

Introduced by Senator LenoFebruary 27, 2015

An act to add Section 71621 to the Government Code, relating to courts.

LEGISLATIVE COUNSEL'S DIGEST

SB 682, as introduced, Leno. Courts.

The Trial Court Employment Protection and Governance Act establishes a trial court employee personnel system that provides authority to hire trial court personnel, regulates the classification and compensation of trial court employees, labor relations, and personnel files, and requires each trial court to establish a system of employment selection and advancement and an employment protection system.

Existing law authorizes state agencies to use personal services contracts to achieve cost savings if specified standards are satisfied, including, among other things, the contract does not cause the displacement of civil service employees and the contract is awarded through a publicized, competitive bidding process. The State Personnel Board is required to review a proposed contract upon the request of an employee organization for compliance with those standards.

This bill would establish specified standards if a trial court intends to enter into, or renew or extend, a contract for any services that are currently or customarily performed by that trial court's employees. Among other things, the bill would require the trial court to clearly demonstrate that the contract will result in actual overall cost savings to the trial court. The bill would provide that those standards do not apply to a contract under certain circumstances, including, among others, when the services are incidental to a contract for the purchase or lease of real or personal property.

This bill would require a trial court to provide a report by February 1, 2016, to the Department of Finance, the chairperson of the Joint Legislative Budget Committee, and the chairpersons of the Senate Committee on Judiciary and the Assembly Committee on Judiciary if the trial court entered into, or renewed or extended, a contract between July 1, 2015, and December 31, 2015, for services that were provided or are customarily provided by its trial court employees and the contract has a term extending beyond March 31, 2016. The bill would require that report to provide specified information relating to these contracts, including an analysis of whether the contract resulted in the displacement of trial court employees.

This bill would provide that its provisions are severable.

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 71621 is added to the Government Code,
 2 to read:
 3 71621. The purpose of this section is to establish standards for
 4 when a trial court intends to enter into, or renew or extend, a
 5 contract for any services that are currently or have been customarily
 6 performed by that trial court’s employees.
 7 (a) Contracts for services that are currently or customarily
 8 performed by trial court employees are permissible in a trial court
 9 when all of the following conditions are met:
 10 (1) The trial court clearly demonstrates that the contract will
 11 result in actual overall cost savings to the trial court, provided that:
 12 (A) In comparing costs, there shall be included the trial court’s
 13 additional costs of providing the same service as proposed by a
 14 contractor. These additional costs shall include the salaries and
 15 benefits of additional staff that would be needed and the costs of
 16 additional space, equipment, and materials needed to perform the
 17 function.
 18 (B) In comparing costs, there shall not be included the trial
 19 court’s indirect overhead costs unless these costs can be attributed
 20 solely to the function in question and would not exist if that
 21 function was not performed by the trial court. Indirect overhead
 22 costs shall mean the pro rata share of existing administrative
 23 salaries and benefits, rent, equipment costs, utilities, and materials.

1 (C) In comparing costs, there shall be included in the costs of
2 a contractor providing a service any continuing trial court costs
3 that would be directly associated with the contracted function.
4 These continuing trial court costs shall include, but not be limited
5 to, those for inspection, supervision, and monitoring.

6 (2) Proposals to contract out work shall not be approved solely
7 on the basis that savings will result from lower contractor pay rates
8 or benefits. Contracts shall be eligible for approval if the
9 contractor's wages are at the industry's level and do not undercut
10 trial court pay rates.

11 (3) The contract does not cause the displacement of trial court
12 employees. The term "displacement" includes layoff, demotion,
13 loss of employment or employment seniority, involuntary transfer
14 to a new class, involuntary transfer to a new location requiring a
15 change of residence, and time base reductions. Displacement does
16 not include changes in shifts or days off, nor does it include
17 reassignment to other positions within the same class and general
18 location

19 (4) The savings shall be large enough to ensure that they will
20 not be eliminated by private sector and trial court fluctuations that
21 could normally be expected during the contracting period.

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

24 (6) The contract is awarded through a publicized, competitive
25 bidding process.

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

30 (8) The potential for future economic risk to the trial court from
31 potential contractor rate increases is minimal.

32 (9) The contract is with a firm. A "firm" means a corporation,
33 partnership, nonprofit organization, or sole proprietorship.

34 (10) The potential economic advantage of contracting out is not
35 outweighed by the public's interest in having a particular function
36 performed directly by the trial court.

