

AMENDED IN ASSEMBLY MAY 14, 2015

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

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~~ *45103 and 88003* 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~~ *short-term 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. Existing law provides that substitute and short-term employees, as defined, employed and paid for less than 75% of a school year or college year, shall not be part of the classified service.~~

~~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.~~

~~The~~

~~This 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. a short-term employee position not continue on a year-after-year basis.~~

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~~*a* school district shall
- 4 employ persons for positions not requiring certification
- 5 qualifications. The governing board *of a school district* shall,
- 6 except where Article 6 (commencing with Section 45240) or
- 7 Section 45318 applies, classify all of these employees and
- 8 positions. The employees and positions shall be known as the
- 9 classified service.
- 10 (b) (1) Substitute and short-term employees, employed and
- 11 paid for less than 75 percent of a school year, shall not be a part
- 12 of the classified service.

1 (2) Apprentices and professional experts employed on a
2 temporary basis for a specific project, regardless of length of
3 employment, shall not be a part of the classified service.

4 (3) Full-time students employed part time, and part-time students
5 employed part time in any college workstudy program, or in a
6 work experience education program conducted by a community
7 college district pursuant to Article 7 (commencing with Section
8 51760) of Chapter 5 of Part 28 and that is financed by state or
9 federal funds, shall not be a part of the classified service.

10 (4) Part-time playground positions shall not be a part of the
11 classified service, where the employee is not otherwise employed
12 in a classified position. Part-time playground positions shall be
13 considered a part of the classified service when the employee in
14 the position also works in the same school district in a classified
15 position.

16 (c) Unless otherwise permitted, a person whose position does
17 not require certification qualifications shall not be employed by a
18 ~~the governing board,~~ *board of a school district*, except as
19 authorized by this section.

20 (d) As used in this section:

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

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

33 (2) *“Short-term employee” means any person who is employed*
34 *to perform a service for the school district, upon the completion*
35 *of which, which the service required or similar services will not*
36 *be extended or needed on a continuing basis. Before employing a*
37 *short-term employee, the governing board, board of a school*
38 *district, at a regularly scheduled board meeting, shall specify the*
39 *service required to be performed by the employee pursuant to the*
40 *definition of “classification” in subdivision (a) of Section 45101,*

1 and shall certify the ending date of the service. The ending date
2 may be shortened or extended by the governing ~~board~~, *board of*
3 *the school district*, but shall not extend beyond 75 percent of a
4 school year. *A short-term employee position shall not continue on*
5 *a year-after-year basis.*

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

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

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

22 (f) This section shall apply only to *school* districts not
23 incorporating the merit system as outlined in Article 6
24 (commencing with Section 45240).

25 *SEC. 2. Section 88003 of the Education Code is amended to*
26 *read:*

27 88003. (a) The governing board of ~~any~~ *a* community college
28 district shall employ persons for positions that are not academic
29 positions. The governing board, except where Article 3
30 (commencing with Section 88060) or Section 88137 applies, shall
31 classify all those employees and positions. The employees and
32 positions shall be known as the classified service. Substitute and
33 short-term employees, employed and paid for less than 75 percent
34 of a college year, shall not be a part of the classified service.
35 Part-time playground positions, ~~apprentices~~ *apprentices*, and
36 professional experts employed on a temporary basis for a specific
37 project, ~~regardless~~ *irrespective* of length of employment, shall not
38 be a part of the classified service. Full-time students employed
39 part time, and part-time students employed part time in any college
40 work-study program, or in a work experience education program

1 conducted by a community college district and ~~which~~ *that* is
2 financed by state or federal funds, shall not be a part of the
3 classified service. Unless otherwise permitted, a person whose
4 position does not require certification qualifications shall not be
5 employed by a governing board, except as authorized by this
6 section.

