

AMENDED IN ASSEMBLY MAY 9, 2012

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE MAY 10, 2011

AMENDED IN SENATE APRIL 14, 2011

SENATE BILL

No. 252

Introduced by Senator Vargas

February 10, 2011

~~An act to add Article 4.5 (commencing with Section 19135) to Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code, relating to public contracts. An act to amend Section 3521.7 of the Government Code, relating to collective bargaining.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 252, as amended, Vargas. ~~Public contracts: personal services. Collective bargaining: state employees.~~

Existing law authorizes the Public Employment Relations Board to, in accordance with reasonable standards, designate positions or classes of positions which have duties consisting primarily of the enforcement of state laws. Existing law prohibits employees in these designated positions or classes from being denied the right to be in a bargaining unit composed solely of those employees.

Existing regulations provide the procedure by which an employee organization may file a petition to become the exclusive representative of an appropriate unit consisting of a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative. Existing regulations require a petition to sever to be accompanied by proof of majority support in the unit claimed to be appropriate.

This bill would declare that state employee peace officers, as prescribed, have the right to be in a unit composed solely of those employees, provided they have complied with the regulations governing severance petitions described above. The bill would require the State Personnel Board to grant any complying petition within 30 days of the effective date of this act. The bill would also make related, conforming changes to those provisions.

~~The California Constitution provides that the civil service includes every officer and employee of the state, except as otherwise provided. The California courts have interpreted the California Constitution as generally restricting the contracting out of state activities or tasks to the private sector, if those activities or tasks may be adequately and competently performed by state employees. Existing statutory law codifies certain judicially created exceptions to that constitutional provision, and authorizes the state to enter into personal services contracts when specified conditions are met.~~

~~The California Public Records Act requires each state and local agency to make its records available for public inspection during office hours and, upon request of any person, to make copies available upon payment of fees, unless the records are exempt by law from disclosure.~~

~~This bill would enact the Government Oversight and Fiscal Accountability Review Act of 2011. The bill would require a state agency or department that enters into a privatization contract, as defined, to report to the Department of General Services, on or before April 1, 2012, and annually each April 1 thereafter, regarding that privatization contract, and would require the Department of General Services to compile, publish, and make that report available for public inspection. The bill would also provide that a subcontract executed under a privatization contract is a public record, and would require the contractor to submit these subcontracts to the contracting agency, which would in turn be required to make the records available to the public pursuant to the California Public Records Act. State agencies and departments would also be required to prepare, as part of their budget requests, a document that contains specified information relating to their use of privatization contractors.~~

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. The Legislature finds and declares the following:*

2 *(a) Preservation of California's natural and cultural resources*
3 *is a fundamental responsibility of the state government.*
4 *California's priceless natural resources are being lost at an*
5 *alarming rate because of the lack of the state's ability to enforce*
6 *environmental laws. Department of Fish and Game wardens are*
7 *California's primary enforcement agencies that protect those*
8 *natural resources.*

9 *(b) Department of Fish and Game wardens and state park peace*
10 *officers are statutorily designated peace officers with statewide*
11 *law enforcement authority.*

12 *(c) Department of Fish and Game wardens are the lead*
13 *investigators with the primary law enforcement expertise in natural*
14 *resources protection of California's fish, wildlife, water quality,*
15 *and habitat from criminal behavior including poaching, pollution,*
16 *and wanton destruction of natural lands, and also provide public*
17 *safety, national homeland security, and disaster response.*

18 *(d) Department of Fish and Game wardens investigate all inland*
19 *and marine, including in the Pacific Ocean, bays and estuaries,*
20 *water pollution violations, including illegal water diversions,*
21 *illegal removal of water and impacts to aquatic life, damming of*
22 *water courses, illegal draining of lakes or reservoirs, and illegal*
23 *sedimentation from pollution of water from illegal construction*
24 *activities. Wardens are trained and charged to respond to*
25 *investigate every hazardous material that enters or may enter any*
26 *state waters, including the ocean.*

27 *(e) Department of Fish and Game wardens provide enforcement*
28 *within the Office of Spill Prevention and Response of the*
29 *Department of Fish and Game and prepare investigation reports*
30 *of illegal pollution that result in criminal prosecution or civil*
31 *penalties.*

