

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1066**

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**Introduced by Assembly Member Gonzalez**

February 26, 2015

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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 amended, 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 that is not an ongoing district  
16 venture, irrespective of length of employment, shall not be a part  
17 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, work-study~~  
20 *program* or in a work experience education program conducted

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

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

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

14 (d) As used in this section:

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

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

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

1 (e) Employment of either full-time or part-time students in any  
2 college ~~workstudy program~~, *work-study program* or in a work  
3 experience education program shall not result in the displacement  
4 of classified personnel or impair existing contracts for services.

5 (f) This section shall apply only to districts not incorporating  
6 the merit system as outlined in Article 6 (commencing with Section  
7 45240).

8 SEC. 2. Section 45103.1 of the Education Code is amended to  
9 read:

10 45103.1. (a) Notwithstanding any other provision of this  
11 chapter, personal services contracting with nonemployee  
12 contractors for all services currently or customarily performed by  
13 classified school employees to achieve cost savings is permissible,  
14 unless otherwise prohibited, when all the following conditions are  
15 met:

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

19 (A) In comparing costs, there shall be included the school  
20 district’s additional cost of providing the same service as proposed  
21 by a contractor. These additional costs shall include the salaries  
22 and benefits of additional staff that would be needed and the cost  
23 of additional space, equipment, and materials needed to perform  
24 the function.

25 (B) In comparing costs, there shall not be included the school  
26 district’s indirect overhead costs unless these costs can be attributed  
27 solely to the function in question and would not exist if that  
28 function was not performed by the school district. Indirect overhead  
29 costs shall mean the pro rata share of existing administrative  
30 salaries and benefits, rent, equipment costs, utilities, and materials.

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

36 (2) Proposals to contract out work shall not be approved solely  
37 on the basis that savings will result from lower contractor pay rates  
38 or benefits. Proposals to contract out work shall be eligible for  
39 approval if the contractor’s wages are at the industry’s level and  
40 do not undercut school district pay rates.

1 (3) The contract does not cause the displacement of school  
2 district employees. The term “displacement” includes layoff,  
3 demotion, involuntary transfer to a new classification, involuntary  
4 transfer to a new location requiring a change of residence, and  
5 time base reductions. Displacement does not include changes in  
6 shifts or days off, nor does it include reassignment to other  
7 positions within the same classification and general location or  
8 employment with the contractor, so long as wages and benefits  
9 are comparable to those paid by the school district.

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

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

15 (6) The contract is awarded through a publicized, competitive  
16 bidding process.

17 (7) The contract includes specific provisions pertaining to the  
18 qualifications of the staff that will perform the work under the  
19 contract, as well as assurance that the contractor’s hiring practices  
20 meet applicable nondiscrimination standards.

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

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

26 (10) The potential economic advantage of contracting is not  
27 outweighed by the public’s interest in having a particular function  
28 performed directly by the school district.

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

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

35 (2) The services contracted are not available within the district,  
36 cannot be performed satisfactorily by school district employees,  
37 or are of such a highly specialized or technical nature that the  
38 necessary expert knowledge, experience, and ability are not  
39 available through the school district.

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

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

14 (5) The nature of the work is such that the criteria for emergency  
15 appointments apply. “Emergency appointment” means an  
16 appointment made for a period not to exceed 60 working days of  
17 a single school year either during an actual emergency to prevent  
18 the stoppage of public business or because of the limited duration  
19 of the work. The method of selection and the qualification  
20 standards for an emergency nonemployee contractor shall be  
21 determined by the district. The frequency of appointment, length  
22 of contract, and the circumstances appropriate for the appointment  
23 of firms or individuals under emergency appointments as  
24 nonemployee contractors shall be restricted so as to prevent the  
25 use of emergency appointments to circumvent the regular or  
26 ordinary hiring process for school district employees.

27 (6) The contractor will provide equipment, materials, facilities,  
28 or support services that could not feasibly be provided by the  
29 school district in the location where the services are to be  
30 performed.

31 (7) The nature of the services, objectively determined, is so  
32 urgent, temporary, or occasional that the delay incumbent in the  
33 implementation of those services under the district’s regular or  
34 ordinary hiring process would frustrate their very purpose, therefore  
35 requiring the use of nonemployee contractors. The use of any  
36 nonemployee contractor by a school district under this section is  
37 limited to 60 working days of a single school year.

