
COMMITTEE ON EDUCATION

Senator Carol Liu, Chair
2015 - 2016 Regular

Bill No: SB 669
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Consultant: Kathleen Chavira
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Subject: Civil service: personal services contracts: California State Universities

SUMMARY

This bill establishes standards for the use of personal services contracts by the California State University (CSU).

BACKGROUND

Current law provides standards for the use of personal service contracts by state agencies with specific criteria for contracting outside state service. These criteria include demonstration of cost savings, definition of costs, and requirements that work not be contracted out solely on the basis of lower pay rates or benefits, and justification of savings based on the size and duration of the contract.

(Government Code § 19130)

Article 7 of the California Constitution establishes the State Civil Service and establishes the State Personnel Board, a 5 member body appointed by the Governor and approved by the Senate, to enforce and administer civil service statutes. The Constitution establishes several exemptions from the civil service, including officers and employees of the University of California and the California State University.

ANALYSIS

This bill establishes nearly identical requirements and review processes for personal services contracting by the CSU as those that exist for State agencies. It:

1. Specifies that use of personal services contracting to achieve costs savings is permissible when the CSU clearly demonstrates that the contract will result in overall cost savings and:
 - A. Prescribes the specific costs to be included/excluded in the calculation.
 - B. Prohibits approval solely on the basis of savings from lower contractor pay rates or benefits, and requires that wages be at the industry's level and that they do not significantly undercut university pay rates.
 - C. Displacement of university employees, as specified, is not caused by the contract.

- D. It does not affect nondiscrimination efforts, savings are large enough to be maintained during cost fluctuations, are clearly justified by size and duration, contracts are publicly and competitively bid, and various other requirements.
- 2. Restricts personal services contracting, unless the following conditions are met:
 - A. The Legislature mandates or authorizes work be performed by independent contractors, and the contract is for a new university function.
 - B. Services are unavailable or unable to be satisfactorily performed within the university or by university employees.
 - C. Services are incidental to a purchase or lease contract.
 - D. The legislative, administrative, or legal goals/purposes cannot be accomplished through the regular or ordinary hiring process.
 - E. University employees cannot feasibly supply the equipment, materials, facilities, or support services provided by the contractor.
 - F. The contract is for the provision of training courses for which qualified university employees are not available.
 - G. The contract is for services of an urgent, temporary, or occasional nature.

STAFF COMMENTS

- 1. ***Need for the bill.*** According to the author, the intent of this bill is to provide the California State University (CSU) employees the same contracting out protections that apply to state workers.
- 2. ***Current CSU practice.*** According to the CSU, in 2012-13 it had over 7,000 personal services contracts valued at a cost of over \$500 million for various services within the University. These contracts are for services that include animal boarding, agricultural chemicals, archaeologists, portable toilet suppliers, demolition contractors, stonemasons, furniture suppliers, fire protection providers, pest and vermin control, hazardous waste disposal providers, and more. The CSU contends that, per the requirements of Higher Education Employer-Employee Relations Act (HEERA), the University meets and confers with unions and negotiations have resulted in provisions in collective bargaining agreements that outline the conditions and processes to be followed regarding contracting out.
- 3. ***Collective Bargaining.*** Provisions regarding contracting out are an element of both the California State University Employees Union - CSUEU (Article 3) and State Employees Trades Council - SETC (Article 4) collective bargaining agreements. The CSUEU agreement authorizes contracting out provided that it does not displace bargaining unit employees, and defines displacement to include layoff, demotion, involuntary transfer to a new classification, or to a new

satellite campus location, or a location requiring a change of residence, and involuntary time base reductions. The California State University (CSU) is required to notify the Union when contracting out is to be on a long-term basis and the Union is authorized to request to meet and confer on the impacts of long-term contracting out work. Prior to meeting, the CSU is required to provide the California State University Employees Union (CSUEU) all existing relevant information, including RFPs, copies of bids received, and any cost analysis used to evaluate the need for contracting out. The State Employees Trades Council (SETC) agreement, prior to contracting out, requires a campus to consider the availability of SETC employees to perform the work, whether they have the special skills and licensure necessary, whether the work can be completed within time constraints applicable to the project, the availability of required materials and/or equipment, and the cost involved in performing the work in-house versus contracting out. Notification of the Chief Campus Steward is required prior to the start of any such contracted work.

Should the Legislature insert itself in a matter which it appears is already being addressed through collective bargaining?

4. ***Civil Service exemption.*** This bill is modeled on State Civil Service Act language used to govern personal services contracting within the state.

Provisions of the California Constitution specifically exclude officers and employees of the CSU from state civil service, and the Legislature has granted the CSU other exemptions from Civil Service provisions, including:

- A. Exclusion from Public Contract Code provisions regarding the acquisition of goods and services
- B. Authority to promulgate regulations without having to utilize the procedures outlined in the Administrative Procedures Act, thereby exempting CSU from Office of Administrative Law review.

Do the CSU's current contracting out practices rise to a level of concern that warrants the CSU being subject to civil service-like provisions?

5. ***Purview of the Trustees?*** The provisions of this bill are substantively similar to the requirements outlined for state agencies under the Civil Service Act. However, unlike state agencies, statute extends the authority to administer the CSU and to adopt rules and regulations consistent with the laws of the state, to the CSU Trustees, a body appointed by the Governor and confirmed by the Senate.

If the Committee believes there is a need for greater clarity around the use of personal services contracts at the CSU, **staff recommends** the bill be amended to delete its current contents and to amend Education Code section 89036, which outlines the power of the Trustees to enter into agreements, to authorize the Trustees to enter into personal services contracts and to require the Trustees to establish standards and conditions for their use.

6. *Related and prior legislation.*

SB 943 (Beall, 2014) was substantively similar to this bill. In addition it assigned the State Personnel Board oversight of CSU contracting practices. SB 943 was heard by this Committee on April 30, 2014 and failed passage in the Committee by a vote of 2-2.

AB 2225 (Lowenthal, 2002) proposed similar personal services contracting standards for the CSU. AB 2225 was heard by this Committee in June 2002, and was held without recommendation.

SUPPORT

California Labor Federation
California State University Employees Union (CSUEU/SEIU)
Service Employees International Union (SEIU)

OPPOSITION

California State University
California State University East Bay
California State University Long Beach

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