37 (b) This section does not preclude a trial court or the Judicial
38 Council from adopting more restrictive rules regarding the
39 contracting of court services.

1 (c) Contracting shall also be permissible when any of the
2 following conditions can be met:

3 (1) The contract is for a new trial court function and the
4 Legislature has specifically mandated or authorized the
5 performance of the work by independent contractors.

6 (2) The contract is between a trial court and another trial court
7 or local government entity for services to be performed by
8 employees of the other trial court or employees of the local
9 government entity.

10 (3) The services contracted for cannot be satisfactorily
11 performed by trial court employees, or are of such a highly
12 specialized or technical nature that the necessary expert knowledge,
13 experience, and ability cannot be obtained from the court’s trial
14 court employees.

15 (4) The services are incidental to a contract for the purchase or
16 lease of real or personal property. Contracts described in this
17 paragraph, known as “service agreements,” shall include, but not
18 be limited to, agreements to service or maintain office equipment
19 or computers that are leased or rented. Service agreements do not
20 include contracts to operate equipment or computers for purposes
21 other than service or maintenance.

22 (5) The legislative, administrative, or legal goals and purposes
23 cannot be accomplished through the utilization of trial court
24 employees because of the need to protect against a conflict of
25 interest or to ensure independent and unbiased findings in cases
26 where there is a clear need for an independent, outside perspective.

27 (6) Due to an emergency, a contract is necessary for the
28 immediate preservation of the public health, welfare, or safety.

29 (7) The contractor will conduct training courses for which
30 appropriately qualified trial court employee instructors are not
31 available from the court, provided that permanent instructor
32 positions shall be filled through the process for hiring trial court
33 employees.

34 (8) The services are of such an urgent, temporary, or occasional
35 nature that the delay incumbent in their implementation through
36 the process for hiring trial court employees would frustrate their
37 very purpose. This paragraph shall not apply to the services of
38 official court reporters, except individual official reporters pro
39 tempore may be used by a trial court when the criteria of this
40 paragraph are met.

1 (9) The contract is a personal services contract developed
2 pursuant to rehabilitation programs in accordance with Sections
3 19403 and 19404 of the Welfare and Institutions Code, pursuant
4 to habilitation programs in accordance with Chapter 13
5 (commencing with Section 4850) of Division 4.5 of the Welfare
6 and Institutions Code, or pursuant to a program vendored or
7 contracted through a regional center or the State Department of
8 Developmental Services in accordance with the Lanterman
9 Developmental Disabilities Services Act (Division 4.5
10 (commencing with Section 4500) of the Welfare and Institutions
11 Code), and the contract will not cause an existing trial court
12 employee to incur a loss of his or her employment or employment
13 seniority; a reduction in wages, benefits, or hours; or an involuntary
14 transfer to a new location requiring a change in residence.

15 (10) The contract is for the services of any court interpreter.
16 Contracts for the services of any court interpreter, and restrictions
17 on contracting out interpreter services, shall be governed by the
18 Trial Court Interpreter Employment and Labor Relations Act
19 (Chapter 7.5 (commencing with Section 71800)) and any
20 memorandum of understanding or agreement entered into pursuant
21 to that act, or by the other provisions of this chapter, the Trial Court
22 Employment Protection and Governance Act, and any
23 memorandum of understanding or agreement entered into pursuant
24 to that act, as applicable.

25 SEC. 2. If a trial court entered into, or renewed or extended, a
26 contract between July 1, 2015, and December 31, 2015, inclusive,
27 for services that were provided or are customarily provided by its
28 trial court employees and that contract has a term extending beyond
29 March 31, 2016, the trial court shall provide a report by no later
30 than February 1, 2016, to the Department of Finance, chairperson
31 of the Joint Legislative Budget Committee and the chairpersons
32 of the Senate Committee on Judiciary and Assembly Committee
33 on Judiciary. The report shall provide all of the following:

34 (a) A copy of the contract.

35 (b) An analysis of whether the contract is permissible under the
36 standards set forth in Section 71621 of the Government Code, as
37 added by Section 1 of this act.

38 (c) An analysis of whether the contract resulted in the
39 displacement of trial court employees.

1 (d) An analysis of whether the contract involves the use of
2 contractors to perform the type of services that were customarily
3 performed by trial court employees.

4 SEC. 3. The provisions of this act are severable. If any
5 provision of this act or its application is held invalid, that invalidity
6 shall not affect other provisions or applications that can be given
7 effect without the invalid provision or application.