

Introduced by Senator Leno

February 27, 2015

An act to add Section 71621 to the Government Code, relating to courts.

LEGISLATIVE COUNSEL'S DIGEST

SB 682, as amended, Leno. Courts.

The Trial Court Employment Protection and Governance Act establishes a trial court employee personnel system that provides authority to hire trial court personnel, regulates the classification and compensation of trial court employees, labor relations, and personnel files, and requires each trial court to establish a system of employment selection and advancement and an employment protection system.

Existing law authorizes state agencies to use personal services contracts to achieve cost savings if specified standards are satisfied, including, among other things, the contract does not cause the displacement of civil service employees and the contract is awarded through a publicized, competitive bidding process. The State Personnel Board is required to review a proposed contract upon the request of an employee organization for compliance with those standards.

This bill would establish specified standards if a trial court intends to enter ~~into, or renew or extend,~~ *into* a contract for any services that are currently or customarily performed by that trial court's employees. Among other things, the bill would require the trial court to clearly demonstrate that the contract will result in actual overall cost savings to the trial court. The bill would provide that those standards do not apply to a contract under certain circumstances, including, among others,

when the services are incidental to a contract for the purchase or lease of real or personal property.

This bill would require a trial court to provide a report by February 1, 2016, to the Department of Finance, the ~~chairperson~~ Chairperson of the Joint Legislative Budget Committee, and the ~~chairpersons~~ Chairpersons of the Senate Committee on Judiciary and the Assembly Committee on Judiciary if the trial court entered into, or renewed or extended, a contract between July 1, 2015, and December 31, 2015, *inclusive*, for services that were provided or are customarily provided by its trial court employees and the contract has a term extending beyond March 31, 2016. The bill would require that report to provide specified information relating to these contracts, including an analysis of whether the contract resulted in the displacement of trial court employees.

This bill would provide that its provisions are severable.

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 71621 is added to the Government Code,
2 to read:

3 71621. The purpose of this section is to establish standards for
4 when a trial court intends to enter ~~into, or renew or extend,~~ into a
5 contract for any services that are currently or have been customarily
6 performed by that trial court's employees.

7 (a) Contracts for services that are currently or customarily
8 performed by trial court employees are permissible in a trial court
9 when all of the following conditions are met:

10 (1) The trial court clearly demonstrates that the contract will
11 result in actual overall cost savings to the trial court, provided that:

12 (A) In comparing costs, there shall be included the trial court's
13 additional costs of providing the same service as proposed by a
14 contractor. These additional costs shall include the salaries and
15 benefits of additional staff that would be needed and the costs of
16 additional space, equipment, and materials needed to perform the
17 function.

18 (B) In comparing costs, there shall not be included the trial
19 court's indirect overhead costs unless these costs can be attributed
20 solely to the function in question and would not exist if that
21 function was not performed by the trial court. Indirect overhead

1 costs shall mean the pro rata share of existing administrative
2 salaries and benefits, rent, equipment costs, utilities, and materials.

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

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

13 (3) The contract does not cause the displacement of trial court
14 employees. The term "displacement" includes layoff, demotion,
15 loss of employment or employment seniority, involuntary transfer
16 to a new class, involuntary transfer to a new location requiring a
17 change of residence, and time base reductions. Displacement does
18 not include changes in shifts or days off, nor does it include
19 reassignment to other positions within the same class and general
20 location.

21 (4) The savings shall be large enough to ensure that they will
22 not be eliminated by private sector and trial court fluctuations that
23 could normally be expected during the contracting period.

24 (5) The amount of savings clearly justify the size and duration
25 of the contracting agreement.

26 (6) The contract is awarded through a publicized, competitive
27 bidding process.

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

32 (8) The potential for future economic risk to the trial court from
33 potential contractor rate increases is minimal.

34 (9) The contract is with a firm. A "firm" means a corporation,
35 partnership, nonprofit organization, or sole proprietorship.

36 (10) The potential economic advantage of contracting out is not
37 outweighed by the public's interest in having a particular function
38 performed directly by the trial court.

1 (b) This section does not preclude a trial court or the Judicial
2 Council from adopting more restrictive rules regarding the
3 contracting of court services.

4 (c) Contracting shall also be permissible when any of the
5 following conditions can be met:

6 (1) The contract is for a new trial court function and the
7 Legislature has specifically mandated or authorized the
8 performance of the work by independent contractors.

9 (2) The contract is between a trial court and another trial court
10 or local government entity for services to be performed by
11 employees of the other trial court or employees of the local
12 government entity.

