

AMENDED IN SENATE SEPTEMBER 6, 2013

AMENDED IN SENATE SEPTEMBER 3, 2013

AMENDED IN SENATE AUGUST 22, 2013

AMENDED IN SENATE JULY 3, 2013

AMENDED IN ASSEMBLY MAY 24, 2013

AMENDED IN ASSEMBLY APRIL 25, 2013

AMENDED IN ASSEMBLY APRIL 18, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 906

Introduced by Assembly Member Pan

February 22, 2013

An act to amend Sections ~~19130 and~~ 19131 *and* 19132 of the Government Code, relating to personal services contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 906, as amended, Pan. Personal services ~~contracts; independent contractors; contracts.~~

The State Civil Service Act authorizes state agencies to use personal services contracts if prescribed conditions are met, ~~including requiring~~ *met. The act, with regard to certain personal services contracts, requires* the agency to notify the State Personnel Board of its intention to enter into such a contract and ~~requiring~~ *requires* the board to contact all organizations that represent state employees who perform the type of work to be contracted. ~~Existing law~~ *The act* also requires the board, at the request of an employee organization that represents state employees,

to review the adequacy of a proposed or executed personal services contract, as specified.

~~This bill would authorize state agencies to use personal services contracts when the services are of irregular, unpredictable, or occasional duration and are necessary to carry out instructional activities related to peace officer standards and training. The bill would also limit the term of certain personal services contracts to 2 years, with specified exceptions. The bill would specify that the provisions applicable to personal services contracts do not apply to personal services contracts for architectural or engineering services, as defined.~~

~~This bill would prohibit a contracting agency from executing certain proposed personal services contracts until the State Personnel Board has contacted all organizations that represent state employees who perform the type of work to be contracted.~~

This bill would amend the act to remove the State Personnel Board notification provisions, and instead, except as specified, would prohibit the execution of proposed personal services contracts until the state agency proposing to execute the contract has certified that all organizations that represent state employees who perform the type of work to be contracted have been notified. The bill would require the Department of General Services to establish the certification process.

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:~~
- 7 ~~(1) The contracting agency clearly demonstrates that the~~
- 8 ~~proposed contract will result in actual overall cost savings to the~~
- 9 ~~state, provided that:~~
- 10 ~~(A) In comparing costs, there shall be included the state's~~
- 11 ~~additional cost of providing the same service as proposed by a~~
- 12 ~~contractor. These additional costs shall include the salaries and~~
- 13 ~~benefits of additional staff that would be needed and the cost of~~

1 additional space, equipment, and materials needed to perform the
2 function.

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

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

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

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

26 ~~(4) The contract does not adversely affect the state's affirmative~~
27 ~~action efforts.~~

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

31 ~~(6) The amount of savings clearly justify the size and duration~~
32 ~~of the contracting agreement.~~

33 ~~(7) The contract is awarded through a publicized, competitive~~
34 ~~bidding process.~~

35 ~~(8) The contract includes specific provisions pertaining to the~~
36 ~~qualifications of the staff that will perform the work under the~~
37 ~~contract, as well as assurance that the contractor's hiring practices~~
38 ~~meet applicable nondiscrimination, affirmative action standards.~~

39 ~~(9) The potential for future economic risk to the state from~~
40 ~~potential contractor rate increases is minimal.~~

- 1 ~~(10) The contract is with a firm. A “firm” means a corporation,~~
- 2 ~~limited liability company, partnership, nonprofit organization, or~~
- 3 ~~sole proprietorship.~~
- 4 ~~(11) The potential economic advantage of contracting is not~~
- 5 ~~outweighed by the public’s interest in having a particular function~~
- 6 ~~performed directly by state government.~~
- 7 ~~(b) Personal services contracting also shall be permissible when~~
- 8 ~~any of the following conditions can be met:~~
- 9 ~~(1) The functions contracted are exempted from civil service~~
- 10 ~~by Section 4 of Article VII of the California Constitution, which~~
- 11 ~~describes exempt appointments.~~
- 12 ~~(2) The contract is for a new state function and the Legislature~~
- 13 ~~has specifically mandated or authorized the performance of the~~
- 14 ~~work by independent contractors.~~
- 15 ~~(3) The services contracted are not available within civil service,~~
- 16 ~~cannot be performed satisfactorily by civil service employees, or~~
- 17 ~~are of such a highly specialized or technical nature that the~~
- 18 ~~necessary expert knowledge, experience, and ability are not~~
- 19 ~~available through the civil service system.~~
- 20 ~~(4) The services are incidental to a contract for the purchase or~~
- 21 ~~lease of real or personal property. Contracts under this criterion,~~
- 22 ~~known as “service agreements,” shall include, but not be limited~~
- 23 ~~to, agreements to service or maintain office equipment or~~
- 24 ~~computers that are leased or rented.~~
- 25 ~~(5) The legislative, administrative, or legal goals and purposes~~
- 26 ~~cannot be accomplished through the utilization of persons selected~~
- 27 ~~pursuant to the regular civil service system. Contracts are~~
- 28 ~~permissible under this criterion to protect against a conflict of~~
- 29 ~~interest or to ensure independent and unbiased findings in cases~~
- 30 ~~where there is a clear need for a different, outside perspective.~~
- 31 ~~These contracts shall include, but not be limited to, obtaining expert~~
- 32 ~~witnesses in litigation.~~
- 33 ~~(6) The nature of the work is such that the Government Code~~
- 34 ~~standards for emergency appointments apply. These contracts shall~~
- 35 ~~conform to Article 8 (commencing with Section 19888) of Chapter~~
- 36 ~~2.5 of Part 2.6.~~
- 37 ~~(7) State agencies need private counsel because a conflict of~~
- 38 ~~interest on the part of the Attorney General’s office prevents it~~
- 39 ~~from representing the agency without compromising its position.~~