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

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

17 (1) *“Seventy-five percent of a college year” means 195 working*
18 *days, including holidays, sick leave, vacation, and other leaves of*
19 *absences, irrespective of the number of hours worked per day.*

20 ~~“Short-term employee,” as used in this section,~~

21 (2) *“Short-term employee” means any person who is employed*
22 *to perform a service for the community college district, upon the*
23 *completion of which, which the service required or similar services*
24 *will not be extended or needed on a continuing basis. Before*
25 *employing a short-term employee, the governing board, at a*
26 *regularly scheduled board meeting, shall specify the service*
27 *required to be performed by the employee pursuant to the definition*
28 *of “classification” in subdivision (a) of Section 88001, and shall*
29 *certify the ending date of the service. The ending date may be*
30 *shortened or extended by the governing board, but shall not extend*
31 *beyond 75 percent of a school college year. A short-term employee*
32 *position shall not continue on a year-after-year basis.*

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

36 ~~Employment~~

37 (3) *“Substitute employee” means any person employed to*
38 *replace any classified employee who is temporarily absent from*
39 *duty. In addition, if the community college district is then engaged*
40 *in a procedure to hire a permanent employee to fill a vacancy in*

1 *any classified position, the governing board may fill the vacancy*
 2 *through the employment, for not more than 60 calendar days, of*
 3 *one or more substitute employees, except to the extent that a*
 4 *collective bargaining agreement then in effect provides for a*
 5 *different period of time.*

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

10 ~~This~~

11 (d) *This section shall apply only to community college districts*
 12 *not incorporating the merit system as outlined in Article 3*
 13 *(commencing with Section 88060).*

14 *SEC. 3. If the Commission on State Mandates determines that*
 15 *this act contains costs mandated by the state, reimbursement to*
 16 *local agencies and school districts for those costs shall be made*
 17 *pursuant to Part 7 (commencing with Section 17500) of Division*
 18 *4 of Title 2 of the Government Code.*

19 ~~SECTION 1. Section 45103 of the Education Code is amended~~
 20 ~~to read:~~

21 ~~45103. (a) The governing board of any school district shall~~
 22 ~~employ persons for positions not requiring certification~~
 23 ~~qualifications. The governing board has a mandatory duty to~~
 24 ~~classify, and shall, except where Article 6 (commencing with~~
 25 ~~Section 45240) or Section 45318 applies, classify all of these~~
 26 ~~employees and positions. The employees and positions shall be~~
 27 ~~known as the classified service.~~

28 ~~(b) (1) Substitute employees, employed and paid for less than~~
 29 ~~75 percent of a single school year, and short-term employees,~~
 30 ~~employed and paid for less than 75 percent of a single school year,~~
 31 ~~shall not be a part of the classified service.~~

32 ~~(2) Apprentices and professional experts employed on a limited,~~
 33 ~~temporary basis for a specific project that is not an ongoing district~~
 34 ~~venture, irrespective of length of employment, shall not be a part~~
 35 ~~of the classified service.~~

36 ~~(3) Full-time students employed part time, and part-time students~~
 37 ~~employed part time in any college work-study program or in a~~
 38 ~~work experience education program conducted by a community~~
 39 ~~college district pursuant to Article 7 (commencing with Section~~

1 51760) of Chapter 5 of Part 28 of Division 4 and that is financed
2 by state or federal funds, shall not be a part of the classified service.

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

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

12 ~~(d) As used in this section:~~

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

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

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

39 ~~(e) Employment of either full-time or part-time students in any~~
40 ~~college work-study program or in a work experience education~~

1 program shall not result in the displacement of classified personnel
2 or impair existing contracts for services.

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

6 SEC. 2. Section 45103.1 of the Education Code is amended to
7 read:

8 45103.1. (a) Notwithstanding any other provision of this
9 chapter, personal services contracting with nonemployee
10 contractors for all services currently or customarily performed by
11 classified school employees to achieve cost savings is permissible,
12 unless otherwise prohibited, when all the following conditions are
13 met:

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

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

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

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

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

39 (3) The contract does not cause the displacement of school
40 district employees. The term "displacement" includes layoff,

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

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

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

13 (6) The contract is awarded through a publicized, competitive
14 bidding process.

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

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

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

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

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

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

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

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

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

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

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

35 (e) This section shall apply to all school districts, including
36 districts that have adopted the merit system.

