

ASSEMBLY BILL

No. 1066

Introduced by Assembly Member Gonzalez

February 26, 2015

An act to amend Sections 45103, 45103.1, 45104, 45256, 45286, 88003, 88003.1, 88004, 88076, and 88105 of the Education Code, relating to classified employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 1066, as introduced, Gonzalez. Classified employees: nonemployee contractors: limited-term, short-term, and substitute employees.

(1) Existing law requires school districts and community college districts to employ persons for positions not requiring certification qualifications and to classify, as defined, these persons. These employees are generally known as classified employees. Existing law also authorizes school districts and community college districts to contract for personal services currently or customarily performed by classified employees to achieve cost savings, unless otherwise prohibited, when certain conditions are met.

This bill would recast and revise the statutes relating to the use of nonemployee contractors and limited-term, short-term, and substitute employees in the classified service of school districts and community college districts. Among numerous other changes, the bill would declare that school districts and community college districts have a mandatory duty to classify all of their employees and positions not requiring certification qualifications, including nonemployee contractors.

The bill would revise the definition of "short-term employee" to require that the working days counted to determine whether an employee

had short-term status take place in a single school year or college year. The bill would also include a definition of “limited-term employee” that requires that the service provided by the employee to the school district or community college district be calculated within a single school year or college year.

To the extent that this bill would impose new duties on school districts and community college districts, it would constitute a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 SECTION 1. Section 45103 of the Education Code is amended
2 to read:

3 45103. (a) The governing board of any school district shall
4 employ persons for positions not requiring certification
5 qualifications. The governing board *has a mandatory duty to*
6 *classify, and* shall, except where Article 6 (commencing with
7 Section 45240) or Section 45318 applies, classify all of these
8 employees and positions. The employees and positions shall be
9 known as the classified service.

10 (b) (1) Substitute *employees, employed and paid for less than*
11 *75 percent of a single school year;* and short-term employees,
12 employed and paid for less than 75 percent of a *single* school year,
13 shall not be a part of the classified service.

14 (2) Apprentices and professional experts employed on a *limited,*
15 temporary basis for a specific ~~project,~~ *regardless project that is*
16 *not an ongoing district venture, irrespective* of length of
17 employment, shall not be a part of the classified service.

18 (3) Full-time students employed part time, and part-time students
19 employed part time in any college workstudy program, or in a
20 work experience education program conducted by a community

1 college district pursuant to Article 7 (commencing with Section
2 51760) of Chapter 5 of Part 28 of *Division 4* and that is financed
3 by state or federal funds, shall not be a part of the classified service.

4 (4) Part-time playground positions shall not be a part of the
5 classified service, where the employee is not otherwise employed
6 in a classified position. Part-time playground positions shall be
7 considered a part of the classified service when the employee in
8 the position also works in the same school district in a classified
9 position.

10 (c) Unless otherwise permitted, a person whose position does
11 not require certification qualifications shall not be employed by a
12 governing board, except as authorized by this section.

13 (d) As used in this section:

14 (1) ~~“Substitute employee” means any person employed to~~
15 ~~replace any classified employee who is temporarily absent from~~
16 ~~duty. In addition, if the district is then engaged in a procedure to~~
17 ~~hire a permanent employee to fill a vacancy in any classified~~
18 ~~position, the governing board may fill the vacancy through the~~
19 ~~employment, for not more than 60 calendar days, of one or more~~
20 ~~substitute employees, except to the extent that a collective~~
21 ~~bargaining agreement then in effect provides for a different period~~
22 ~~of time.~~

23 (1) *“Seventy-five percent of a single school year” means 195*
24 *working days of a single school year, including holidays, sick*
25 *leave, vacation, and other leaves of absence, irrespective of number*
26 *of hours worked per day.*

27 (2) “Short-term employee” means any person who is employed
28 to perform a *discrete* service for the district, upon the completion
29 of which, the service required or similar services will not be
30 extended or needed on a continuing *or recurring* basis. Before
31 employing a short-term employee, the governing board, at a
32 regularly scheduled board meeting, shall specify the service
33 required to be performed by the employee pursuant to the definition
34 of “classification” in subdivision (a) of Section 45101, and shall
35 certify the ~~ending date~~ *starting and ending dates* of the service.
36 The ending date may be shortened or extended by the governing
37 board, but shall not extend beyond 75 percent of a *single school*
38 *year, and the district shall not employ a short-term employee in*
39 *subsequent school years to perform the same or similar services.*

