

AMENDED IN SENATE JUNE 28, 2011

AMENDED IN ASSEMBLY MAY 2, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 450

Introduced by Assembly Member Wieckowski
(Coauthors: Assembly Members Fuentes, Gatto, Mendoza, and Portantino)
(Coauthor: Senator Vargas)

February 15, 2011

An act to amend Section 89036 of the Education Code, ~~and to amend Section 12440.1 of the Government Code~~, relating to the California State University.

LEGISLATIVE COUNSEL'S DIGEST

AB 450, as amended, Wieckowski. California State University: audits.

~~(1) Existing law requires the Trustees of the California State University to maintain records of certain vendor payments for 3 years and make those records available to the Controller for postaudit review, as needed, and to contract with one or more public accounting firms to conduct specified financial statement and compliance audits without obtaining the approval of any other state officer or entity.~~

~~This bill would provide that the trustees, in conjunction with the Controller, have the right, at reasonable times and upon reasonable notice, to examine the books, records, and other compilations of data of a services contractor, as defined, that relate to the provisions and requirements of all service contracts.~~

~~(2)~~

Existing law authorizes the ~~trustees~~ Trustees of the California State University to enter into agreements for the performance of acts or for the furnishing of services, facilities, materials, goods, supplies, or equipment, under certain conditions. The trustees are required to prescribe policies and procedures for the acquisition of services, facilities, materials, goods, supplies, or equipment, subject to specified criteria.

This bill would require the policies and procedures for the acquisition of services to ~~specify that any direct or indirect rebates from a 3rd party be fully disclosed~~ ensure a service contractor, as defined, fully discloses to the campus, auxiliary organization, or other unit of the California State University all discounts, rebates, allowances, and incentives received by the service contractor from its suppliers, as specified, and ~~credited~~ to disclose and pay to the campus, auxiliary organization, or other unit of the university the full amount of the discount, rebate, or applicable credit, as specified. This bill would require the policies and procedures for the acquisition of services ~~and~~ be available for review as part of any audit conducted under specified provisions. The bill would require any necessary changes to the policies and procedures for the acquisition of services be implemented upon the renewal, extension, or amendment of an existing agreement or as part of any new service agreement.

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 89036 of the Education Code is amended
- 2 to read:
- 3 89036. (a) (1) The trustees may enter into agreements with
- 4 any public or private agency, officer, person, or institution,
- 5 corporation, association, or foundation for the performance of acts
- 6 or for the furnishing of services, facilities, materials, goods,
- 7 supplies, or equipment by or for the trustees or for the joint
- 8 performance of an act or function or the joint furnishing of services
- 9 and facilities by the trustees and the other party to the agreement.
- 10 (2) (A) Notwithstanding any other provision of law, the trustees
- 11 shall prescribe policies and procedures for the acquisition of
- 12 services, facilities, materials, goods, supplies, or equipment. The
- 13 policies and procedures of the trustees for the acquisition of

1 materials, goods, supplies, or equipment shall include competitive
2 means for obtaining best value while complying with legislative
3 intent regarding competitive bids or proposals as it is expressed
4 in Article 3 (commencing with Section 10300) of Chapter 2 of
5 Part 2 of Division 2 of the Public Contract Code, and may include
6 the use of financing arrangements.

7 (B) The policies and procedures for the acquisition of services
8 ~~shall specify that any direct or indirect rebates from a third party~~
9 ~~shall be fully disclosed and credited to the campus or other unit~~
10 ~~of the university shall ensure that a service contractor fully~~
11 ~~discloses to the California State University campus, auxiliary~~
12 ~~organization, or other unit of the California State University all~~
13 ~~discounts, rebates, allowances, and incentives received by the~~
14 ~~service contractor from its suppliers. If the service contractor~~
15 ~~receives a discount, rebate, allowance, or other incentive from~~
16 ~~any supplier, the service contractor shall disclose and pay to the~~
17 ~~California State University campus the full amount of the discount,~~
18 ~~rebate, or applicable credit that is received based on the purchases~~
19 ~~made on behalf of the California State University campus, auxiliary~~
20 ~~organization, or other unit of the California State University.~~
21 ~~Language stating this requirement shall be placed in agreements~~
22 ~~covered by this section. All discounts, rebates, allowances, and~~
23 ~~incentives shall be paid to the California State University campus,~~
24 ~~auxiliary organization, or other unit of the California State~~
25 ~~University during a mutually agreed upon time frame, and be~~
26 ~~available for review as part of any audit conducted pursuant to~~
27 ~~Section 89045 or Section 12440.1 of the Government Code. Any~~
28 ~~changes required pursuant to this section shall be implemented~~
29 ~~upon the renewal, extension, or amendment of an existing~~
30 ~~agreement or as part of any new service agreement.~~

31 (3) The trustees may enter into agreements with the federal
32 government or any agency thereof in accordance with the
33 procedures prescribed by the federal government or agency in
34 order to receive the benefits of any federal statute extending
35 benefits to the California State University or to California State
36 University students, including, but not necessarily limited to, both
37 of the following:

38 (A) Agreements with any agency of the federal government for
39 the education of persons in the service of the federal government.