37 (d) This section shall apply to nonemployee personal service
38 contracts entered into after January 1, 2003. This section shall not
39 apply to the renewal of personal services contracts subsequent to
40 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. 3. Section 45104 of the Education Code is amended to~~
4 ~~read:~~

5 ~~45104. (a) A school district has a mandatory duty to classify,~~
6 ~~and shall classify, every position not defined by this code as a~~
7 ~~position requiring certification qualifications and not specifically~~
8 ~~exempted from the classified service pursuant to Section 45103~~
9 ~~or 45256, as required by those sections. These positions shall be~~
10 ~~a part of the classified service. These positions shall not be~~
11 ~~designated as certificated, the assignment of a title to any such~~
12 ~~position shall not remove the position from the classified service,~~
13 ~~and possession of a certification document shall not be made a~~
14 ~~requirement for employment in the position.~~

15 ~~(b) Nothing in this section shall be construed to prohibit the~~
16 ~~employment of any individual in a position described by this~~
17 ~~section as part of the classified service who is in possession of~~
18 ~~certification qualifications, nor shall the possession of certification~~
19 ~~qualifications be grounds for the elimination of an individual for~~
20 ~~consideration for employment in such a position.~~

21 ~~(c) An employee of a school district, or the exclusive~~
22 ~~representative of such an employee within the meaning of Section~~
23 ~~3543.8 of the Government Code, may bring an action to challenge~~
24 ~~the classification of an employee or position by a school district~~
25 ~~under subdivision (a) of Section 45103, subdivision (a) of Section~~
26 ~~45286, or this section, or to compel a school district to classify an~~
27 ~~employee or position as required by those provisions.~~

28 ~~(d) This section shall apply to districts which have adopted the~~
29 ~~merit system in the same manner and with the same effect as~~
30 ~~though it were a part of Article 6 (commencing with Section~~
31 ~~45240).~~

32 ~~SEC. 4. Section 45256 of the Education Code is amended to~~
33 ~~read:~~

34 ~~45256. (a) The commission has a mandatory duty to classify,~~
35 ~~and shall classify, all employees and positions within the~~
36 ~~jurisdiction of the governing board or of the commission, except~~
37 ~~those that are exempt from the classified service, as specified in~~
38 ~~subdivision (b). The employees and positions shall be known as~~
39 ~~the classified service. "To classify" shall include, but not~~
40 ~~necessarily be limited to, allocating positions to appropriate classes,~~

1 ~~arranging classes into occupational hierarchies, determining~~
2 ~~reasonable relationships within occupational hierarchies, and~~
3 ~~preparing written class specifications.~~

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

5 ~~(1) Positions which require certification qualifications.~~

6 ~~(2) Full-time students employed part time.~~

7 ~~(3) Part-time students employed part time in any college~~
8 ~~work-study program or in a work experience education program~~
9 ~~conducted by a community college district pursuant to Article 7~~
10 ~~(commencing with Section 51760) of Chapter 5 of Part 28 of~~
11 ~~Division 4 and that is financed by state or federal funds.~~

12 ~~(4) Apprentice positions of a limited, temporary nature.~~

13 ~~(5) Positions established for the employment of professional~~
14 ~~experts on a limited, temporary basis for a specific project that is~~
15 ~~not an ongoing district venture by the governing board or by the~~
16 ~~commission when so designated by the commission.~~

17 ~~(6) Part-time playground positions, where the employee is not~~
18 ~~otherwise employed in a classified position. Part-time playground~~
19 ~~positions shall be considered part of the classified service when~~
20 ~~the employee in the position also works in the same school district~~
21 ~~in a classified position.~~

22 ~~(e) (1) Employment of either full-time or part-time students in~~
23 ~~any college work-study program or in a work experience education~~
24 ~~program shall not result in the displacement of classified personnel~~
25 ~~or impair existing contracts for services.~~

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

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

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

38 ~~SEC. 5. Section 45286 of the Education Code is amended to~~
39 ~~read:~~

1 45286. ~~(a) Whenever the appointing power shall require the~~
2 ~~appointment of a limited-term employee to a position, the duration~~
3 ~~of which is not to exceed six consecutive months in a single school~~
4 ~~year, or, in case of an appointment of a substitute employee in lieu~~
5 ~~of a temporarily absent employee, the duration of which is not to~~
6 ~~exceed the authorized absence of that employee, the appointing~~
7 ~~power shall have a ministerial duty to appoint the substitute or~~
8 ~~limited-term employee to the position subject to the requirements~~
9 ~~of this section.~~