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

1 (d) This section shall apply to nonemployee personal service  
2 contracts entered into after January 1, 2003. This section shall not  
3 apply to the renewal of personal services contracts subsequent to  
4 January 1, 2003, where the contract was entered into before January  
5 1, 2003, irrespective of whether the contract is renewed or rebid  
6 with the existing contractor or with a new contractor.

7 SEC. 3. Section 45104 of the Education Code is amended to  
8 read:

9 45104. (a) A school district has a mandatory duty to classify,  
10 and shall classify, every position not defined by this code as a  
11 position requiring certification qualifications and not specifically  
12 exempted from the classified service pursuant to Section 45103  
13 or 45256, as required by those sections. These positions shall be  
14 a part of the classified service. These positions shall not be  
15 designated as certificated, the assignment of a title to any such a  
16 position shall not remove the position from the classified service,  
17 and possession of a certification document shall not be made a  
18 requirement for employment in the position.

19 ~~(b) A school district has a mandatory duty to classify, and shall~~  
20 ~~classify, each position held by a nonemployee contractor in~~  
21 ~~accordance with Section 45103.1.~~

22 (e)

23 (b) Nothing in this section shall be construed to prohibit the  
24 employment of any individual in a position described by this  
25 section as part of the classified service who is in possession of  
26 certification qualifications, nor shall the possession of certification  
27 qualifications be grounds for the elimination of an individual for  
28 consideration for employment in such a position.

29 ~~(d)~~

30 (c) An employee of a school district, or the exclusive  
31 representative of such an employee within the meaning of Section  
32 3543.8 of the Government Code, may bring an action to challenge  
33 the classification of an employee or position by a school district  
34 under subdivision (a) of Section 45103, subdivision (a) of Section  
35 45286, or this section, or to compel a school district to classify an  
36 employee or position as required by those provisions.

37 (e)

38 (d) This section shall apply to districts which have adopted the  
39 merit system in the same manner and with the same effect as

1 though it were a part of Article 6 (commencing with Section  
2 45240).

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

5 45256. (a) The commission has a mandatory duty to classify,  
6 and shall classify, all employees and positions within the  
7 jurisdiction of the governing board or of the commission, except  
8 those that are exempt from the classified service, as specified in  
9 subdivision (b). The employees and positions shall be known as  
10 the classified service. “To classify” shall include, but not  
11 necessarily be limited to, allocating positions to appropriate classes,  
12 arranging classes into occupational hierarchies, determining  
13 reasonable relationships within occupational hierarchies, and  
14 preparing written class specifications.

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

- 16 (1) Positions which require certification qualifications.
- 17 (2) Full-time students employed part time.
- 18 (3) Part-time students employed part time in any college  
19 ~~workstudy program, work-study program~~ or in a work experience  
20 education program conducted by a community college district  
21 pursuant to Article 7 (commencing with Section 51760) of Chapter  
22 5 of Part 28 of Division 4 and that is financed by state or federal  
23 funds.
- 24 (4) Apprentice positions of a limited, temporary nature.
- 25 (5) Positions established for the employment of professional  
26 experts on a limited, temporary basis for a specific project that is  
27 not an ongoing district venture by the governing board or by the  
28 commission when so designated by the commission.
- 29 (6) Part-time playground positions, where the employee is not  
30 otherwise employed in a classified position. Part-time playground  
31 positions shall be considered part of the classified service when  
32 the employee in the position also works in the same school district  
33 in a classified position.

34 (c) (1) Employment of either full-time or part-time students in  
35 any college ~~workstudy program, work-study program~~ or in a work  
36 experience education program shall not result in the displacement  
37 of classified personnel or impair existing contracts for services.

38 (2) Nothing in this section shall prevent an employee, who has  
39 attained regular status in a full-time position, from taking a

1 voluntary reduction in time and retaining his or her regular status  
2 under the provisions of this law.

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

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

11 SEC. 5. Section 45286 of the Education Code is amended to  
12 read:

13 45286. (a) Whenever the appointing power shall require the  
14 appointment of a limited-term employee to a position, the duration  
15 of which is not to exceed six consecutive months in a single school  
16 year, or, in case of an appointment of a substitute employee in lieu  
17 of a temporarily absent employee, the duration of which is not to  
18 exceed the authorized absence of that employee, the appointing  
19 power shall have a ministerial duty to appoint the substitute or  
20 limited-term employee to the position subject to the requirements  
21 of this section.