1 (B) Agreements with any agency of the federal government for
2 the education of veterans. These agreements shall provide for
3 payment of the maximum amount permitted under the act, or acts,
4 of Congress under which the agreement is entered into.

5 (4) Notwithstanding any other provision of law, the trustees
6 have all power necessary to perform any acts, and comply with
7 conditions, required or imposed by the federal government in order
8 to receive the benefits. The trustees are vested with all necessary
9 power and authority to cooperate with any agency of the federal
10 government in the administration of any applicable act of Congress
11 and rules and regulations adopted thereunder.

12 (b) Notwithstanding any other provision of law, the trustees
13 have all power necessary to award contracts to one or more
14 contractors, at any one or more campuses, for the collection of
15 delinquent ~~education~~ *educational* loans required to be repaid under
16 federal law.

17 (c) *As used in this section, the following terms have the following*
18 *meanings:*

19 (1) *“Auxiliary organization” means those entities defined in*
20 *Section 89901.*

21 (2) *“Rebate” includes any return of monetary value, including,*
22 *but not limited to, any volume discounts, allowances, or discount*
23 *purchase incentives.*

24 (3) *“Service contractor” includes a contractor providing food,*
25 *janitorial, laundry, maintenance, window cleaning, or landscape*
26 *services.*

27 ~~SEC. 2. Section 12440.1 of the Government Code is amended~~
28 ~~to read:~~

29 ~~12440.1. (a) The trustees, in conjunction with the Controller,~~
30 ~~shall implement a process that allows any campus or other unit of~~
31 ~~the university to make payments of obligations of the university~~
32 ~~from its revolving fund directly to all of its vendors.~~
33 ~~Notwithstanding Article 5 (commencing with Section 16400) of~~
34 ~~Chapter 2 of Part 2 of Division 4, or any other provision of law,~~
35 ~~the trustees may draw from funds appropriated to the university,~~
36 ~~for use as a revolving fund, amounts necessary to make payments~~
37 ~~of obligations of the university directly to vendors. In any fiscal~~
38 ~~year, the trustees shall obtain the approval of the Director of~~
39 ~~Finance to draw amounts in excess of 10 percent of the total~~

1 ~~appropriation to the university for that fiscal year for use as a~~
2 ~~revolving fund.~~

3 ~~(b) The trustees, in conjunction with the Controller, shall have~~
4 ~~the right at reasonable times and upon reasonable notice to examine~~
5 ~~the books, records, and other compilations of data of the services~~
6 ~~contractor that relate to the provisions and requirements of all~~
7 ~~service contracts, including records related to any rebates received~~
8 ~~by a contractor from a third party as a consequence of, or incidental~~
9 ~~to, a contract.~~

10 ~~(c) Notwithstanding Sections 925.6, 12410, and 16403, or any~~
11 ~~other provision of law, the trustees shall maintain payment records~~
12 ~~for three years and make those records available to the Controller~~
13 ~~for postaudit review, as needed.~~

14 ~~(d) Notwithstanding Section 8546.4 or any other provision of~~
15 ~~law, the trustees shall, pursuant to an open bidding process, contract~~
16 ~~with one or more public accounting firms to conduct systemwide~~
17 ~~and individual campus annual financial statement and compliance~~
18 ~~audits without obtaining the approval of any other state officer or~~
19 ~~entity. At least 10 individual campus audits shall be conducted on~~
20 ~~a rotating basis, and each campus shall be audited at least once~~
21 ~~every two years.~~

22 ~~(e) The internal and independent financial statement audits of~~
23 ~~the trustees shall test compliance with procurement procedures~~
24 ~~and the integrity of the payments made. The results of these audits~~
25 ~~shall be included in the biennial report required by Section 13405.~~

26 ~~(f) As used in this section, the following terms have the~~
27 ~~following meanings:~~

28 ~~(1) "Rebate" includes any return of monetary value, including,~~
29 ~~but not limited to, any volume discounts, allowances, or discount~~
30 ~~purchase incentives.~~

31 ~~(2) "Services contractor" includes a contractor providing food,~~
32 ~~janitorial, laundry, maintenance, window cleaning, or landscape~~
33 ~~services.~~

34 ~~(3) "Trustees" means the Trustees of the California State~~
35 ~~University.~~

36 ~~(4) "University" means the California State University.~~