
15 potential contractor rate increases is minimal.

16 ~~(11)~~

17 (10) The contract is with a firm. A “firm” means a corporation,
18 partnership, nonprofit organization, or sole proprietorship.

19 ~~(12)~~

20 (11) The potential economic advantage of contracting is not
21 outweighed by the public’s interest in having a particular function
22 performed directly by state government.

23 (b) Personal services contracting also shall be permissible
24 when any of the following conditions can be met:

25 (1) The functions contracted are exempted from civil service
26 by Section 4 of Article VII of the California Constitution, which
27 describes exempt appointments.

28 (2) The contract is for a new state function and the Legislature
29 has specifically mandated or authorized the performance of the
30 work by independent contractors.

31 (3) The services contracted are not available within civil
32 service, cannot be performed satisfactorily by civil service
33 employees, or are of such a highly specialized or technical nature
34 that the necessary expert knowledge, experience, and ability are
35 not available through the civil service system.

36 (4) The services are incidental to a contract for the purchase or
37 lease of real or personal property. Contracts under this criterion,
38 known as “service agreements,” shall include, but not be limited
39 to, agreements to service or maintain office equipment or
40 computers that are leased or rented.



1 (5) The legislative, administrative, or legal goals and purposes
2 cannot be accomplished through the utilization of persons selected
3 pursuant to the regular civil service system. Contracts are
4 permissible under this criterion to protect against a conflict of
5 interest or to ~~insure~~ ensure independent and unbiased findings in
6 cases where there is a clear need for a different, outside
7 perspective. These contracts shall include, but not be limited to,
8 obtaining expert witnesses in litigation.

9 (6) The nature of the work is such that the Government Code
10 standards for emergency appointments apply. These contracts
11 shall conform with Article 8 (commencing with Section 19888) of
12 Chapter 2.5 of Part 2.6.

13 (7) State agencies need private counsel because a conflict of
14 interest on the part of the Attorney General's office prevents it
15 from representing the agency without compromising its position.
16 These contracts shall require the written consent of the Attorney
17 General, pursuant to Section 11040.

18 (8) The contractor will provide equipment, materials, facilities,
19 or support services that could not feasibly be provided by the state
20 in the location where the services are to be performed.

21 (9) The contractor will conduct training courses for which
22 appropriately qualified civil service instructors are not available,
23 provided that permanent instructor positions in academies or
24 similar settings shall be filled through civil service appointment.

25 (10) The services are of such an urgent, temporary, or
26 occasional nature that the delay incumbent in their implementation
27 under civil service would frustrate their very purpose.

28 (c) All persons who provide services to the state under
29 conditions the board determines constitute an employment
30 relationship shall, unless exempted from civil service by Section
31 4 of Article VII of the California Constitution, be retained under
32 an appropriate civil service appointment.

33 (d) *Any contract executed pursuant to subdivision (a) or (b)*
34 *shall provide that, in the event the State Personnel Board*
35 *determines that the contract is not in compliance with the*
36 *provisions of this section, the contract shall be terminated and the*
37 *contractor shall be liable for a penalty equal to the amount paid*
38 *by the state agency to the subcontractor prior to the termination*
39 *of the contract.*

40 SEC. 2. Section 19131 of the Government Code is repealed.



1 SEC. 3. Section 19131 is added to the Government Code, to
2 read:

3 19131. (a) (1) Except as specified in Section 19132, any
4 state agency that proposes to execute a personal services contract
5 pursuant to Section 19130 shall notify the State Personnel Board
6 of its intention to do so before executing the contract.

7 (2) The notice described in paragraph (1) shall include all of the
8 following:

9 (A) A copy of the proposed contract.

10 (B) The agency’s written justification for the contract, which
11 justification shall include a specific description, including
12 declarations, that demonstrates that the contract complies with
13 Section 19130.

14 (b) (1) Upon receiving the notice described in subdivision (a),
15 the State Personnel Board shall transmit copies of the items
16 contained in the notice to any employee organization that
17 represents state employees who perform the types of work
18 described in the contract.