32 *(f) Department of Fish and Game wardens make arrests that*
33 *often include illegal drug confiscation and have included the*
34 *seizure of countless weapons used to commit crimes, including*
35 *bombs, rifles, pistols, revolvers, shotguns, automatic firearms, and*
36 *every type of manufactured or homemade weapon. Wardens are*
37 *the lead case agents to contain hazardous materials illegally*

1 *dumped into state waters and collect hazardous materials that are*
2 *deleterious to aquatic life for evidence.*

3 *(g) Department of Fish and Game wardens and state park peace*
4 *officers are also responsible for enforcing the Penal Code, Vehicle*
5 *Code, and Health and Safety Code.*

6 *(h) Department of Fish and Game wardens support the*
7 *enforcement of all statutes promulgated by the Legislature and*
8 *regulations, as defined by Title 14 of the California Code of*
9 *Regulations.*

10 *(i) Department of Fish and Game wardens are on call 24 hours*
11 *a day, seven days a week to provide public safety and defend*
12 *against human threats to the environment and wildlife.*

13 *(j) Department of Fish and Game wardens investigate violations*
14 *of local, state, and federal laws and regulations related to habitat*
15 *manipulation, water pollution, or take of fish or wildlife.*

16 *(k) Department of Fish and Game wardens serve search*
17 *warrants, serve arrest warrants, and investigate the illegal*
18 *cultivation of illegal drugs that destroy wildlife, water, and*
19 *endanger the public.*

20 *(l) Department of Fish and Game wardens' responsibilities*
21 *include investigations of illegal take, including out of season, over*
22 *limit, undersized, and prohibited species, and administrative*
23 *violations, of all fish and wildlife species, including, but not limited*
24 *to, listed, threatened, and endangered species, illegal*
25 *commercialization of wildlife and animal parts thereof, habitat*
26 *destruction, and pollution of state waters.*

27 *(m) Department of Fish and Game wardens initiate complex*
28 *investigations, surveillances, and covert operations that stop all*
29 *types of criminal activity, in addition to poaching of fish and*
30 *wildlife, including the poisoning of aquatic life, dumping of toxic*
31 *waste, and illegal commercialization of fish and wildlife.*

32 *(n) Department of Fish and Game wardens are also responsible*
33 *for investigations of oil spills, illegal marijuana cultivation, illegal*
34 *water diversions, pollution, and commercial fishing.*

35 *(o) Department of Fish and Game wardens are responsible for*
36 *a geographic area that includes the state's 159,000 square miles*
37 *of land and 1,100 miles of coastline.*

38 *(p) Department of Fish and Game wardens use specialized*
39 *state-of-the-art patrol vessels with authority to enforce all laws*

1 200 miles out into the Pacific Ocean along the California coastline
2 from Oregon to the Mexico border.

3 (q) Department of Fish and Game wardens and state park peace
4 officers are responsible for over 30,000 miles of rivers and streams,
5 4,800 lakes and reservoirs, over 1,000 native fish, 6,300 native
6 plants and 360 threatened or endangered species, approximately
7 three million license and permit holders and close to 38 million
8 California residents.

9 (r) Department of Fish and Game wardens and state park peace
10 officers perform duties primarily by specialized police vehicles,
11 by boat, on foot patrol, or undercover; issue citations; write
12 reports; make arrests for misdemeanors and felonies and serve
13 warrants; and conduct criminal and administrative investigations.

14 (s) Department of Fish and Game wardens also patrol by
15 specialized aircraft to locate illegal habitat destruction, illegal
16 mining operations, illegal commercial fishing over the ocean, find
17 missing persons, locate wildlife, and locate illegal night hunters
18 with infrared and other specialized night vision devices.

19 (t) Department of Fish and Game wardens and state park peace
20 officers are often the first responders in emergencies and perform
21 search and rescue activities, including, but not limited to, detecting
22 and rescuing persons or vessels in distress.

23 (u) Department of Fish and Game wardens and state park peace
24 officers annually rescue many outdoor recreationalists, hunters,
25 anglers, and accident victims; locate missing or abducted persons;
26 and investigate burglaries and homicides.

27 (v) In rural and rugged areas of the state, especially in
28 California as being the third largest land-mass state in the United
29 States, Department of Fish and Game wardens and state park
30 peace officers are often the only law enforcement presence.