1 ~~(3) “Seventy-five percent of a school year” means 195 working~~
 2 ~~days, including holidays, sick leave, vacation and other leaves of~~
 3 ~~absence, irrespective of number of hours worked per day.~~

4 (3) “*Substitute employee*” means any person employed to
 5 replace any classified employee who is temporarily absent from
 6 duty. In addition, if the district is then engaged in a procedure to
 7 hire a permanent employee to fill a vacancy in any classified
 8 position, the governing board may fill the vacancy through the
 9 employment, for not more than 60 calendar days, of one or more
 10 substitute employees, except to the extent that a collective
 11 bargaining agreement then in effect provides for a different period
 12 of time.

13 (e) Employment of either full-time or part-time students in any
 14 college workstudy program, or in a work experience education
 15 program shall not result in the displacement of classified personnel
 16 or impair existing contracts for services.

17 (f) This section shall apply only to districts not incorporating
 18 the merit system as outlined in Article 6 (commencing with Section
 19 45240).

20 SEC. 2. Section 45103.1 of the Education Code is amended to
 21 read:

22 45103.1. (a) Notwithstanding any other provision of this
 23 chapter, personal services contracting *with nonemployee*
 24 *contractors* for all services currently or customarily performed by
 25 classified school employees to achieve cost savings is permissible,
 26 unless otherwise prohibited, when all the following conditions are
 27 met:

28 (1) The governing board or contracting agency clearly
 29 demonstrates that the proposed contract will result in actual overall
 30 cost savings to the school district, provided that:

31 (A) In comparing costs, there shall be included the school
 32 district’s additional cost of providing the same service as proposed
 33 by a contractor. These additional costs shall include the salaries
 34 and benefits of additional staff that would be needed and the cost
 35 of additional space, equipment, and materials needed to perform
 36 the function.

37 (B) In comparing costs, there shall not be included the school
 38 district’s indirect overhead costs unless these costs can be attributed
 39 solely to the function in question and would not exist if that
 40 function was not performed by the school district. Indirect overhead

1 costs shall mean the pro rata share of existing administrative
2 salaries and benefits, rent, equipment costs, utilities, and materials.

3 (C) In comparing costs, there shall be included in the cost of a
4 contractor providing a service any continuing school district costs
5 that would be directly associated with the contracted function.
6 These continuing school district costs shall include, but not be
7 limited to, those for inspection, supervision, and monitoring.

8 (2) Proposals to contract out work shall not be approved solely
9 on the basis that savings will result from lower contractor pay rates
10 or benefits. Proposals to contract out work shall be eligible for
11 approval if the contractor's wages are at the industry's level and
12 do not undercut school district pay rates.

13 (3) The contract does not cause the displacement of school
14 district employees. The term "displacement" includes layoff,
15 demotion, involuntary transfer to a new classification, involuntary
16 transfer to a new location requiring a change of residence, and
17 time base reductions. Displacement does not include changes in
18 shifts or days off, nor does it include reassignment to other
19 positions within the same classification and general location or
20 employment with the contractor, so long as wages and benefits
21 are comparable to those paid by the school district.

22 (4) The savings shall be large enough to ensure that they will
23 not be eliminated by private sector and district cost fluctuations
24 that could normally be expected during the contracting period.

25 (5) The amount of savings clearly justify the size and duration
26 of the contracting agreement.

27 (6) The contract is awarded through a publicized, competitive
28 bidding process.

29 (7) The contract includes specific provisions pertaining to the
30 qualifications of the staff that will perform the work under the
31 contract, as well as assurance that the contractor's hiring practices
32 meet applicable nondiscrimination standards.

33 (8) The potential for future economic risk to the school district
34 from potential contractor rate increases is minimal.

35 (9) The contract is with a firm. A "firm" means a corporation,
36 limited liability company, partnership, nonprofit organization, or
37 sole proprietorship.

38 (10) The potential economic advantage of contracting is not
39 outweighed by the public's interest in having a particular function
40 performed directly by the school district.

1 (b) Notwithstanding any other provision of this chapter, personal
 2 services contracting *for nonemployee contractors* shall also be
 3 permissible when any of the following conditions can be met:

4 (1) The contract is for new school district functions and the
 5 Legislature has specifically mandated or authorized the
 6 performance of the work by independent contractors.

