SENATE COMMITTEE ON EDUCATION
Senator Benjamin Allen, Chair
2017 - 2018 Regular

Bill No:	AB 848	**Hearing Date:**	July 5, 2017
Author:	McCarty		
Version:	June 26, 2017		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Ian Johnson		

Subject: Public contracts: University of California: California State University: domestic workers

SUMMARY

This bill prohibits the University of California (UC) and the California State University (CSU) from contracting for services performed by workers outside of the United States that would displace a UC or CSU employment position.

BACKGROUND

Existing law:

1) Requires a state agency to comply with specified procedures in awarding agency contracts.

2) Prohibits, with specified exceptions, a state agency authorized to enter into contracts relating to public benefit programs from contracting for services provided by a call center that directly serves applicants for, recipients of, or enrollees in, those public benefit programs unless the contractor or subcontractor certifies in its bid for the contract that the contract, and any subcontract performed under that contract, will be performed solely with workers employed in California.

3) Imposes a civil penalty, as provided, for knowingly providing false information in the above certification.

4) Also requires the contract to include a clause providing for a right by the state to terminate the contract for noncompliance, and specified penalties, if the contractor or subcontractor performs the contract or the subcontract with workers not employed in California during the life of the contract.

ANALYSIS

This bill:

1) Requires contractors and subcontractors to certify under penalty of perjury in their bids that work will be performed solely with workers in the United States.

2) Prohibits the University of California (UC) and the California State University (CSU) from training service contract employees in foreign countries or those who plan to relocate abroad as part of the contract, if it would displace an employment position.

3) Requires the contract to be terminated if the contractor or subcontractor uses workers outside of the United States during the life of the contract, if that contract displaces an employment position, and sets a method for calculating penalties.

4) Defines "displace" to mean the layoff, demotion, involuntary transfer to a new classification or location, or time base reduction of an employee position.

5) Defines "employee position" to mean the position of a career employee, temporary employee, casual employee, seasonal employee, limited-term employee, per diem employee, contracted-out employee, or a vacant employee.

6) Exempts University of California (UC) and California State University (CSU) study abroad programs from the requirements of this bill.

7) Exempts contracts from the requirements of this bill if they would violate a specified World Trade Organization Agreement.

STAFF COMMENTS

1) ***Need for the bill.*** According to the author, "The United States has lost nearly 5 million manufacturing jobs over the last 20 years, with at least 40 percent of these jobs outsourced to a foreign country. In 2004, the University of California San Francisco (UCSF) offshored its medical transcription services to a company in Pakistan. However, the contractor, disappointed with her pay, attempted to extort the school by threatening to release all private medical data onto the internet if she was not compensated fairly. Fortunately, the issue was resolved without incident.

   Recently in July of 2016, UCSF offshored 17% of its IT services to a company called HCL—a contracting company out of India. UCSF's contract with HCL is for 5-years and worth $50 million. UCSF asserts that outsourcing would save them $30 million over the next 5 years. Employees were warned of the possibility of outsourcing, but were eventually given a lay off date of February 28, 2017 and told to train their own replacements.

   The University of California is establishing a precarious precedent by contracting out good paying, middle class IT jobs, not only out of California, but to a foreign country. State funding should not be used to fund contractors and subcontractors such as HCL, at the expense of taxpayer dollars to create jobs in foreign countries. State funds should be used to create jobs in the United States and California."

2) ***India-based offshoring by UCSF and potentially all other UC campuses.*** According to UCSF, the campus faces difficult circumstances because of the Affordable Healthcare Act, which has increased the volume of patients but limits

reimbursement to around 55 cents on the dollar. Over the past five years, which saw the advent of electronic medical records, IT has moved from being responsible for 3 percent of operating expenses to 6 percent. That includes more spending on IT security and analytics.

University of California San Francisco (UCSF's) contract with HCL resulted in the loss of 49 IT career positions and the elimination of 48 other positions that were either vacant or filled by contracted staff, and constitutes a 17 percent reduction in IT staffing.

The UCSF indicated that all impacted UCSF career employees received six-months advance notice of intention to terminate, and that per University of California (UC) policy the employees are eligible for job placement assistance, including assistance in finding other positions from across the UC system. If the employees do not find alternative employment within the UC system, they may also be eligible for severance to assist in their transition. UCSF noted that between five campuses and the UC Office of the President, more than 100 IT positions have already been identified as open and available.

The contract for services between HCL Technologies and UCSF provides all of the other 10 UC campuses, which serve about 240,000 students and employ about 190,000 faculty and staff, with the opportunity to take advantage of the same outsourced IT support services. According the sponsors of this bill, applying the same 17 percent loss ratio across UC's 10 campuses and five medical centers could result in a total of 613 lost positions.

3) ***Policy tradeoffs to consider.*** As numerous reports on offshoring services have noted in recent years, legislation restricting its use related to state contracts involves a number of tradeoffs. Specifically, restrictions on government contracting can increase costs as workers at risk of being displaced by offshoring tend to be relatively skilled and have a history of relatively high wages. To the extent that restrictions on UC and California State University (CSU) contracts mean the segments will pay more for certain services than they otherwise could, the segments will have less money for other purposes, such as financial aid or increased course offerings. Further, is restricting the contracting authority of the higher education segments, particularly the UC, inconsistent with the 2016 Budget Act requirement for the Regents of the UC to implement measures to reduce the university's cost structure?

4) ***Concerns from the segments.*** The UC has expressed several concerns with this bill as currently drafted. First, it is unclear whether this bill applies to contracts that have already been executed, such as UCSF's contract with HCL, or if the bill's prohibition would be implemented prospectively. Second, UC performs activities internationally other than their study abroad programs, such as teaching, research, or other public service activities and projects that could be adversely affected by this bill. Third, the bill does not specify a time period for determining whether a service contract resulted in an employee position being displaced.

According to California State University (CSU), they do not offshore jobs and, per the Government Code and collective bargaining agreements, they are prohibited from displacing represented employees. Even so, CSU is concerned that the bill too broadly defines "employment positions", which would have unintended consequences related to their ability to contract with national vendors. For example, the desktop provider for the CSU uses secondary support services offshore. In its current form, the bill would severely limit the pool of qualified contractors, potentially compelling the CSU to contract with less qualified and more expensive vendors.

Given the author's stated intent of the bill, and that addressing each of the concerns raised by the segments would prevent unintended consequences, ***staff recommends*** that the bill be amended to: (1) specify that neither the University of California (UC) or CSU may contract for services with a contractor or subcontractor, where that contract displaces an employment position, on or after July 1, 2017, (2) add teaching, research, or public service activities and projects to the list of international activities that the bill does not prohibit, (3) add language establishing up to a one-year time period for determining whether a contract for services results in a UC or CSU employment position being displaced, and (4) narrow the definition of "employment position" to include career or permanent employees.

SUPPORT

UPTE-CWA Local 9119 (co-sponsor)
California State University Employees Union (co-sponsor)
American Federation of State, County, and Municipal Employees
California Federation of Teachers
California Labor Federation
California Nurses Association
California Professional Firefighters
California School Employees Association
Communication Workers of America
Union of American Physicians and Dentists

OPPOSITION

None received

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