22 (b) For substitute employees, the appointing power shall submit  
23 a request in which the probable duration of the appointment is  
24 stated. For limited-term employees, the appointing power shall  
25 submit a request certifying the starting and ending dates of the  
26 service for the position. The ending date for a limited-term  
27 employee may be advanced or delayed by the appointing power,  
28 but the term shall not extend beyond six consecutive months in a  
29 single school year, and the school district may not employ a  
30 limited-term employee in subsequent school years to perform the  
31 same or similar services.

32 (c) Eligible persons shall be certified in accordance with their  
33 position on the appropriate employment list and their willingness  
34 to accept appointment to that position as limited-term or substitute  
35 employees. Limited-term and substitute employees shall be subject  
36 to conditions affecting status and tenure during and after  
37 employment that the commission may by rule determine.  
38 Notwithstanding these limitations on the duration of these  
39 positions, the commission may, based on a declaration of an  
40 emergency by the President of the United States or the Governor,

1 authorize an extension that may not exceed one year. The duties  
2 of the extended position shall be related to the emergency.

3 (d) As used in this section:

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

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

19 SEC. 6. Section 88003 of the Education Code is amended to  
20 read:

21 88003. (a) The governing board of any community college  
22 district shall employ persons for positions that are not academic  
23 positions. The governing board, except where Article 3  
24 (commencing with Section 88060) or Section 88137 applies, has  
25 a mandatory duty to classify, and shall classify, all those employees  
26 and positions. The employees and positions shall be known as the  
27 classified service. Substitute employees, employed and paid for  
28 less than 75 percent of a single college year, and short-term  
29 employees, employed and paid for less than 75 percent of a single  
30 college year, shall not be a part of the classified service. Part-time  
31 playground positions, apprentices, and professional experts  
32 employed on a limited, temporary basis for a specific project that  
33 is not an ongoing district venture, irrespective of length of  
34 employment, shall not be a part of the classified service. Full-time  
35 students employed part time, and part-time students employed part  
36 time in any college work-study program, or in a work experience  
37 education program conducted by a community college district and  
38 which is financed by state or federal funds, shall not be a part of  
39 the classified service. Unless otherwise permitted, a person whose  
40 position does not require certification qualifications shall not be

1 employed by a governing board, except as authorized by this  
2 section.

3 (b) As used in this section:

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

8 (2) “Short-term employee,” as used in this section, means any  
9 person who is employed to perform a discrete service for the  
10 district, upon the completion of which, the service required or  
11 similar services will not be extended or needed on a continuing or  
12 recurring basis. Before employing a short-term employee, the  
13 governing board, at a regularly scheduled board meeting, shall  
14 specify the service required to be performed by the employee  
15 pursuant to the definition of “classification” in subdivision (a) of  
16 Section 88001, and shall certify the starting and ending dates of  
17 the service. The ending date may be shortened or extended by the  
18 governing board, but shall not extend beyond 75 percent of a single  
19 ~~school~~ college year, and the district shall not employ a short-term  
20 employee in subsequent college years to perform the same or  
21 similar services.

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

31 (c) Employment of either full-time or part-time students in any  
32 college work-study program, or in a work experience education  
33 program shall not result in the displacement of classified personnel  
34 or impair existing contracts for services.

35 (d) This section shall apply only to districts not incorporating  
36 the merit system as outlined in Article 3 (commencing with Section  
37 88060).

38 SEC. 7. Section 88003.1 of the Education Code is amended to  
39 read:

1 88003.1. (a) Notwithstanding any other provision of this  
2 chapter, personal services contracting with nonemployee  
3 contractors for all services currently or customarily performed by  
4 classified school employees to achieve cost savings is permissible,  
5 unless otherwise prohibited, when all the following conditions are  
6 met:

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

10 (A) In comparing costs, there shall be included the community  
11 college district’s additional cost of providing the same service as  
12 proposed by a contractor. These additional costs shall include the  
13 salaries and benefits of additional staff that would be needed and  
14 the cost of additional space, equipment, and materials needed to  
15 perform the function.