7 (2) The services contracted are not available within the district,
 8 cannot be performed satisfactorily by school district employees,
 9 or are of such a highly specialized or technical nature that the
 10 necessary expert knowledge, experience, and ability are not
 11 available through the school district.

12 (3) The services are incidental to a contract for the purchase or
 13 lease of real or personal property. Contracts under this criterion,
 14 known as “service agreements,” shall include, but not be limited
 15 to, agreements to service or maintain office equipment or
 16 computers that are leased or rented.

17 (4) The policy, administrative, or legal goals and purposes of
 18 the district cannot be accomplished through the utilization of
 19 persons selected pursuant to the regular or ordinary school district
 20 hiring process. Contracts are permissible under this criterion to
 21 protect against a conflict of interest or to ensure independent and
 22 unbiased findings in cases where there is a clear need for a
 23 different, outside perspective. These contracts shall include, but
 24 not be limited to, obtaining expert witnesses in litigation.

25 (5) The nature of the work is such that the criteria for emergency
 26 appointments apply. “Emergency appointment” means an
 27 appointment made for a period not to exceed 60 working days *of*
 28 *a single school year* either during an actual emergency to prevent
 29 the stoppage of public business or because of the limited duration
 30 of the work. The method of selection and the qualification
 31 standards for an emergency ~~employee~~ *nonemployee contractor*
 32 shall be determined by the district. The frequency of appointment,
 33 length of ~~employment~~, *contract*, and the circumstances appropriate
 34 for the appointment of firms or individuals under emergency
 35 appointments *as nonemployee contractors* shall be restricted so
 36 as to prevent the use of emergency appointments to circumvent
 37 the regular or ordinary hiring process *for school district employees*.

38 (6) The contractor will provide equipment, materials, facilities,
 39 or support services that could not feasibly be provided by the

1 school district in the location where the services are to be
2 performed.

3 (7) ~~The services are of such an~~ *nature of the services, objectively*
4 *determined, is so urgent, temporary, or occasional* ~~nature~~ that the
5 delay incumbent in ~~their~~ *the implementation of those services* under
6 the district’s regular or ordinary hiring process would frustrate
7 their very purpose, *therefore requiring the use of nonemployee*
8 *contractors. The use of any nonemployee contractor by a school*
9 *district under this section is limited to 60 working days of a single*
10 *school year.*

11 (c) This section shall apply to all school districts, including
12 districts that have adopted the merit system.

13 (d) This section shall apply to *nonemployee* personal service
14 contracts entered into after January 1, 2003. This section shall not
15 apply to the renewal of personal services contracts subsequent to
16 January 1, 2003, where the contract was entered into before January
17 1, 2003, irrespective of whether the contract is renewed or rebid
18 with the existing contractor or with a new contractor.

19 SEC. 3. Section 45104 of the Education Code is amended to
20 read:

21 45104. ~~Every~~ *(a) A school district has a mandatory duty to*
22 *classify, and shall classify, every position not defined by this code*
23 *as a position requiring certification qualifications and not*
24 *specifically exempted from the classified service* ~~according to the~~
25 ~~provisions of~~ *pursuant to Section 45103 or 45256 shall be*
26 ~~classified, as required by those sections and. These positions shall~~
27 *be a part of the classified service. Such* ~~These positions may~~ *shall*
28 ~~not be designated as certificated nor shall certificated,~~ the
29 assignment of a title to any such a position *shall not* remove the
30 position from the classified service, ~~nor shall~~ *and* possession of a
31 certification document *shall not* be made a requirement for
32 employment in ~~any such~~ *the position.*

33 (b) *A school district has a mandatory duty to classify, and shall*
34 *classify, each position held by a nonemployee contractor in*
35 *accordance with Section 45103.1.*

36 ~~Nothing~~

37 (c) *Nothing* in this section shall be construed to prohibit the
38 employment of any individual in a position described by this
39 section as part of the classified service who is in possession of
40 certification qualifications, nor shall the possession of certification

1 qualifications be grounds for the elimination of an individual for
2 consideration for employment in such a position.