31 (w) Department of Fish and Game wardens and state park peace
32 officers serve as representatives for local government task forces
33 and intelligence networks involving multiple law enforcement
34 agencies, including the Environmental Crimes Task Force, and
35 administer specialized training to other law enforcement agencies,
36 such as firearms training, tracking skills, cold weather or desert
37 survival, and disaster response.

38 (x) Department of Fish and Game wardens provide training on
39 hazardous material response, investigation, and containment to
40 other agencies and are considered California's environmental

1 *police. Department of Fish and Game wardens and state park*
2 *peace officers teach conservation of water and natural resources*
3 *to all other agencies and the public.*

4 *(y) State park peace officers assist wild land and structural fire*
5 *suppression and provide emergency medical services, traffic*
6 *control, and radio dispatching.*

7 *(z) Department of Fish and Game wardens and state park peace*
8 *officers are charged with protecting habitat and wildlife*
9 *biodiversity unequalled by any other state, and they are charged*
10 *with apprehending those that abuse California's natural resources*
11 *that are held in trust for the 38 million people of California.*

12 *(aa) The Department of Fish and Game employs approximately*
13 *277 wardens with only 245 field operatives throughout the state*
14 *to protect California's valuable natural and cultural resources,*
15 *fewer than South Carolina, and the lowest per capita ratio of*
16 *wardens to population in North America.*

17 *(ab) In 2012, there are fewer than 300 state park peace officers.*

18 *(ac) Continued unfunded mandates and fewer Department of*
19 *Fish and Game wardens and state park peace officers has resulted*
20 *in a direct negative impact on public safety and preservation of*
21 *California's natural and cultural resources.*

22 *(ad) The Legislature finds and declares that the recruitment*
23 *and retention of Department of Fish and Game wardens and state*
24 *park peace officers is of primary importance to the state's goal of*
25 *protecting California's priceless natural and cultural resources*
26 *and protecting public safety.*

27 *(ae) Increasing the number of California's fish and game*
28 *wardens must be accomplished to provide adequate protection to*
29 *California's natural resources and cannot be achieved while*
30 *Department of Fish and Game wardens remain in their current*
31 *bargaining unit.*

32 *(af) For the protection and conservation of California's priceless*
33 *natural and cultural resources that California's "environmental*
34 *police" must be a separate bargaining unit from the civilian*
35 *members of State Bargaining Unit 7.*

36 *SEC. 2. Section 3521.7 of the Government Code is amended*
37 *to read:*

38 *3521.7. (a) The board may, in accordance with reasonable*
39 *standards, designate positions or classes of positions which have*
40 *duties consisting primarily of the enforcement of state laws.*

1 Employees ~~so~~ *in these* designated *positions and classes* shall not
2 be denied the right to be in a unit composed solely of ~~such those~~
3 employees.

4 (b) *State employee peace officers in State Bargaining Unit 7*
5 *and designated in Chapter 4.5 (commencing with Section 830) of*
6 *Title 3 of Part 2 of the Penal Code have the right to be in a unit*
7 *composed solely of those employees, provided that they have*
8 *complied with Section 40200 of Title 8 of the California Code of*
9 *Regulations. The board shall grant any complying petition from*
10 *sworn state peace officers in State Bargaining Unit 7 within 30*
11 *days of the effective date of the act adding this subdivision.*

12 SECTION 1. ~~Article 4.5 (commencing with Section 19135) is~~
13 ~~added to Chapter 5 of Part 2 of Division 5 of Title 2 of the~~
14 ~~Government Code, to read:~~

15
16 Article 4.5. Government Oversight and Fiscal Accountability
17 Review
18

19 19135. ~~This article shall be known, and may be cited, as the~~
20 ~~Government Oversight and Fiscal Accountability Review Act of~~
21 ~~2011.~~