16 (B) In comparing costs, there shall not be included the  
17 community college district’s indirect overhead costs unless these  
18 costs can be attributed solely to the function in question and would  
19 not exist if that function was not performed by the community  
20 college district. Indirect overhead costs shall mean the pro rata  
21 share of existing administrative salaries and benefits, rent,  
22 equipment costs, utilities, and materials.

23 (C) In comparing costs, there shall be included in the cost of a  
24 contractor providing a service any continuing community college  
25 district costs that would be directly associated with the contracted  
26 function. These continuing community college district costs shall  
27 include, but not be limited to, those for inspection, supervision,  
28 and monitoring.

29 (2) Proposals to contract out work shall not be approved solely  
30 on the basis that savings will result from lower contractor pay rates  
31 or benefits. Proposals to contract out work shall be eligible for  
32 approval if the contractor’s wages are at the industry’s level and  
33 do not undercut community college district pay rates.

34 (3) The contract does not cause the displacement of community  
35 college district employees. The term “displacement” includes  
36 layoff, demotion, involuntary transfer to a new classification,  
37 involuntary transfer to a new location requiring a change of  
38 residence, and time base reductions. Displacement does not include  
39 changes in shifts or days off, nor does it include reassignment to  
40 other positions within the same classification and general location

1 or employment with the contractor, so long as wages and benefits  
2 are comparable to those paid by the school district.

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

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

9 (6) The contract is awarded through a publicized, competitive  
10 bidding process.

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

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

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

20 (10) The potential economic advantage of contracting is not  
21 outweighed by the public's interest in having a particular function  
22 performed directly by the community college district.

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

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

29 (2) The services contracted are not available within community  
30 college districts, cannot be performed satisfactorily by community  
31 college district employees, or are of such a highly specialized or  
32 technical nature that the necessary expert knowledge, experience,  
33 and ability are not available through the community college district.

34 (3) The services are incidental to a contract for the purchase or  
35 lease of real or personal property. Contracts under this criterion,  
36 known as "service agreements," shall include, but not be limited  
37 to, agreements to service or maintain office equipment or  
38 computers that are leased or rented.

39 (4) The policy, administrative, or legal goals and purposes of  
40 the community college district cannot be accomplished through

1 the utilization of persons selected pursuant to the regular or  
2 ordinary hiring process. Contracts are permissible under this  
3 criterion to protect against a conflict of interest or to ensure  
4 independent and unbiased findings in cases where there is a clear  
5 need for a different, outside perspective. These contracts shall  
6 include, but not be limited to, obtaining expert witnesses in  
7 litigation.

8 (5) The nature of the work is such that the criteria for emergency  
9 appointments apply. “Emergency appointment” means an  
10 appointment made for a period not to exceed 60 working days of  
11 a single college year either during an actual emergency to prevent  
12 the stoppage of public business or because of the limited duration  
13 of the work. The method of selection and the qualification  
14 standards for an emergency nonemployee contractor shall be  
15 determined by the community college district. The frequency of  
16 appointment, length of contract, and the circumstances appropriate  
17 for the appointment of firms or individuals under emergency  
18 appointments of non-employee contractors shall be restricted so  
19 as to prevent the use of emergency appointments to circumvent  
20 the regular or ordinary hiring process for community college  
21 district employees.

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

26 (7) The nature of the services, objectively determined, is so  
27 urgent, temporary, or occasional that the delay incumbent in the  
28 implementation of those services under the community college  
29 district’s regular or ordinary hiring process would frustrate their  
30 very purpose, therefore requiring the use of nonemployee  
31 contractors. The use of any nonemployee contractor by a  
32 community college district under this section is limited to 60  
33 working days of a single college year.

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

36 (d) This section shall apply to nonemployee personal service  
37 contracts entered into after January 1, 2003. This section shall not  
38 apply to the renewal of personal services contracts subsequent to  
39 January 1, 2003, where the contract was entered into before January

1 1, 2003, irrespective of whether the contract is renewed or rebid  
2 with the existing contractor or with a new contractor.

3 SEC. 8. Section 88004 of the Education Code is amended to  
4 read:

5 88004. (a) A community college district has a mandatory duty  
6 to classify, and shall classify, every position not defined by the  
7 regulations of the board of governors as an academic position and  
8 not specifically exempted from the classified service pursuant to  
9 Section 88003 or 88076, as required by those sections. These  
10 positions shall be a part of the classified service. These positions  
11 may not be designated as academic by the governing board of a  
12 district, nor shall the assignment of a title to any such a position  
13 remove the position from the classified service.