1 ~~These contracts shall require the written consent of the Attorney~~
2 ~~General, pursuant to Section 11040.~~

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

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

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

13 ~~(11) The services are of irregular, unpredictable, or occasional~~
14 ~~duration and are necessary to carry out instructional activities in~~
15 ~~compliance with Chapter 1 (commencing with Section 13500) of~~
16 ~~Title 4 of Part 4 of the Penal Code.~~

17 ~~(e) All persons who provide services to the state under~~
18 ~~conditions the board determines constitute an employment~~
19 ~~relationship, unless exempted from civil service by Section 4 of~~
20 ~~Article VII of the California Constitution, shall be retained under~~
21 ~~an appropriate civil service appointment.~~

22 ~~(d) (1) A personal services contract authorized under paragraph~~
23 ~~(6) or paragraph (10) of subdivision (b) shall not have a term in~~
24 ~~excess of two years.~~

25 ~~(2) This subdivision does not apply if the contract is a personal~~
26 ~~services contract developed pursuant to rehabilitation programs~~
27 ~~in accordance with Sections 19403 and 19404 of the Welfare and~~
28 ~~Institutions Code, or by habilitation programs in accordance with~~
29 ~~Chapter 13 (commencing with Section 4850) of Division 4.5 of~~
30 ~~the Welfare and Institutions Code, or by a program vendored or~~
31 ~~contracted through a regional center or the State Department of~~
32 ~~Developmental Services pursuant to the Lanterman Developmental~~
33 ~~Disabilities Services Act (Division 4.5 (commencing with Section~~
34 ~~4500) of the Welfare and Institutions Code), and the contract will~~
35 ~~not cause an existing state employee to incur a loss of his or her~~
36 ~~employment or employment seniority, a reduction in wages,~~
37 ~~benefits, or hours, or an involuntary transfer to a new location~~
38 ~~requiring a change in residence.~~

1 ~~(e) This section does not apply to personal services contracts~~
2 ~~for architectural and engineering services, as defined in Section~~
3 ~~4529.10.~~

4 ~~SEC. 2.~~

5 *SECTION 1.* Section 19131 of the Government Code is
6 amended to read:

7 19131. (a) Any state agency proposing to execute a contract
8 pursuant to subdivision (a) of Section 19130 shall ~~notify the State~~
9 ~~Personnel Board of its intention. All organizations that represent~~
10 ~~state employees who perform the type of work to be contracted,~~
11 ~~and any person or organization which has filed with the board a~~
12 ~~request for notice, shall be contacted immediately by the State~~
13 ~~Personnel Board upon receipt of this notice so that they may be~~
14 ~~given a reasonable opportunity to comment on the proposed~~
15 ~~contract. not execute the contract until it has certified that all~~
16 ~~organizations that represent state employees who perform the type~~
17 ~~of work to be contracted have been notified.~~ Departments or
18 agencies submitting proposed contracts shall retain and provide
19 all data and other information relevant to the contracts and
20 necessary for a specific application of the standards set forth in
21 subdivision (a) of Section 19130. Any employee organization may
22 request, within 10 days of notification, the State Personnel Board
23 to review any contract proposed or executed pursuant to
24 subdivision (a) of Section 19130. The review shall be conducted
25 in accordance with subdivision (b) of Section 10337 of the Public
26 Contract Code. Upon such a request, the State Personnel Board
27 shall review the contract for compliance with the standards
28 specified in subdivision (a) of Section 19130.

29 ~~(b) No state agency shall execute a proposed contract pursuant~~
30 ~~to subdivision (a) of Section 19130 until the State Personnel Board~~
31 ~~has contacted all of the organizations that represent state employees~~
32 ~~who perform the type of work to be contracted.~~

33 *(b) (1) At a minimum, the notice required by subdivision (a)*
34 *shall include a full copy of the proposed contract. The notifying*
35 *agency may redact specific confidential or proprietary information*
36 *from the notice.*

37 *(2) The Department of General Services shall establish the*
38 *certification process.*

1 (3) *The notification and certification requirements of this section*
2 *do not change the requirements for contracts under Section 11045*
3 *or require an additional notification.*

4 *SEC. 2. Section 19132 of the Government Code is amended to*
5 *read:*

6 19132. (a) The State Personnel Board, at the request of an
7 employee organization that represents state employees, shall review
8 the adequacy of any proposed or executed contract ~~which~~ *that* is
9 of a type enumerated in subdivision (b) of Section 19130. The
10 review shall be conducted in accordance with subdivision (c) of
11 Section 10337 of the Public Contract Code. However, a contract
12 that was reviewed at the request of an employee organization when
13 it was proposed need not be reviewed again after its execution.

14 (b) (1) *Unless a personal services contract pursuant to*
15 *subdivision (b) of Section 19130 is necessary due to a sudden and*
16 *unexpected occurrence that poses a clear and imminent danger,*
17 *requiring immediate action to prevent or mitigate the loss or*
18 *impairment of life, health, property, or essential public services,*
19 *the contract shall not be executed until the state agency proposing*
20 *to execute the contract has certified that all organizations that*
21 *represent state employees who perform the type of work to be*
22 *contracted have been notified.*

23 (2) *At a minimum, the notice shall include a full copy of the*
24 *proposed contract. The notifying agency may redact specific*
25 *confidential or proprietary information from the notice.*

26 (3) *The Department of General Services shall establish the*
27 *certification process.*

28 (4) *The notification and certification requirements of this*
29 *subdivision do not change the requirements for contracts under*
30 *Section 11045 or require an additional notification.*