

AMENDED IN ASSEMBLY JUNE 24, 2015

AMENDED IN SENATE MAY 5, 2015

**SENATE BILL**

**No. 682**

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**Introduced by Senator Leno**

**(Coauthor: Senator Wieckowski)**

*(Coauthors: Assembly Members Cristina Garcia, Gipson, and  
Jones-Sawyer)*

February 27, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

SB 682, as amended, 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 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, inclusive, 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 a contract for any services  
5 that are currently or have been customarily performed by that trial  
6 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.

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

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

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

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

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

28 (5) The amount of savings clearly ~~justify~~ *justifies* the size and  
29 duration of the contracting agreement.

30 (6) The contract is awarded through a publicized, competitive  
31 bidding process.

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

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

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

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

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

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

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

12 (2) The contract is between a trial court and another trial court  
13 or ~~local~~ government entity for services to be performed by  
14 employees of the other trial court or employees of the ~~local~~  
15 government entity.

16 (3) The services contracted for cannot be satisfactorily  
17 performed by trial court employees, or are of such a highly  
18 specialized or technical nature that the necessary expert knowledge,  
19 experience, and ability cannot be obtained from the court's trial  
20 court employees.

21 (4) The services are incidental to a contract for the purchase or  
22 lease of real or personal property. Contracts described in this  
23 paragraph, known as "service agreements," shall include, but not  
24 be limited to, agreements to service or maintain office equipment  
25 or computers that are leased or rented. Service agreements do not  
26 include contracts to operate equipment or computers for purposes  
27 other than service or maintenance.

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

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

35 (7) The contractor will conduct training courses for which  
36 appropriately qualified trial court employee instructors are not  
37 available from the court, provided that permanent instructor  
38 positions shall be filled through the process for hiring trial court  
39 employees.

1 (8) The contractor will provide equipment, materials, facilities,  
2 or support services that could not feasibly be provided by the trial  
3 court in the location where the services are to be performed. This  
4 paragraph shall not apply to services contracted in order to open  
5 closed courthouses if those services were performed by trial court  
6 employees before the closure or for the ongoing operation of new  
7 or reopened courthouses.

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

15 (10) The contract is a personal services contract developed  
16 pursuant to rehabilitation programs in accordance with Sections  
17 19403 and 19404 of the Welfare and Institutions Code, pursuant  
18 to habilitation programs in accordance with Chapter 13  
19 (commencing with Section 4850) of Division 4.5 of the Welfare  
20 and Institutions Code, or pursuant to a program vendored or  
21 contracted through a regional center or the State Department of  
22 Developmental Services in accordance with the Lanterman  
23 Developmental Disabilities Services Act (Division 4.5  
24 (commencing with Section 4500) of the Welfare and Institutions  
25 Code), and the contract will not cause an existing trial court  
26 employee to incur a loss of his or her employment or employment  
27 seniority; a reduction in wages, benefits, or hours; or an involuntary  
28 transfer to a new location requiring a change in residence.

29 (11) The contract is for the services of any court interpreter.  
30 Contracts for the services of any court interpreter, and restrictions  
31 on contracting out interpreter services, shall be governed by the  
32 Trial Court Interpreter Employment and Labor Relations Act  
33 (Chapter 7.5 (commencing with Section 71800)) and any  
34 memorandum of understanding or agreement entered into pursuant  
35 to that act, or by the other provisions of this chapter, the Trial Court  
36 Employment Protection and Governance Act, and any  
37 memorandum of understanding or agreement entered into pursuant  
38 to that act, as applicable.

39 SEC. 2. If a trial court entered into, or renewed or extended, a  
40 contract between July 1, 2015, and December 31, 2015, inclusive,

1 for services that were provided or are customarily provided by its  
2 trial court employees and that contract has a term extending beyond  
3 March 31, 2016, the trial court shall provide a report by no later  
4 than February 1, 2016, to the Department of Finance, Chairperson  
5 of the Joint Legislative Budget Committee and the Chairpersons  
6 of the Senate Committee on Judiciary and Assembly Committee  
7 on Judiciary. The report shall provide all of the following:  
8 (a) A copy of the contract.  
9 (b) An analysis of whether the contract is permissible under the  
10 standards set forth in Section 71621 of the Government Code, as  
11 added by Section 1 of this act.  
12 (c) An analysis of whether the contract resulted in the  
13 displacement of trial court employees.  
14 (d) An analysis of whether the contract involves the use of  
15 contractors to perform the type of services that were customarily  
16 performed by trial court employees.  
17 SEC. 3. The provisions of this act are severable. If any  
18 provision of this act or its application is held invalid, that invalidity  
19 shall not affect other provisions or applications that can be given  
20 effect without the invalid provision or application.