22 19136. ~~For purposes of this article:~~

- 23 (a) ~~“Agency” includes any state agency or department.~~
- 24 (b) ~~“Person” includes an individual, institution, federal, state,~~
25 ~~or local government entity, or any other public or private entity.~~
- 26 (c) ~~“Privatization contract” means an agreement or combination~~
27 ~~or series of agreements executed pursuant to Section 19130, by~~
28 ~~which a privatization contractor agrees with an agency to provide~~
29 ~~services valued at five hundred thousand dollars (\$500,000) or~~
30 ~~more, that are substantially similar to, and in lieu of, services~~
31 ~~provided, in whole or in part, by civil service employees of the~~
32 ~~agency.~~
- 33 (d) ~~“Privatization contractor” means any contractor, consultant,~~
34 ~~subcontractor, independent contractor, or private business owner~~
35 ~~that contracts with an agency to perform services that are~~
36 ~~substantially similar to, and in lieu of, services provided, in whole~~
37 ~~or in part, by civil service employees of the agency.~~
- 38 (e) ~~“Privatization contractor employee” includes a worker~~
39 ~~directly employed by a privatization contractor, as well as an~~

1 ~~employee of a subcontractor or an independent contractor that~~
2 ~~provides supplies or services to a privatization contractor.~~

3 ~~(f) “Services” includes, with respect to a privatization contractor,~~
4 ~~all aspects of the provision of services provided by a privatization~~
5 ~~contractor pursuant to a privatization contract, or any services~~
6 ~~provided by a subcontractor of a privatization contractor under the~~
7 ~~privatization contract.~~

8 ~~19137. (a) A privatization contractor shall file with the~~
9 ~~contracting agency a copy of each subcontract or amendment to a~~
10 ~~subcontract executed under a privatization contract. The agency~~
11 ~~shall maintain the subcontract or amendment to the subcontract as~~
12 ~~a public record, as defined in the California Public Records Act~~
13 ~~(Chapter 3.5 (commencing with Section 6250) of Division 7 of~~
14 ~~Title 1).~~

15 ~~(b) A privatization contract shall include language that provides~~
16 ~~for public access to the completed contract.~~

17 ~~(c) As part of the budgetary process, an agency shall provide~~
18 ~~an addendum to its submitted budget request that includes all of~~
19 ~~the following information:~~

20 ~~(1) The name of each privatization contractor or subcontractor~~
21 ~~that has entered into a privatization contract with the agency during~~
22 ~~that year, the duration of that privatization contract, and the services~~
23 ~~provided pursuant to that contract.~~

24 ~~(2) The total cost of each privatization contract for the prior~~
25 ~~year.~~

26 ~~(3) The projected number of privatization contracts for the~~
27 ~~current and upcoming year and the estimated cost of each contract~~
28 ~~for the current and upcoming year.~~

29 ~~(4) For each privatization contract, the number of privatization~~
30 ~~contractor employees and consultants, reflected as full-time~~
31 ~~equivalent positions, and their hourly wage rates for the current~~
32 ~~and previous fiscal year.~~

33 ~~(d) The addendum provided pursuant to subdivision (c) shall~~
34 ~~be a public record.~~

35 ~~19138. (a) An agency that enters into a privatization contract~~
36 ~~shall prepare and submit to the Department of General Services,~~
37 ~~on or before April 1, 2012, and annually each April 1 thereafter,~~
38 ~~a report containing all of the following:~~

39 ~~(1) A copy of each privatization contract for that year.~~

- 1 ~~(2) A budget analysis of each privatization contract reported~~
2 ~~pursuant to paragraph (1) that contains all of the following:~~
- 3 ~~(A) The cost of each privatization contract for the prior, current,~~
4 ~~and next year.~~
 - 5 ~~(B) The number of privatization contractor employees, reflected~~
6 ~~as full-time equivalent positions, and their hourly wage rates.~~
 - 7 ~~(C) The cost of benefits paid by the agency for each privatization~~
8 ~~employee for the current and previous year.~~
- 9 ~~(3) The name of the privatization contractor and the number of~~
10 ~~privatization contractor employees and consultants, reflected as~~
11 ~~full-time equivalent positions, that performed legal, medical,~~
12 ~~accounting, engineering, or any other professional, technical, or~~
13 ~~consultant service for the agency on a contractual basis during the~~
14 ~~previous year.~~
- 15 ~~(4) The amount of compensation received by each privatization~~
16 ~~contractor employee or consultant for the services described in~~
17 ~~paragraph (3) during the previous year.~~
- 18 ~~(b) The Department of General Services shall compile, publish,~~
19 ~~and make available for public inspection all contracting reports he~~
20 ~~or she has received in accordance with this article.~~