

AMENDED IN ASSEMBLY MARCH 15, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2183

Introduced by Assembly Member Gatto

February 18, 2016

An act to ~~amend Section 89030 of~~ *add Section 89036.5 to the* Education Code, relating to postsecondary education.

LEGISLATIVE COUNSEL'S DIGEST

AB 2183, as amended, Gatto. California State ~~University~~. *University: personal service contracts.*

Existing law, the State Civil Service Act, establishes standards for the use of personal services contracts by state agencies. The act provides that personal services contracting is permissible to achieve cost savings when certain conditions are met, including, but not limited to, that the contracting agency demonstrates that the proposed contract will result in actual overall cost savings to the state and that the contract will not cause the displacement of civil service employees. The act also authorizes state agencies to enter into personal services contracts for functions exempted from civil service. The California Constitution excludes the officers and employees of the California State University from the state civil service.

Existing law authorizes the trustees of the California State University to enter into agreements with any public or private agency, person, or institution for the furnishing of services, facilities, goods, supplies, or equipment, among others, and requires the trustees to prescribe policies and procedures for the acquisition of those services, facilities, materials, goods, supplies, or equipment.

This bill would establish standards for the use of personal services contracts by the trustees of the California State University similar to those in the State Civil Service Act.

~~Existing law establishes the California State University and its various campuses under the administration of the Trustees of the California State University. Existing law requires the trustees to adopt rules and regulations not inconsistent with the laws of this state for the governance of the trustees, their appointees and employees, and the California State University.~~

~~This bill would make nonsubstantive changes to that provision.~~

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

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

- 1 *SECTION 1. Section 89036.5 is added to the Education Code,*
2 *to read:*
3 89036.5. (a) *The purpose of this section is to establish*
4 *standards for the use of personal services contracts.*
5 (b) *The trustees may enter into personal services contracts to*
6 *achieve cost savings when all the following conditions are met:*
7 (1) *The trustees clearly demonstrate that the proposed contract*
8 *will result in actual overall cost savings to the California State*
9 *University, consistent with the following:*
10 (A) *In comparing costs, the trustees shall include the university's*
11 *additional cost of providing the same service as proposed by a*
12 *contractor. These additional costs shall include the salaries and*
13 *benefits of additional staff that would be needed and the cost of*
14 *additional space, equipment, and materials needed to perform the*
15 *function.*
16 (B) *In comparing costs, the trustees shall not include the*
17 *university's indirect overhead costs unless these costs can be*
18 *attributed solely to the function in question and would not exist if*
19 *that function was not performed by university employees. "Indirect*
20 *overhead costs" means the pro rata share of existing administrative*
21 *salaries and benefits, rent, equipment costs, utilities, and materials.*
22 (C) *In comparing costs, the trustees shall include in the cost of*
23 *a contractor providing a service any continuing university costs*
24 *that would be directly associated with the contracted function.*

1 *These continuing costs shall include, but not be limited to, those*
2 *for inspection, supervision, and monitoring.*

3 *(2) Proposals to contract out work shall not be approved solely*
4 *on the basis that savings will result from lower contractor pay*
5 *rates or benefits. Proposals to contract out work shall be eligible*
6 *for approval if the contractor's wages are at the industry's level*
7 *and do not significantly undercut university pay rates.*

8 *(3) The contract does not cause the displacement of university*
9 *employees. The term "displacement" includes layoff, demotion,*
10 *involuntary transfer to a new class, involuntary transfer to a new*
11 *location requiring a change of residence, and time base reductions.*
12 *Displacement does not include changes in shifts or days off, nor*
13 *does it include reassignment to other positions within the same*
14 *class and general location.*

15 *(4) The contract does not adversely affect the university's*
16 *nondiscrimination standards.*

17 *(5) The savings shall be large enough to ensure that they will*
18 *not be eliminated by private sector and university cost fluctuations*
19 *that could normally be expected during the contracting period.*

20 *(6) The amount of savings clearly justify the size and duration*
21 *of the contracting agreement.*

22 *(7) The contract is awarded through a publicized, competitive*
23 *bidding process.*

24 *(8) The contract includes specific provisions pertaining to the*
25 *qualifications of the staff that will perform the work under the*
26 *contract, as well as assurance that the contractor's hiring practices*
27 *meet applicable nondiscrimination standards.*

28 *(9) The potential for future economic risk to the university from*
29 *potential contractor rate increases is minimal.*

30 *(10) The contract is with a firm. A "firm" means a corporation,*
31 *partnership, nonprofit organization, or sole proprietorship.*

32 *(11) The potential economic advantage of contracting is not*
33 *outweighed by the public's interest in having a particular function*
34 *performed directly by university.*

35 *(c) The trustees may also enter into personal services contracts*
36 *when any of the following conditions can be met:*

37 *(1) The contract is for a new university function and the*
38 *Legislature has specifically mandated or authorized the*
39 *performance of the work by independent contractors.*

1 (2) *The services contracted are not available within the*
2 *university, cannot be performed satisfactorily by university*
3 *employees, or are of a highly specialized or technical nature that*
4 *the necessary expert knowledge, experience, and ability are not*
5 *available from the university's employees.*

6 (3) *The services are incidental to a contract for the purchase*
7 *or lease of real or personal property. Contracts under this*
8 *criterion, known as "service agreements," shall include, but not*
9 *be limited to, agreements to service or maintain office equipment*
10 *or computers that are leased or rented.*

11 (4) *The legislative, administrative, or legal goals and purposes*
12 *cannot be accomplished through the utilization of university*
13 *employees because of the need to protect against a conflict of*
14 *interest or to ensure independent and unbiased findings in cases*
15 *where there is a clear need for a different, outside perspective.*
16 *These contracts shall include, but not be limited to, obtaining*
17 *expert witnesses in litigation.*

18 (5) *Due to an emergency, a contract is necessary for the*
19 *immediate preservation of the public health, welfare, or safety.*

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

23 (7) *The contractor will conduct training courses for which*
24 *appropriately qualified university instructors are not available.*
25 *Permanent instructor positions in academies or similar settings*
26 *shall be filled through the process for hiring university employees.*

27 (8) *The services are of an urgent, temporary, or occasional*
28 *nature that the delay incumbent in their implementation through*
29 *the process for hiring university employees would frustrate their*
30 *very purpose.*

31 ~~SECTION 1. Section 89030 of the Education Code is amended~~
32 ~~to read:~~

33 ~~89030. (a) The trustees shall adopt rules and regulations not~~
34 ~~inconsistent with the laws of this state for the governance of all of~~
35 ~~the following:~~

36 ~~(1) The trustees.~~

37 ~~(2) The appointees and employees of the trustees.~~

38 ~~(3) The California State University.~~

1 ~~(b) The adoption of these rules and regulations is not subject to~~
2 ~~Chapter 3.5 (commencing with Section 11340) of Part 1 of Division~~
3 ~~3 of Title 2 of the Government Code.~~

4 ~~(c) The rules and regulations shall be published for distribution~~
5 ~~as soon as practicable after adoption.~~

6 ~~(d) This section shall be liberally construed in order that the~~
7 ~~purposes of the Donahoe Higher Education Act pursuant to Part~~
8 ~~40 (commencing with Section 66000) of Division 5 may be~~
9 ~~effectuated.~~