13 (3) The services contracted for cannot be satisfactorily
14 performed by trial court employees, or are of such a highly
15 specialized or technical nature that the necessary expert knowledge,
16 experience, and ability cannot be obtained from the court's trial
17 court employees.

18 (4) The services are incidental to a contract for the purchase or
19 lease of real or personal property. Contracts described in this
20 paragraph, known as "service agreements," shall include, but not
21 be limited to, agreements to service or maintain office equipment
22 or computers that are leased or rented. Service agreements do not
23 include contracts to operate equipment or computers for purposes
24 other than service or maintenance.

25 (5) The legislative, administrative, or legal goals and purposes
26 cannot be accomplished through the utilization of trial court
27 employees because of the need to protect against a conflict of
28 interest or to ensure independent and unbiased findings in cases
29 where there is a clear need for an independent, outside perspective.

30 (6) Due to an emergency, a contract is necessary for the
31 immediate preservation of the public health, welfare, or safety.

32 (7) The contractor will conduct training courses for which
33 appropriately qualified trial court employee instructors are not
34 available from the court, provided that permanent instructor
35 positions shall be filled through the process for hiring trial court
36 employees.

37 (8) *The contractor will provide equipment, materials, facilities,*
38 *or support services that could not feasibly be provided by the trial*
39 *court in the location where the services are to be performed. This*
40 *paragraph shall not apply to services contracted in order to open*

1 *closed courthouses if those services were performed by trial court*
2 *employees before the closure or for the ongoing operation of new*
3 *or reopened courthouses.*

4 ~~(8)~~

5 (9) The services are of such an urgent, temporary, or occasional
6 nature that the delay incumbent in their implementation through
7 the process for hiring trial court employees would frustrate their
8 very purpose. This paragraph shall not apply to the services of
9 official court reporters, except individual official reporters pro
10 tempore may be used by a trial court when the criteria of this
11 paragraph are met.

12 ~~(9)~~

13 (10) The contract is a personal services contract developed
14 pursuant to rehabilitation programs in accordance with Sections
15 19403 and 19404 of the Welfare and Institutions Code, pursuant
16 to habilitation programs in accordance with Chapter 13
17 (commencing with Section 4850) of Division 4.5 of the Welfare
18 and Institutions Code, or pursuant to a program vendored or
19 contracted through a regional center or the State Department of
20 Developmental Services in accordance with the Lanterman
21 Developmental Disabilities Services Act (Division 4.5
22 (commencing with Section 4500) of the Welfare and Institutions
23 Code), and the contract will not cause an existing trial court
24 employee to incur a loss of his or her employment or employment
25 seniority; a reduction in wages, benefits, or hours; or an involuntary
26 transfer to a new location requiring a change in residence.

27 ~~(10)~~

28 (11) The contract is for the services of any court interpreter.
29 Contracts for the services of any court interpreter, and restrictions
30 on contracting out interpreter services, shall be governed by the
31 Trial Court Interpreter Employment and Labor Relations Act
32 (Chapter 7.5 (commencing with Section 71800)) and any
33 memorandum of understanding or agreement entered into pursuant
34 to that act, or by the other provisions of this chapter, the Trial Court
35 Employment Protection and Governance Act, and any
36 memorandum of understanding or agreement entered into pursuant
37 to that act, as applicable.

38 SEC. 2. If a trial court entered into, or renewed or extended, a
39 contract between July 1, 2015, and December 31, 2015, inclusive,
40 for services that were provided or are customarily provided by its

1 trial court employees and that contract has a term extending beyond
2 March 31, 2016, the trial court shall provide a report by no later
3 than February 1, 2016, to the Department of Finance, Chairperson
4 of the Joint Legislative Budget Committee and the Chairpersons
5 of the Senate Committee on Judiciary and Assembly Committee
6 on Judiciary. The report shall provide all of the following:

7 (a) A copy of the contract.

8 (b) An analysis of whether the contract is permissible under the
9 standards set forth in Section 71621 of the Government Code, as
10 added by Section 1 of this act.

11 (c) An analysis of whether the contract resulted in the
12 displacement of trial court employees.

13 (d) An analysis of whether the contract involves the use of
14 contractors to perform the type of services that were customarily
15 performed by trial court employees.

16 SEC. 3. The provisions of this act are severable. If any
17 provision of this act or its application is held invalid, that invalidity
18 shall not affect other provisions or applications that can be given
19 effect without the invalid provision or application.