3 *(d) An employee of a school district, or the exclusive*
4 *representative of such an employee within the meaning of Section*
5 *3543.8 of the Government Code, may bring an action to challenge*
6 *the classification of an employee or position by a school district*
7 *under subdivision (a) of Section 45103 subdivision (a) of Section*
8 *45286, or this section, or to compel a school district to classify an*
9 *employee or position as required by those provisions.*

10 ~~This~~

11 *(e) This section shall apply to districts which have adopted the*
12 *merit system in the same manner and with the same effect as*
13 *though it were a part of Article 6 (commencing with Section 45240)*
14 *of this chapter 45240).*

15 SEC. 4. Section 45256 of the Education Code is amended to
16 read:

17 45256. (a) The commission *has a mandatory duty to classify,*
18 *and shall classify, all employees and positions within the*
19 *jurisdiction of the governing board or of the commission, except*
20 *those that are exempt from the classified service, as specified in*
21 *subdivision (b). The employees and positions shall be known as*
22 *the classified service. “To classify” shall include, but not*
23 *necessarily be limited to, allocating positions to appropriate classes,*
24 *arranging classes into occupational hierarchies, determining*
25 *reasonable relationships within occupational hierarchies, and*
26 *preparing written class specifications.*

27 (b) All of the following are exempt from the classified service:

28 (1) Positions which require certification qualifications.

29 (2) Full-time students employed part time.

30 (3) Part-time students employed part time in any college
31 workstudy program, or in a work experience education program
32 conducted by a community college district pursuant to Article 7
33 (commencing with Section 51760) of Chapter 5 of Part 28 of
34 *Division 4* and that is financed by state or federal funds.

35 (4) Apprentice positions *of a limited, temporary nature.*

36 (5) Positions established for the employment of professional
37 experts on a *limited, temporary* basis for a specific project *that is*
38 *not an ongoing district venture* by the governing board or by the
39 commission when so designated by the commission.

1 (6) Part-time playground positions, where the employee is not
2 otherwise employed in a classified position. Part-time playground
3 positions shall be considered part of the classified service when
4 the employee in the position also works in the same school district
5 in a classified position.

6 (c) (1) Employment of either full-time or part-time students in
7 any college workstudy program, or in a work experience education
8 program shall not result in the displacement of classified personnel
9 or impair existing contracts for services.

10 (2) Nothing in this section shall prevent an employee, who has
11 attained regular status in a full-time position, from taking a
12 voluntary reduction in time and retaining his or her regular status
13 under the provisions of this law.

14 (d) No person whose contribution consists solely in the rendition
15 of individual personal services and whose employment does not
16 come within the scope of the exceptions listed above shall be
17 employed outside the classified service.

18 (e) A part-time position is one for which the assigned time,
19 when computed on an hourly, daily, weekly, or monthly basis, is
20 less than 87½ percent of the normally assigned time of the majority
21 of employees in the classified service.

22 SEC. 5. Section 45286 of the Education Code is amended to
23 read:

24 45286. (a) Whenever the appointing power shall require the
25 appointment of a ~~person~~ *limited-term employee* to a position, the
26 duration of which is not to exceed six ~~months~~, *consecutive months*
27 *in a single school year*, or, in case of an appointment of a *substitute*
28 *employee* in lieu of ~~an~~ *a temporarily absent employee, the duration*
29 *of which* is not to exceed the authorized absence of ~~said that~~
30 *employee, the appointing power shall ~~submit~~ have a ministerial*
31 *duty to appoint the substitute or limited-term employee to the*
32 *position subject to the requirements of this section.*

33 (b) *For substitute employees, the appointing power shall submit*
34 *a request in which the probable duration of the appointment is*
35 *stated. ~~Eligibles~~ For limited-term employees, the appointing power*
36 *shall submit a request certifying the starting and ending dates of*
37 *the service for the position. The ending date for a limited-term*
38 *employee may be advanced or delayed by the appointing power,*
39 *but the term shall not extend beyond six consecutive months in a*
40 *single school year, and the school district may not employ a*

1 *limited-term employee in subsequent school years to perform the*
 2 *same or similar services.*

3 (c) *Eligible persons* shall be certified in accordance with their
 4 position on the appropriate employment list and their willingness
 5 to accept appointment to ~~such~~ *that* position as limited-term *or*
 6 *substitute* employees. Limited-term *and substitute* employees shall
 7 be subject to conditions affecting status and tenure during and after
 8 employment that the commission may by rule determine.
 9 Notwithstanding these limitations on the duration of these
 10 positions, the commission may, based on a declaration of an
 11 emergency by the President of the United States or the Governor,
 12 authorize an extension that may not exceed one year. The duties
 13 of the extended position ~~must~~ *shall* be related to the emergency.

