

AMENDED IN ASSEMBLY MAY 31, 2016
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 add Section 89036.5 to the Education Code, relating to postsecondary education.

LEGISLATIVE COUNSEL'S DIGEST

AB 2183, as amended, Gatto. California State University: personal ~~service~~ *services* 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~~ *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. *Act for services that are currently or customarily performed by employees of the university.*

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

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

- 1 SECTION 1. Section 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 *(b) If the trustees enter into a new contract, or renew or extend*
8 *an existing contract, for services that are currently or customarily*
9 *performed by the university's employees, all of the following*
10 *requirements shall apply:*
11 (1) The trustees clearly demonstrate that the proposed contract
12 will result in actual overall cost savings to the California State
13 University, consistent with the following:
14 (A) In comparing costs, the trustees shall include the university's
15 additional cost of providing the same service as proposed by a
16 contractor. These additional costs shall include the salaries and
17 benefits of additional staff that would be needed and the cost of
18 additional space, equipment, and materials needed to perform the
19 function.
20 (B) In comparing costs, the trustees shall not include the
21 university's indirect overhead costs unless these costs can be
22 attributed solely to the function in question and would not exist if
23 that function was not performed by university employees. "Indirect
24 overhead costs" means the pro rata share of existing administrative
25 salaries and benefits, rent, equipment costs, utilities, and materials.
26 (C) In comparing costs, the trustees shall include in the cost of
27 a contractor providing a service any continuing university costs
28 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 rates
5 or benefits. Proposals to contract out work shall be eligible for
6 approval if the contractor's wages are at the industry's level and
7 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 *the* 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 or
7 lease of real or personal property. Contracts under this criterion,
8 known as "service agreements," shall include, but not be limited
9 to, agreements to service or maintain office equipment or
10 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 expert
17 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 nature
28 that the delay incumbent in their implementation through the
29 process for hiring university employees would frustrate their very
30 purpose.