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

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

31 ~~(d) As used in this section:~~

32 ~~(1) “Limited-term employee” means any person who is~~
33 ~~employed to perform for the school district a discrete service, the~~
34 ~~duration of which is not to exceed six consecutive months in a~~
35 ~~single school year, if upon the completion of the discrete service,~~
36 ~~no similar service shall be needed on a continuing or recurring~~
37 ~~basis.~~

38 ~~(2) “Substitute employee” means any person employed to~~
39 ~~replace any classified employee who is temporarily absent from~~
40 ~~duty. In addition, if the school district is then engaged in a~~

1 procedure to hire a permanent employee to fill a vacancy in any
2 classified position, the school district may fill the vacancy through
3 the employment, for not more than 60 calendar days, of one or
4 more substitute employees, except to the extent that a collective
5 bargaining agreement then in effect provides for a different period
6 of time.

7 ~~SEC. 6.~~ Section 88003 of the Education Code is amended to
8 read:

9 ~~88003.~~ (a) The governing board of any community college
10 district shall employ persons for positions that are not academic
11 positions. The governing board, except where Article 3
12 (commencing with Section 88060) or Section 88137 applies, has
13 a mandatory duty to classify, and shall classify, all those employees
14 and positions. The employees and positions shall be known as the
15 classified service. Substitute employees, employed and paid for
16 less than 75 percent of a single college year, and short-term
17 employees, employed and paid for less than 75 percent of a single
18 college year, shall not be a part of the classified service. Part-time
19 playground positions, apprentices, and professional experts
20 employed on a limited, temporary basis for a specific project that
21 is not an ongoing district venture, irrespective of length of
22 employment, shall not be a part of the classified service. Full-time
23 students employed part time, and part-time students employed part
24 time in any college work-study program, or in a work experience
25 education program conducted by a community college district and
26 which is financed by state or federal funds, shall not be a part of
27 the classified service. Unless otherwise permitted, a person whose
28 position does not require certification qualifications shall not be
29 employed by a governing board, except as authorized by this
30 section.

31 (b) As used in this section:

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

36 (2) “Short-term employee,” as used in this section, means any
37 person who is employed to perform a discrete service for the
38 district, upon the completion of which, the service required or
39 similar services will not be extended or needed on a continuing or
40 recurring basis. Before employing a short-term employee, the

1 governing board, at a regularly scheduled board meeting, shall
2 specify the service required to be performed by the employee
3 pursuant to the definition of “classification” in subdivision (a) of
4 Section 88001, and shall certify the starting and ending dates of
5 the service. The ending date may be shortened or extended by the
6 governing board, but shall not extend beyond 75 percent of a single
7 college year, and the district shall not employ a short-term
8 employee in subsequent college years to perform the same or
9 similar services.

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

19 (e) Employment of either full-time or part-time students in any
20 college work-study program, or in a work experience education
21 program shall not result in the displacement of classified personnel
22 or impair existing contracts for services.

23 (d) This section shall apply only to districts not incorporating
24 the merit system as outlined in Article 3 (commencing with Section
25 88060).

26 SEC. 7. Section 88003.1 of the Education Code is amended to
27 read:

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

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

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

1 the cost of additional space, equipment, and materials needed to
2 perform the function.

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

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

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

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

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

34 ~~(5) The amount of savings clearly justify the size and duration~~
35 ~~of the contracting agreement.~~

36 ~~(6) The contract is awarded through a publicized, competitive~~
37 ~~bidding process.~~

38 ~~(7) The contract includes specific provisions pertaining to the~~
39 ~~qualifications of the staff that will perform the work under the~~

1 contract, as well as assurance that the contractor's hiring practices
2 meet applicable nondiscrimination standards.

