

ASSEMBLY BILL

No. 906

Introduced by Assembly Member Pan

February 22, 2013

An act to amend Section 19130 of the Government Code, relating to personal services contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 906, as introduced, Pan. Personal services contracts: independent contractors.

The State Civil Service Act authorizes state agencies to use personal services contracts if prescribed conditions are met.

This bill would prohibit the award of a personal services contract under those provisions unless the Legislature has specifically authorized the performance of the work by an independent contractor and appropriated funds specifically for that purpose.

The bill would limit the terms of certain personal services contracts, and, upon expiration of such a contract and any extension or renewal thereof, prohibit the contracting agency from entering into additional contracts for the same or substantially similar personal services. The bill would require any contracting agency proposing to extend or renew such a contract to notify the State Personnel Board of its intention, and would require the board to immediately contact all organizations that represent state employees who perform the type of work to be contracted. The bill would authorize an employee organization to request, within 10 days of notification, to meet and confer with the contracting agency prior to the execution of the contract renewal or extension.

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:
7 (1) The contracting agency clearly demonstrates that the
8 proposed contract will result in actual overall cost savings to the
9 state, provided that:
10 (A) In comparing costs, there shall be included the state’s
11 additional cost of providing the same service as proposed by a
12 contractor. These additional costs shall include the salaries and
13 benefits of additional staff that would be needed and the cost of
14 additional space, equipment, and materials needed to perform the
15 function.
16 (B) In comparing costs, there shall not be included the state’s
17 indirect overhead costs unless these costs can be attributed solely
18 to the function in question and would not exist if that function was
19 not performed in state service. Indirect overhead costs shall mean
20 the pro rata share of existing administrative salaries and benefits,
21 rent, equipment costs, utilities, and materials.
22 (C) In comparing costs, there shall be included in the cost of a
23 contractor providing a service any continuing state costs that would
24 be directly associated with the contracted function. These
25 continuing state costs shall include, but not be limited to, those
26 for inspection, supervision, and monitoring.
27 (2) Proposals to contract out work shall not be approved solely
28 on the basis that savings will result from lower contractor pay rates
29 or benefits. Proposals to contract out work shall be eligible for
30 approval if the contractor’s wages are at the industry’s level and
31 do not significantly undercut state pay rates.
32 (3) The contract does not cause the displacement of civil service
33 employees. The term “displacement” includes layoff, demotion,
34 involuntary transfer to a new class, involuntary transfer to a new
35 location requiring a change of residence, and time base reductions.

1 Displacement does not include changes in shifts or days off, nor
2 does it include reassignment to other positions within the same
3 class and general location.

4 (4) The contract does not adversely affect the state’s affirmative
5 action efforts.

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

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

11 (7) The contract is awarded through a publicized, competitive
12 bidding process.

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

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

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

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

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

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

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

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

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

1 to, agreements to service or maintain office equipment or
 2 computers that are leased or rented.

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

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

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

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

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

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

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

35 (d) *A personal services contract shall not be awarded under*
 36 *this section unless the Legislature has specifically authorized the*
 37 *performance of the work by an independent contractor and*
 38 *appropriated funds specifically for that purpose.*

39 (e) (1) *A personal services contract authorized under*
 40 *subdivision (a) or paragraph (2) of subdivision (b) shall not have*

1 a term in excess of 90 days, subject to the right of the contracting
2 agency to enter into a single extension or renewal of the contract
3 for a term of up to ninety 90 days. Upon expiration of a personal
4 services contract and any extension or renewal thereof, the
5 contracting agency shall not enter into additional contracts for
6 the same or substantially similar personal services.

7 (2) Any contracting agency proposing to extend or renew a
8 contract pursuant to this subdivision shall notify the State
9 Personnel Board of its intention. The State Personnel Board, upon
10 receipt of this notice, shall immediately contact all organizations
11 that represent state employees who perform the type of work to be
12 contracted. Any employee organization may request, within 10
13 days of notification, to meet and confer with the contracting agency
14 prior to the execution of the contract renewal or extension.