

AMENDED IN SENATE APRIL 14, 2015

**SENATE BILL**

**No. 669**

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**Introduced by Senator Pan**

February 27, 2015

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An act to ~~amend Section 19130 of the Government~~ *add Section 89036.5 to the Education Code*, relating to personal ~~service services~~ contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 669, as amended, Pan. ~~Civil service: personal~~ *Personal services contracts: California State Universities: University.*

~~Existing law~~ *law, the State Civil Service Act*, establishes standards for the use of personal services contracts by state agencies. ~~Existing law~~ *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.*

~~This bill would make these provisions for the use of personal services contracts applicable to California State Universities.~~

*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.

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 (1) The trustees clearly demonstrate that the proposed contract  
8 will result in actual overall cost savings to the California State  
9 University, provided that:

10 (A) In comparing costs, there shall be included 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, there shall not be included 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 shall mean the pro rata share of existing  
21 administrative salaries and benefits, rent, equipment costs, utilities,  
22 and materials.

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

28 (2) Proposals to contract out work shall not be approved solely  
29 on the basis that savings will result from lower contractor pay  
30 rates or benefits. Proposals to contract out work shall be eligible

1 for approval if the contractor's wages are at the industry's level  
2 and do not significantly undercut university pay rates.

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

10 (4) The contract does not adversely affect the university's  
11 affirmative action efforts.

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

15 (6) The amount of savings clearly justify the size and duration  
16 of the contracting agreement.

17 (7) The contract is awarded through a publicized, competitive  
18 bidding process.

19 (8) The contract includes specific provisions pertaining to the  
20 qualifications of the staff that will perform the work under the  
21 contract, as well as assurance that the contractor's hiring practices  
22 meet applicable nondiscrimination, affirmative action standards.

23 (9) The potential for future economic risk to the university from  
24 potential contractor rate increases is minimal.

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

27 (11) The potential economic advantage of contracting is not  
28 outweighed by the public's interest in having a particular function  
29 performed directly by university.

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

32 (1) The contract is for a new university function 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  
36 university, cannot be performed satisfactorily by university  
37 employees, or are of such a highly specialized or technical nature  
38 that the necessary expert knowledge, experience, and ability are  
39 not available from the university's employees.

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

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

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

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

18 (7) *The contractor will conduct training courses for which*  
 19 *appropriately qualified university instructors are not available,*  
 20 *provided that permanent instructor positions in academies or*  
 21 *similar settings shall be filled through the process for hiring*  
 22 *university employees.*

23 (8) *The services are of such an urgent, temporary, or occasional*  
 24 *nature that the delay incumbent in their implementation through*  
 25 *the process for hiring university employees would frustrate their*  
 26 *very purpose.*

27 ~~SECTION 1. Section 19130 of the Government Code is~~  
 28 ~~amended to read:~~

29 ~~19130. The purpose of this article is to establish standards for~~  
 30 ~~the use of personal services contracts.~~

31 ~~(a) Personal services contracting is permissible to achieve cost~~  
 32 ~~savings when all the following conditions are met:~~

33 ~~(1) The contracting agency clearly demonstrates that the~~  
 34 ~~proposed contract will result in actual overall cost savings to the~~  
 35 ~~state, provided that:~~

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

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

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

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

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

19 ~~(3) The contract does not cause the displacement of civil service~~  
20 ~~employees. The term "displacement" includes layoff, demotion,~~  
21 ~~involuntary transfer to a new class, involuntary transfer to a new~~  
22 ~~location requiring a change of residence, and time base reductions.~~  
23 ~~Displacement does not include changes in shifts or days off, nor~~  
24 ~~does it include reassignment to other positions within the same~~  
25 ~~class and general location.~~

26 ~~(4) The contract does not adversely affect the state's affirmative~~  
27 ~~action efforts.~~

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

31 ~~(6) The amount of savings clearly justify the size and duration~~  
32 ~~of the contracting agreement.~~

33 ~~(7) The contract is awarded through a publicized, competitive~~  
34 ~~bidding process.~~

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

39 ~~(9) The potential for future economic risk to the state from~~  
40 ~~potential contractor rate increases is minimal.~~

1     ~~(10) The contract is with a firm. A “firm” means a corporation,~~  
2 ~~partnership, nonprofit organization, or sole proprietorship.~~

3     ~~(11) The potential economic advantage of contracting is not~~  
4 ~~outweighed by the public’s interest in having a particular function~~  
5 ~~performed directly by state government.~~

6     ~~(b) Personal services contracting also shall be permissible when~~  
7 ~~any of the following conditions can be met:~~

8     ~~(1) The functions contracted are exempted from civil service~~  
9 ~~by Section 4 of Article VII of the California Constitution, which~~  
10 ~~describes exempt appointments.~~

11     ~~(2) The contract is for a new state function and the Legislature~~  
12 ~~has specifically mandated or authorized the performance of the~~  
13 ~~work by independent contractors.~~

14     ~~(3) The services contracted are not available within civil service,~~  
15 ~~cannot be performed satisfactorily by civil service employees, or~~  
16 ~~are of such a highly specialized or technical nature that the~~  
17 ~~necessary expert knowledge, experience, and ability are not~~  
18 ~~available through the civil service system.~~

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

24     ~~(5) The legislative, administrative, or legal goals and purposes~~  
25 ~~cannot be accomplished through the utilization of persons selected~~  
26 ~~pursuant to the regular civil service system. Contracts are~~  
27 ~~permissible under this criterion to protect against a conflict of~~  
28 ~~interest or to insure independent and unbiased findings in cases~~  
29 ~~where there is a clear need for a different, outside perspective.~~  
30 ~~These contracts shall include, but not be limited to, obtaining expert~~  
31 ~~witnesses in litigation.~~

32     ~~(6) The nature of the work is such that the Government Code~~  
33 ~~standards for emergency appointments apply. These contracts shall~~  
34 ~~conform with Article 8 (commencing with Section 19888) of~~  
35 ~~Chapter 2.5 of Part 2.6.~~

36     ~~(7) State agencies need private counsel because a conflict of~~  
37 ~~interest on the part of the Attorney General’s office prevents it~~  
38 ~~from representing the agency without compromising its position.~~  
39 ~~These contracts shall require the written consent of the Attorney~~  
40 ~~General, pursuant to Section 11040.~~

1     ~~(8) The contractor will provide equipment, materials, facilities,~~  
2     ~~or support services that could not feasibly be provided by the state~~  
3     ~~in the location where the services are to be performed.~~

4     ~~(9) The contractor will conduct training courses for which~~  
5     ~~appropriately qualified civil service instructors are not available,~~  
6     ~~provided that permanent instructor positions in academies or similar~~  
7     ~~settings shall be filled through civil service appointment.~~

8     ~~(10) The services are of such an urgent, temporary, or occasional~~  
9     ~~nature that the delay incumbent in their implementation under civil~~  
10    ~~service would frustrate their very purpose.~~

11    ~~(e) All persons who provide services to the state under~~  
12    ~~conditions the board determines constitute an employment~~  
13    ~~relationship shall, unless exempted from civil service by Section~~  
14    ~~4 of Article VII of the California Constitution, be retained under~~  
15    ~~an appropriate civil service appointment.~~

16    ~~(d) This article shall apply to the California State University.~~  
17    ~~Any reference in this article to a contracting agency or a state~~  
18    ~~agency shall include the California State University.~~