14 (d) *As used in this section:*

15 (1) *“Limited-term employee” means any person who is employed*
 16 *to perform for the school district a discrete service, the duration*
 17 *of which is not to exceed six consecutive months in a single school*
 18 *year, if upon the completion of the discrete service, no similar*
 19 *service shall be needed on a continuing or recurring basis.*

20 (2) *“Substitute employee” means any person employed to*
 21 *replace any classified employee who is temporarily absent from*
 22 *duty. In addition, if the school district is then engaged in a*
 23 *procedure to hire a permanent employee to fill a vacancy in any*
 24 *classified position, the school district may fill the vacancy through*
 25 *the employment, for not more than 60 calendar days, of one or*
 26 *more substitute employees, except to the extent that a collective*
 27 *bargaining agreement then in effect provides for a different period*
 28 *of time.*

29 SEC. 6. Section 88003 of the Education Code is amended to
 30 read:

31 88003. ~~The~~ (a) *The governing board of any community college*
 32 *district shall employ persons for positions that are not academic*
 33 *positions. The governing board, except where Article 3*
 34 *(commencing with Section 88060) or Section 88137 applies, has*
 35 *a mandatory duty to classify, and shall classify, all those employees*
 36 *and positions. The employees and positions shall be known as the*
 37 *classified service. Substitute employees, employed and paid for*
 38 *less than 75 percent of a single college year, and short-term*
 39 *employees, employed and paid for less than 75 percent of a single*
 40 *college year, shall not be a part of the classified service. Part-time*

1 playground positions, ~~apprentices~~ *apprentices*, and professional
2 experts employed on a *limited*, temporary basis for a specific
3 ~~project, regardless~~ *project that is not an ongoing district venture,*
4 *irrespective* of length of employment, shall not be a part of the
5 classified service. Full-time students employed part time, and
6 part-time students employed part time in any college work-study
7 program, or in a work experience education program conducted
8 by a community college district and which is financed by state or
9 federal funds, shall not be a part of the classified service. Unless
10 otherwise permitted, a person whose position does not require
11 certification qualifications shall not be employed by a governing
12 board, except as authorized by this section.

13 ~~“Substitute employee,” as used in this section, means any person~~
14 ~~employed to replace any classified employee who is temporarily~~
15 ~~absent from duty. In addition, if the district is then engaged in a~~
16 ~~procedure to hire a permanent employee to fill a vacancy in any~~
17 ~~classified position, the governing board may fill the vacancy~~
18 ~~through the employment, for not more than 60 calendar days, of~~
19 ~~one or more substitute employees, except to the extent that a~~
20 ~~collective bargaining agreement then in effect provides for a~~
21 ~~different period of time.~~

22 (b) *As used in this section:*

23 (1) *“Seventy-five percent of a single college year” means 195*
24 *working days of a single college year, including holidays, sick*
25 *leave, vacation, and other leaves of absences, irrespective of*
26 *number of hours worked per day.*

27 ~~“Short-term~~

28 (2) *“Short-term employee,” as used in this section, means any*
29 *person who is employed to perform a discrete service for the*
30 *district, upon the completion of which, the service required or*
31 *similar services will not be extended or needed on a continuing or*
32 *recurring basis. Before employing a short-term employee, the*
33 *governing board, at a regularly scheduled board meeting, shall*
34 *specify the service required to be performed by the employee*
35 *pursuant to the definition of “classification” in subdivision (a) of*
36 *Section 88001, and shall certify the ~~ending date~~ starting and ending*
37 *dates of the service. The ending date may be shortened or extended*
38 *by the governing board, but shall not extend beyond 75 percent of*
39 *a single school year, and the district shall not employ a short-term*

1 *employee in subsequent college years to perform the same or*
 2 *similar services.*

3 ~~“Seventy-five percent of a college year” means 195 working~~
 4 ~~days, including holidays, sick leave, vacation and other leaves of~~
 5 ~~absences, irrespective of number of hours worked per day.~~

6 (3) *“Substitute employee,” as used in this section, means any*
 7 *person employed to replace any classified employee who is*
 8 *temporarily absent from duty. In addition, if the district is then*
 9 *engaged in a procedure to hire a permanent employee to fill a*
 10 *vacancy in any classified position, the governing board may fill*
 11 *the vacancy through the employment, for not more than 60*
 12 *calendar days, of one or more substitute employees, except to the*
 13 *extent that a collective bargaining agreement then in effect*
 14 *provides for a different period of time.*

