

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1293**

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**Introduced by Assembly Member Holden**

February 27, 2015

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An act to amend Section ~~3512~~ 19130 of the Government Code, relating to ~~state public employment~~. *civil service*.

LEGISLATIVE COUNSEL'S DIGEST

AB 1293, as amended, Holden. State public employment: labor negotiations.

*The California Constitution provides that the civil service includes every officer and employee in the state except as otherwise provided in the Constitution. Existing law, the State Civil Service Act, however, permits the use of personal services contracts by state agencies if specified conditions are met. In this regard, a state agency may use a personal service contract to achieve cost savings if, among other conditions, the contract does not cause the displacement, as defined, of civil service employees. Existing law also permits the use of personal services contracts in response to particular conditions, including during emergencies, if the contract is for a new state function and the Legislature has mandated or authorized the performance of work by independent contractors, or to protect against a conflict of interest, among others.*

*This bill would make the use of personal services contracts in response to particular conditions, as described above, conditional on the contract not causing the displacement, as defined, of civil service employees.*

~~Existing law, the Ralph C. Dills Act, grants to state employees the right to form employee organizations for the purpose of representing~~

~~their members in negotiating conditions of employment with the state. Existing law provides a statement of legislative purpose in connection with these and other provisions.~~

~~This bill would make nonsubstantive changes in this statement of purpose.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ 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  
14 additional space, equipment, and materials needed to perform the  
15 function.

16 (B) In comparing costs, there shall not be included the state’s  
17 indirect overhead costs unless these costs can be attributed solely  
18 to the function in question and would not exist if that function was  
19 not performed in state service. Indirect overhead costs shall mean  
20 the pro rata share of existing administrative salaries and benefits,  
21 rent, equipment costs, utilities, and materials.

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

27 (2) Proposals to contract out work shall not be approved solely  
28 on the basis that savings will result from lower contractor pay rates  
29 or benefits. Proposals to contract out work shall be eligible for

1 approval if the contractor's wages are at the industry's level and  
2 do not significantly undercut state pay rates.

3 (3) The contract does not cause the displacement of civil service  
4 employees. The term "displacement" includes layoff, demotion,  
5 involuntary transfer to a new class, involuntary transfer to a new  
6 location requiring a change of residence, and time base reductions.  
7 Displacement does not include changes in shifts or days off, nor  
8 does it include reassignment to other positions within the same  
9 class and general location.

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

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

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

17 (7) The contract is awarded through a publicized, competitive  
18 bidding process.

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

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

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

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

30 (b) ~~Personal~~ *Except as provided in subdivision (d), personal*  
31 *services contracting also shall be permissible when any of the*  
32 *following conditions can be met:*

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

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

39 (3) The services contracted are not available within civil service,  
40 cannot be performed satisfactorily by civil service employees, or

1 are of such a highly specialized or technical nature that the  
2 necessary expert knowledge, experience, and ability are not  
3 available through the civil service system.

4 (4) The services are incidental to a contract for the purchase or  
5 lease of real or personal property. Contracts under this criterion,  
6 known as “service agreements,” shall include, but not be limited  
7 to, agreements to service or maintain office equipment or  
8 computers that are leased or rented.

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

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

21 (7) State agencies need private counsel because a conflict of  
22 interest on the part of the Attorney General’s office prevents it  
23 from representing the agency without compromising its position.  
24 These contracts shall require the written consent of the Attorney  
25 General, pursuant to Section 11040.

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

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

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

36 (c) All persons who provide services to the state under  
37 conditions the board determines constitute an employment  
38 relationship shall, unless exempted from civil service by Section  
39 4 of Article VII of the California Constitution, be retained under  
40 an appropriate civil service appointment.

1     (d) A personal services contract otherwise permitted pursuant  
2 to subdivision (b) is prohibited if it would cause the displacement  
3 of civil service employees. For the purposes of this subdivision,  
4 “displacement” includes layoff, demotion, involuntary transfer to  
5 a new class, involuntary transfer to a new location requiring a  
6 change of residence, and time base reductions. Displacement does  
7 not include changes in shifts or days off, nor does it include  
8 reassignment to other positions within the same class and general  
9 location.

10     ~~SECTION 1. Section 3512 of the Government Code is amended~~  
11 ~~to read:~~

12     ~~3512. (a) It is the purpose of this chapter:~~

13     ~~(1) To promote full communication between the state and its~~  
14 ~~employees by providing a reasonable method of resolving disputes~~  
15 ~~regarding wages, hours, and other terms and conditions of~~  
16 ~~employment between the state and public employee organizations.~~

17     ~~(2) To promote the improvement of personnel management and~~  
18 ~~employer-employee relations within the State of California by~~  
19 ~~providing a uniform basis for recognizing the right of state~~  
20 ~~employees to join organizations of their own choosing and be~~  
21 ~~represented by those organizations in their employment relations~~  
22 ~~with the state.~~

23     ~~(3) In order to foster peaceful employer-employee relations, to~~  
24 ~~allow state employees to select one employee organization as the~~  
25 ~~exclusive representative of the employees in an appropriate unit,~~  
26 ~~and to permit the exclusive representative to receive financial~~  
27 ~~support from those employees who receive the benefits of this~~  
28 ~~representation.~~

29     ~~(b) This chapter shall not be construed to contravene the spirit~~  
30 ~~or intent of the merit principle in state employment, nor to limit~~  
31 ~~the entitlements of state civil service employees, including those~~  
32 ~~designated as managerial and confidential, provided by Article~~  
33 ~~VII of the California Constitution or by laws or rules enacted~~  
34 ~~pursuant thereto.~~