19 (2) Within 10 days of receiving a notice pursuant to paragraph
20 (1), the employee organization may submit a written request to the
21 State Personnel Board to have that board determine, in accordance
22 with subdivision (b) of Section 10337 of the Public Contract Code,
23 whether the proposed contract complies with Section 19130 and
24 Article VII of the California Constitution.

25 SEC. 4. Section 19132 of the Government Code is repealed.

26 SEC. 5. Section 19132 is added to the Government Code, to
27 read:

28 19132. (a) A state agency may propose or execute a personal
29 services contract pursuant to paragraph (10) of subdivision (b) of
30 Section 19130 without notifying the State Personnel Board. The
31 board nonetheless shall review a personal services contract that is
32 proposed or executed pursuant to that paragraph (10), if the board
33 receives a request to do so from an employee organization that
34 represents state employees that perform the types of work
35 described in the proposed or executed contract. The board shall
36 conduct its review in accordance with subdivision (b) of Section
37 10337 of the Public Contract Code to determine solely whether the
38 proposed or executed contract complies with Section 19130 and
39 Article VII of the California Constitution.



1 (b) Notwithstanding subdivision (c) of Section 10337 of the
2 Public Contract Code, a state agency may expend money on a
3 contract that has been executed pursuant to paragraph (10) of
4 subdivision (b) of Section 19130, even though the contract has not
5 been approved by the State Personnel Board. Should the board
6 subsequently disapprove a contract executed pursuant to that
7 paragraph (10), any individual may bring an action in a court of
8 competent jurisdiction to recover for the state's General Fund any
9 money paid to the contractor under the contract.

10 SEC. 6. Section 10337 of the Public Contract Code is
11 repealed.

12 SEC. 7. Section 10337 is added to the Public Contract Code,
13 to read:

14 10337. (a) The State Personnel Board is solely responsible
15 for determining whether a personal services contract that has been
16 proposed or executed by a state agency complies with Section
17 19130 of the Government Code and Article VII of the California
18 Constitution. The board and the Department of General Services
19 shall jointly establish the procedures for making these
20 determinations.

21 (b) (1) If the board has reason to believe that a proposed or
22 executed personal services contract does not comply with Section
23 19130 of the Government Code and Article VII of the California
24 Constitution, or when an organization that represents state
25 employees that performs the types of work described in the
26 contract requests board review pursuant to Section 19131 or 19132
27 of the Government Code, the board shall direct the state agency
28 that is or will be a party to the contract to transmit the proposed or
29 executed contract to the board for review.

30 (2) The board shall review the proposed or executed contract
31 solely to determine whether the contract complies with Section
32 19130 of the Government Code and Article VII of the California
33 Constitution and shall, in writing, approve or disapprove the
34 contract on this basis. To assist the board in making this
35 determination, the state agency that has executed the contract, or
36 that is proposing to execute the contract, has the burden of proof
37 to demonstrate that the contract complies with Section 19130 of
38 the Government Code and Article VII of the California
39 Constitution.



- 1 (3) The board may review a proposed or executed personal
2 services contract either before or after the Department of General
3 Services has reviewed that contract.
- 4 (4) The board may delegate the review of a proposed or
5 executed personal services contract to the board's executive
6 officer only if the officer's determination may be appealed to the
7 board by the state agency or the employee organizations that
8 represent state employees that perform the types of work described
9 in the personal services contract. If the executive officer reviews
10 the contract pursuant to this paragraph, the determination of
11 whether the contract complies with Section 19130 of the
12 Government Code and Article VII of the California Constitution
13 shall be made in writing.
- 14 (c) If a personal services contract is subject to review by the
15 board pursuant to Section 19131 of the Government Code, a state
16 agency may not expend money on that contract and no work may
17 be performed under that contract until the board has approved or
18 disapproved of the contract.
- 19 (d) It is the intent of the Legislature that, except as provided in
20 this section, the board may not establish a separate program for
21 reviewing and approving personal services contracts in the place
22 of, or in addition to, the program administered by the Department
23 of General Services pursuant to this article.