15 **Employment**

16 (c) *Employment of either full-time or part-time students in any*
 17 *college work-study program, or in a work experience education*
 18 *program shall not result in the displacement of classified personnel*
 19 *or impair existing contracts for services.*

20 ~~This~~

21 (d) *This section shall apply only to districts not incorporating*
 22 *the merit system as outlined in Article 3 (commencing with Section*
 23 *88060).*

24 SEC. 7. Section 88003.1 of the Education Code is amended to
 25 read:

26 88003.1. (a) Notwithstanding any other provision of this
 27 chapter, personal services contracting *with nonemployee*
 28 *contractors* for all services currently or customarily performed by
 29 classified school employees to achieve cost savings is permissible,
 30 unless otherwise prohibited, when all the following conditions are
 31 met:

32 (1) The governing board or contracting agency clearly
 33 demonstrates that the proposed contract will result in actual overall
 34 cost savings to the community college district, provided that:

35 (A) In comparing costs, there shall be included the community
 36 college district’s additional cost of providing the same service as
 37 proposed by a contractor. These additional costs shall include the
 38 salaries and benefits of additional staff that would be needed and
 39 the cost of additional space, equipment, and materials needed to
 40 perform the function.

1 (B) In comparing costs, there shall not be included the
2 community college district's indirect overhead costs unless these
3 costs can be attributed solely to the function in question and would
4 not exist if that function was not performed by the community
5 college district. Indirect overhead costs shall mean the pro rata
6 share of existing administrative salaries and benefits, rent,
7 equipment costs, utilities, and materials.

8 (C) In comparing costs, there shall be included in the cost of a
9 contractor providing a service any continuing community college
10 district costs that would be directly associated with the contracted
11 function. These continuing community college district costs shall
12 include, but not be limited to, those for inspection, supervision,
13 and monitoring.

14 (2) Proposals to contract out work shall not be approved solely
15 on the basis that savings will result from lower contractor pay rates
16 or benefits. Proposals to contract out work shall be eligible for
17 approval if the contractor's wages are at the industry's level and
18 do not undercut community college district pay rates.

19 (3) The contract does not cause the displacement of community
20 college district employees. The term "displacement" includes
21 layoff, demotion, involuntary transfer to a new classification,
22 involuntary transfer to a new location requiring a change of
23 residence, and time base reductions. Displacement does not include
24 changes in shifts or days off, nor does it include reassignment to
25 other positions within the same classification and general location
26 or employment with the contractor, so long as wages and benefits
27 are comparable to those paid by the school district.

28 (4) The savings shall be large enough to ensure that they will
29 not be eliminated by private sector and community college district
30 cost fluctuations that could normally be expected during the
31 contracting period.

32 (5) The amount of savings clearly justify the size and duration
33 of the contracting agreement.

34 (6) The contract is awarded through a publicized, competitive
35 bidding process.

36 (7) The contract includes specific provisions pertaining to the
37 qualifications of the staff that will perform the work under the
38 contract, as well as assurance that the contractor's hiring practices
39 meet applicable nondiscrimination standards.

1 (8) The potential for future economic risk to the community
2 college district from potential contractor rate increases is minimal.

3 (9) The contract is with a firm. A “firm” means a corporation,
4 limited liability company, partnership, nonprofit organization, or
5 sole proprietorship.

6 (10) The potential economic advantage of contracting is not
7 outweighed by the public’s interest in having a particular function
8 performed directly by the community college district.

9 (b) Notwithstanding any other provision of this chapter, personal
10 services contracting *for nonemployee contractors* shall also be
11 permissible when any of the following conditions can be met:

12 (1) The contract is for new community college district functions
13 and the Legislature has specifically mandated or authorized the
14 performance of the work by independent contractors.

15 (2) The services contracted are not available within community
16 college districts, cannot be performed satisfactorily by community
17 college district employees, or are of such a highly specialized or
18 technical nature that the necessary expert knowledge, experience,
19 and ability are not available through the community college district.

20 (3) The services are incidental to a contract for the purchase or
21 lease of real or personal property. Contracts under this criterion,
22 known as “service agreements,” shall include, but not be limited
23 to, agreements to service or maintain office equipment or
24 computers that are leased or rented.

