

ASSEMBLY BILL

No. 2391

Introduced by Assembly Member Koretz

February 19, 2004

An act to amend Section 19130 of the Government Code, relating to public employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2391, as introduced, Koretz. Public employment: legal services contracts: State Bargaining Unit 2.

Existing law authorizes a state agency to contract for private legal services if, among other circumstances, the Attorney General's office has a conflict of interest that prevents the office from representing the agency.

This bill would prohibit a state agency from contracting for legal services if the hourly rate of compensation for these services exceeds by more than 200% the hourly rate billed to state agencies by State Bargaining Unit 2.

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 19130 of the Government Code is
- 2 amended to read:
- 3 19130. The purpose of this article is to establish standards for
- 4 the use of personal services contracts.
- 5 (a) Personal services contracting is permissible to achieve cost
- 6 savings when all the following conditions are met:

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

4 (A) In comparing costs, there shall be included the state's
5 additional cost of providing the same service as proposed by a
6 contractor. These additional costs shall include the salaries and
7 benefits of additional staff that would be needed and the cost of
8 additional space, equipment, and materials needed to perform the
9 function.

10 (B) In comparing costs, there shall not be included the state's
11 indirect overhead costs unless these costs can be attributed solely
12 to the function in question and would not exist if that function was
13 not performed in state service. Indirect overhead costs shall mean
14 the pro rata share of existing administrative salaries and benefits,
15 rent, equipment costs, utilities, and materials.

16 (C) In comparing costs, there shall be included in the cost of a
17 contractor providing a service any continuing state costs that
18 would be directly associated with the contracted function. These
19 continuing state costs shall include, but not be limited to, those for
20 inspection, supervision, and monitoring.

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

26 (3) The contract does not cause the displacement of civil
27 service employees. The term "displacement" includes layoff,
28 demotion, involuntary transfer to a new class, involuntary transfer
29 to a new location requiring a change of residence, and time base
30 reductions. Displacement does not include changes in shifts or
31 days off, nor does it include reassignment to other positions within
32 the same class and general location.

33 (4) The contract does not adversely affect the state's
34 affirmative action efforts.

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

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

1 (7) The contract is awarded through a publicized, competitive
2 bidding process.

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

7 (9) The potential for future economic risk to the state from
8 potential contractor rate increases is minimal.

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

11 (11) The potential economic advantage of contracting is not
12 outweighed by the public's interest in having a particular function
13 performed directly by state government.

14 (b) Personal services contracting also shall be permissible
15 when any of the following conditions can be met:

16 (1) The functions contracted are exempted from civil service
17 by Section 4 of Article VII of the California Constitution, which
18 describes exempt appointments.

19 (2) The contract is for a new state function and the Legislature
20 has specifically mandated or authorized the performance of the
21 work by independent contractors.

22 (3) The services contracted are not available within civil
23 service, cannot be performed satisfactorily by civil service
24 employees, or are of such a highly specialized or technical nature
25 that the necessary expert knowledge, experience, and ability are
26 not available through the civil service system.

27 (4) The services are incidental to a contract for the purchase or
28 lease of real or personal property. Contracts under this criterion,
29 known as "service agreements," shall include, but not be limited
30 to, agreements to service or maintain office equipment or
31 computers that are leased or rented.

32 (5) The legislative, administrative, or legal goals and purposes
33 cannot be accomplished through the utilization of persons selected
34 pursuant to the regular civil service system. Contracts are
35 permissible under this criterion to protect against a conflict of
36 interest or to insure independent and unbiased findings in cases
37 where there is a clear need for a different, outside perspective.
38 These contracts shall include, but not be limited to, obtaining
39 expert witnesses in litigation.

1 (6) The nature of the work is such that the Government Code
2 standards for emergency appointments apply. These contracts
3 shall conform with Article 8 (commencing with Section 19888) of
4 Chapter 2.5 of Part 2.6.

5 (7) State agencies need private counsel because a conflict of
6 interest on the part of the Attorney General's office prevents it
7 from representing the agency without compromising its position.
8 These contracts shall require the written consent of the Attorney
9 General, pursuant to Section 11040.

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

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

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

20 (c) *Notwithstanding subdivision (b), a state agency may not*
21 *contract for legal services if the hourly rate of compensation for*
22 *these services exceeds by more than 200 percent the hourly rate*
23 *billed to state agencies by State Bargaining Unit 2.*

24 (d) All persons who provide services to the state under
25 conditions the board determines constitute an employment
26 relationship shall, unless exempted from civil service by Section
27 4 of Article VII of the California Constitution, be retained under
28 an appropriate civil service appointment.