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

5 ~~(9) The contract is with a firm. A "firm" means a corporation,
6 limited liability company, partnership, nonprofit organization, or
7 sole proprietorship.~~

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

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

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

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

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

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

36 ~~(5) The nature of the work is such that the criteria for emergency
37 appointments apply. "Emergency appointment" means an
38 appointment made for a period not to exceed 60 working days of
39 a single college year either during an actual emergency to prevent
40 the stoppage of public business or because of the limited duration~~

1 of the work. The method of selection and the qualification
2 standards for an emergency nonemployee contractor shall be
3 determined by the community college district. The frequency of
4 appointment, length of contract, and the circumstances appropriate
5 for the appointment of firms or individuals under emergency
6 appointments of non-employee contractors shall be restricted so
7 as to prevent the use of emergency appointments to circumvent
8 the regular or ordinary hiring process for community college
9 district employees.

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

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

22 (e) This section shall apply to all community colleges, including
23 community college districts that have adopted the merit system.

24 (d) This section shall apply to nonemployee personal service
25 contracts entered into after January 1, 2003. This section shall not
26 apply to the renewal of personal services contracts subsequent to
27 January 1, 2003, where the contract was entered into before January
28 1, 2003, irrespective of whether the contract is renewed or rebid
29 with the existing contractor or with a new contractor.

30 SEC. 8. Section 88004 of the Education Code is amended to
31 read:

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

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

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

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

19 ~~SEC. 9. Section 88076 of the Education Code is amended to~~
20 ~~read:~~

21 ~~88076. (a) The commission has a mandatory duty to classify,~~
22 ~~and shall classify all employees and positions within the~~
23 ~~jurisdiction of the governing board or of the commission, except~~
24 ~~those which are exempt from the classified service, as specified~~
25 ~~in subdivision (b). The employees and positions shall be known~~
26 ~~as the classified service. "To classify" shall include, but not~~
27 ~~necessarily be limited to, allocating positions to appropriate classes,~~
28 ~~arranging classes into occupational hierarchies, determining~~
29 ~~reasonable relationships within occupational hierarchies, and~~
30 ~~preparing written class specifications.~~

31 ~~(b) The following positions and employees are exempt from the~~
32 ~~classified service:~~

- 33 ~~(1) Academic positions.~~
- 34 ~~(2) Part-time playground positions.~~
- 35 ~~(3) Full-time students employed part time.~~
- 36 ~~(4) Part-time students employed part time in any college~~
37 ~~work-study program or in a work-experience education program~~
38 ~~conducted by a community college which is financed by state or~~
39 ~~federal funds.~~
- 40 ~~(5) Apprentice positions of a limited, temporary nature.~~

1 ~~(6) Positions established for the employment of professional~~
2 ~~experts on a limited, temporary basis for a specific project that is~~
3 ~~not an ongoing district venture by the governing board or by the~~
4 ~~commission when so designated by the commission.~~

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

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

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

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

21 ~~SEC. 10. Section 88105 of the Education Code is amended to~~
22 ~~read:~~

23 ~~88105. (a) Whenever the appointing power requires the~~
24 ~~appointment of a limited-term employee to a position, the duration~~
25 ~~of which is not to exceed six consecutive months in a single college~~
26 ~~year, or, in case of an appointment of a substitute employee in lieu~~
27 ~~of a temporarily absent employee, the duration of which is not to~~
28 ~~exceed the authorized absence of that employee, the appointing~~
29 ~~power shall have a ministerial duty to appoint the substitute or~~
30 ~~limited-term employee to the position subject to the requirements~~
31 ~~of this section.~~

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

1 employ a limited-term employee in subsequent college years to
2 perform the same or similar services.

3 (e) 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 a position as limited-term or
6 substitute employees. Limited-term and substitute employees shall
7 be subject to those conditions affecting status and tenure during
8 and after the employment as the commission may by rule
9 determine. Notwithstanding these limitations on the duration of
10 these 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 shall be related to the emergency.

14 (d) As used in this section:

15 (1) "Limited-term employee" means any person who is
16 employed to perform for the community college district a discrete
17 service, the duration of which is not to exceed six consecutive
18 months in a single college year, if upon the completion of the
19 discrete service, a similar service shall be needed on a continuing
20 or recurring basis.

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

30 SEC. 11. If the Commission on State Mandates determines
31 that this act contains costs mandated by the state, reimbursement
32 to local agencies and school districts for those costs shall be made
33 pursuant to Part 7 (commencing with Section 17500) of Division
34 4 of Title 2 of the Government Code.

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