25 (4) The policy, administrative, or legal goals and purposes of
26 the community college district cannot be accomplished through
27 the utilization of persons selected pursuant to the regular or
28 ordinary hiring process. Contracts are permissible under this
29 criterion to protect against a conflict of interest or to ensure
30 independent and unbiased findings in cases where there is a clear
31 need for a different, outside perspective. These contracts shall
32 include, but not be limited to, obtaining expert witnesses in
33 litigation.

34 (5) The nature of the work is such that the criteria for emergency
35 appointments apply. “Emergency appointment” means an
36 appointment made for a period not to exceed 60 working days *of*
37 *a single college year* either during an actual emergency to prevent
38 the stoppage of public business or because of the limited duration
39 of the work. The method of selection and the qualification
40 standards for an emergency ~~employee~~ *nonemployee contractor*

1 shall be determined by the community college district. The
 2 frequency of appointment, length of ~~employment, contract,~~ and
 3 the circumstances appropriate for the appointment of firms or
 4 individuals under emergency appointments *of non-employee*
 5 *contractors* shall be restricted so as to prevent the use of emergency
 6 appointments to circumvent the regular or ordinary hiring process
 7 *for community college district employees.*

8 (6) The contractor will provide equipment, materials, facilities,
 9 or support services that could not feasibly be provided by the
 10 community college district in the location where the services are
 11 to be performed.

12 (7) ~~The services are of such an~~ *nature of the services, objectively*
 13 *determined, is so* urgent, temporary, or occasional ~~nature~~ that the
 14 delay incumbent in ~~their~~ *the* implementation *of those services* under
 15 the community college district’s regular or ordinary hiring process
 16 would frustrate their very purpose, *therefore requiring the use of*
 17 *nonemployee contractors. The use of any nonemployee contractor*
 18 *by a community college district under this section is limited to 60*
 19 *working days of a single college year.*

20 (c) This section shall apply to all community colleges, including
 21 community college districts that have adopted the merit system.

22 (d) This section shall apply to *nonemployee* personal service
 23 contracts entered into after January 1, 2003. This section shall not
 24 apply to the renewal of personal services contracts subsequent to
 25 January 1, 2003, where the contract was entered into before January
 26 1, 2003, irrespective of whether the contract is renewed or rebid
 27 with the existing contractor or with a new contractor.

28 SEC. 8. Section 88004 of the Education Code is amended to
 29 read:

30 88004. ~~Every~~ *(a) A community college district has a mandatory*
 31 *duty to classify, and shall classify, every* position not defined by
 32 the regulations of the board of governors as an academic position
 33 and not specifically exempted from the classified service ~~according~~
 34 ~~to the provisions of pursuant to~~ Section 88003 or 88076 ~~shall be~~
 35 ~~classified,~~ as required by those ~~sections and~~ *sections. These*
 36 *positions* shall be a part of the classified service. These positions
 37 may not be designated as academic by the governing board of a
 38 district, nor shall the assignment of a title to any such a position
 39 remove the position from the classified service.

1 (b) A community college district has a mandatory duty to
 2 classify, and shall classify, each position held by a nonemployee
 3 contractor in accordance with Section 88003.1.

4 ~~Nothing~~

5 (c) ~~Nothing~~ in this section shall be construed to prohibit anyone
 6 from being employed in a classification because he or she possesses
 7 the minimum qualifications required of faculty members or
 8 academic administrators, nor shall the possession of those
 9 qualifications be grounds for the elimination of an individual from
 10 consideration for employment in a classified position.

11 (d) An employee of a community college district, or the exclusive
 12 representative of such an employee within the meaning of Section
 13 3543.8 of the Government Code, may bring an action to challenge
 14 the classification of an employee or position by a community
 15 college district under subdivision (a) of Section 88003, subdivision
 16 (a) of Section 88076, or this section, or to compel a community
 17 college district to classify an employee or position as required by
 18 those provisions.

19 ~~This~~

20 (e) This section shall apply to districts which have adopted the
 21 merit system in the same manner and with the same effect as
 22 though it were a part of Article 3 (commencing with Section 88060)
 23 of this chapter.

24 SEC. 9. Section 88076 of the Education Code is amended to
 25 read:

26 88076. (a) The commission *has a mandatory duty to classify,*
 27 *and* shall classify all employees and positions within the
 28 jurisdiction of the governing board or of the commission, except
 29 those which are exempt from the classified service, as specified
 30 in subdivision (b). The employees and positions shall be known
 31 as the classified service. “To classify” shall include, but not
 32 necessarily be limited to, allocating positions to appropriate classes,
 33 arranging classes into occupational hierarchies, determining
 34 reasonable relationships within occupational hierarchies, and
 35 preparing written class specifications.

