

Assembly Bill No. 740

Passed the Assembly May 19, 2011

Chief Clerk of the Assembly

Passed the Senate September 1, 2011

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 19135 to the Government Code, relating to personal services contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 740, Blumenfield. Personal services contracts.

Existing law authorizes state agencies to use personal services contracts if specified standards are satisfied, including, among other things, the contract does not cause the displacement of civil service employees and the contract is awarded through a publicized, competitive bidding process. The State Personnel Board is required to review a proposed contract upon the request of an employee organization for compliance with those standards.

This bill would require a state agency to immediately discontinue a contract disapproved by action of the board or its delegate unless ordered otherwise by the board or its delegate. The bill would prohibit the state agency from circumventing or disregarding the board's action by entering into another contract for the same or similar services or to continue the services that were the subject of the contract that was disapproved. The bill would require the state agency to serve notice of the discontinuation of the contract to the vendor within 15 days from the board's final action, and to serve a copy of the notice on the board and the employee organization that filed the contract challenge. The bill would provide that failure to serve this notice may be grounds for rejection of future contracts for the same or similar services. The bill would make a related statement of legislative findings.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code specifies the conditions under which state agencies may contract for services rather than use civil servants to perform specified work and the

procedures for reviewing and amending contracts for that permissive contracting.

(b) A union challenging the appropriateness of a personal services contract with the State Personnel Board must provide adequate evidence to support its challenge, and state agencies are given the opportunity to demonstrate how the contract meets one or more of the conditions permitted under Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code.

(c) The Legislature recognizes that the State Personnel Board is best able to determine the appropriateness of whether a state agency or department may contract for services, and the conditions for amending or continuing the contract for permissive services.

(d) In a September 2009 report, the State Auditor found “faults in the State’s oversight of the California Constitution’s implied civil service mandate. In particular, the [State Personnel Board] currently has no mechanism for determining whether state agencies are complying with its decisions.” The State Auditor concluded that departments experienced no repercussions for failing to terminate contracts disapproved by the board.

(e) The State Auditor recommended that the State Personnel Board specify that contracts disapproved by the board must be terminated and require state agencies to provide documentation to the board and the applicable unions to demonstrate to the satisfaction of the board the termination of these contracts. The recommended changes would provide clarity to departments about the results of the State Personnel Board decisions.

(f) Implementing the recommendation of the State Auditor regarding contracts reviewed by the State Personnel Board would provide greater governmental accountability and transparency without reducing the ability of state agencies to enter or continue valid contracts.

SEC. 2. Section 19135 is added to the Government Code, to read:

19135. (a) If a contract is disapproved by action of the board or its delegate, a state agency shall immediately discontinue that contract unless ordered otherwise by the board or its delegate. The state agency shall not circumvent or disregard the board’s action by entering into another contract for the same or similar services

or to continue the services that were the subject of the contract disapproved by the board or its delegate.

(b) A state agency ordered to discontinue a contract shall serve notice of the discontinuation of the contract to the vendor within 15 days from the board's final action unless a different notice period is specified. A copy of the notice also shall be served on the board and the employee organization that filed the contract challenge. Failure to serve this notice may be grounds for rejection of future contracts for the same or similar services that were discontinued.

Approved _____, 2011

Governor