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

17 ~~(e)~~

18 (b) Nothing in this section shall be construed to prohibit anyone  
19 from being employed in a classification because he or she possesses  
20 the minimum qualifications required of faculty members or  
21 academic administrators, nor shall the possession of those  
22 qualifications be grounds for the elimination of an individual from  
23 consideration for employment in a classified position.

24 ~~(d)~~

25 (c) An employee of a community college district, or the  
26 exclusive representative of such an employee within the meaning  
27 of Section 3543.8 of the Government Code, may bring an action  
28 to challenge the classification of an employee or position by a  
29 community college district under subdivision (a) of Section 88003,  
30 subdivision (a) of Section 88076, or this section, or to compel a  
31 community college district to classify an employee or position as  
32 required by those provisions.

33 ~~(e)~~

34 (d) This section shall apply to districts which have adopted the  
35 merit system in the same manner and with the same effect as  
36 though it were a part of Article 3 (commencing with Section 88060)  
37 of this chapter.

38 SEC. 9. Section 88076 of the Education Code is amended to  
39 read:

1 88076. (a) The commission has a mandatory duty to classify,  
2 and shall classify all employees and positions within the  
3 jurisdiction of the governing board or of the commission, except  
4 those which are exempt from the classified service, as specified  
5 in subdivision (b). The employees and positions shall be known  
6 as the classified service. “To classify” shall include, but not  
7 necessarily be limited to, allocating positions to appropriate classes,  
8 arranging classes into occupational hierarchies, determining  
9 reasonable relationships within occupational hierarchies, and  
10 preparing written class specifications.

11 (b) The following positions and employees are exempt from the  
12 classified service:

13 (1) Academic positions.

14 (2) Part-time playground positions.

15 (3) Full-time students employed part time.

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

20 (5) Apprentice positions of a limited, temporary nature.

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

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

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

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

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

1 SEC. 10. Section 88105 of the Education Code is amended to  
2 read:

3 88105. (a) Whenever the appointing power requires the  
4 appointment of a limited-term employee to a position, the duration  
5 of which is not to exceed six consecutive months in a single college  
6 year, or, in case of an appointment of a substitute employee in lieu  
7 of a temporarily absent employee, the duration of which is not to  
8 exceed the authorized absence of that employee, the appointing  
9 power shall have a ministerial duty to appoint the substitute or  
10 limited-term employee to the position subject to the requirements  
11 of this section.

12 (b) For substitute employees, the appointing power shall submit  
13 a request in which the probable duration of the appointment is  
14 stated. For limited-term employees, the appointing power shall  
15 submit a request certifying the starting and ending dates of the  
16 service for the position. The ending date for a limited-term  
17 employee may be advanced or delayed by the appointing power,  
18 but the term shall not extend beyond six consecutive months in a  
19 single college year, and the community college district may not  
20 employ a limited-term employee in subsequent college years to  
21 perform the same or similar services.

22 (c) Eligible persons shall be certified in accordance with their  
23 position on the appropriate employment list and their willingness  
24 to accept appointment to such a position as limited-term or  
25 substitute employees. Limited-term and substitute employees shall  
26 be subject to those conditions affecting status and tenure during  
27 and after the employment as the commission may by rule  
28 determine. Notwithstanding these limitations on the duration of  
29 these positions, the commission may, based on a declaration of an  
30 emergency by the President of the United States or the Governor,  
31 authorize an extension that may not exceed one year. The duties  
32 of the extended position shall be related to the emergency.

33 (d) As used in this section:

34 (1) "Limited-term employee" means any person who is  
35 employed to perform for the community college district a discrete  
36 service, the duration of which is not to exceed six consecutive  
37 months in a single college year, if upon the completion of the  
38 discrete service, as a similar service shall be needed on a continuing  
39 or recurring basis.

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

10 SEC. 11. If the Commission on State Mandates determines  
11 that this act contains costs mandated by the state, reimbursement  
12 to local agencies and school districts for those costs shall be made  
13 pursuant to Part 7 (commencing with Section 17500) of Division  
14 4 of Title 2 of the Government Code.