36 (b) The following positions and employees are exempt from the
 37 classified service:

- 38 (1) Academic positions.
- 39 (2) Part-time playground positions.
- 40 (3) Full-time students employed part time.

1 (4) Part-time students employed part time in any college
2 work-study program or in a work experience education program
3 conducted by a community college which is financed by state or
4 federal funds.

5 (5) Apprentices positions *of a limited, temporary nature.*

6 (6) Positions established for the employment of professional
7 experts on a *limited, temporary* basis for a specific project *that is*
8 *not an ongoing district venture* by the governing board or by the
9 commission when so designated by the commission.

10 ~~Employment~~

11 (c) (1) *Employment* of either full-time or part-time students in
12 any college work-study program, or in a work experience education
13 program shall not result in the displacement of classified personnel
14 or impair existing contracts for services.

15 ~~However, nothing~~

16 (2) *Nothing* in this section shall prevent an employee, who has
17 attained regular status in a full-time position, from taking a
18 voluntary reduction in time and retaining his or her regular status
19 under the provisions of this law.

20 ~~No~~

21 (d) *No* person whose contribution consists solely in the rendition
22 of individual personal services and whose employment does not
23 come within the scope of the exceptions listed above shall be
24 employed outside the classified service.

25 ~~A~~

26 (e) A part-time position is one for which the assigned time, when
27 computed on an hourly, daily, weekly, or monthly basis, is less
28 than 87 ½ percent of the normally assigned time of the majority
29 of employees in the classified service.

30 SEC. 10. Section 88105 of the Education Code is amended to
31 read:

32 88105. (a) Whenever the appointing power requires the
33 appointment of a ~~person~~ *limited-term employee* to a position, the
34 duration of which is not to exceed six ~~months~~, *consecutive months*
35 *in a single college year*; or, in case of an appointment of a
36 *substitute employee* in lieu of ~~an~~ *a temporarily* absent employee,
37 *the duration of which* is not to exceed the authorized absence of
38 that employee, ~~he or she~~ *the appointing power shall have a*
39 *ministerial duty to appoint the substitute or limited-term employee*
40 *to the position subject to the requirements of this section.*

1 (b) *For substitute employees, the appointing power shall submit*
2 *a request in which the probable duration of the appointment is*
3 *stated. ~~Eligible~~ For limited-term employees, the appointing power*
4 *shall submit a request certifying the starting and ending dates of*
5 *the service for the position. The ending date for a limited-term*
6 *employee may be advanced or delayed by the appointing power,*
7 *but the term shall not extend beyond six consecutive months in a*
8 *single college year, and the community college district may not*
9 *employ a limited-term employee in subsequent college years to*
10 *perform the same or similar services.*

11 (c) *Eligible persons shall be certified in accordance with their*
12 *position on the appropriate employment list and their willingness*
13 *to accept appointment to such a position as limited-term or*
14 *substitute employees. Limited-term and substitute employees shall*
15 *be subject to those conditions affecting status and tenure during*
16 *and after the employment as the commission may by rule*
17 *determine. Notwithstanding these limitations on the duration of*
18 *these positions, the commission may, based on a declaration of an*
19 *emergency by the President of the United States or the Governor,*
20 *authorize an extension that may not exceed one year. The duties*
21 *of the extended position shall be related to the emergency.*

22 (d) *As used in this section:*

23 (1) *“Limited-term employee” means any person who is employed*
24 *to perform for the community college district a discrete service,*
25 *the duration of which is not to exceed six consecutive months in a*
26 *single college year, if upon the completion of the discrete service,*
27 *as similar service shall be needed on a continuing or recurring*
28 *basis.*

29 (2) *“Substitute employee” means any person employed to*
30 *replace any classified employee who is temporarily absent from*
31 *duty. In addition, if the community college district is then engaged*
32 *in a procedure to hire a permanent employee to fill a vacancy in*
33 *any classified position, the community college district may fill the*
34 *vacancy through the employment, for not more than 60 calendar*
35 *days, of one or more substitute employees, except to the extent that*
36 *a collective bargaining agreement then in effect provides for a*
37 *different period of time.*

38 SEC. 11. If the Commission on State Mandates determines
39 that this act contains costs mandated by the state, reimbursement
40 to local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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