

Assembly Bill No. 1293

Passed the Assembly June 2, 2015

Chief Clerk of the Assembly

Passed the Senate September 2, 2015

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2015, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 19130 of the Government Code, relating to civil service.

LEGISLATIVE COUNSEL'S DIGEST

AB 1293, 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.

The people of the State of California do enact as follows:

SECTION 1. Section 19130 of the Government Code is amended to read:

19130. The purpose of this article is to establish standards for the use of personal services contracts.

(a) Personal services contracting is permissible to achieve cost savings when all the following conditions are met:

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

(A) In comparing costs, there shall be included the state's additional cost of providing the same service as proposed by a

contractor. These additional costs shall include the salaries and benefits of additional staff that would be needed and the cost of additional space, equipment, and materials needed to perform the function.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) State agencies need private counsel because a conflict of interest on the part of the Attorney General’s office prevents it

from representing the agency without compromising its position. These contracts shall require the written consent of the Attorney General, pursuant to Section 11040.

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

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

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

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

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

Approved _____, 2015

Governor