

AMENDED IN ASSEMBLY AUGUST 31, 2015

AMENDED IN ASSEMBLY JUNE 24, 2015

AMENDED IN SENATE MAY 5, 2015

SENATE BILL

No. 682

Introduced by Senator Leno

(Coauthor: Senator Wieckowski)

(Coauthors: Assembly Members Cristina Garcia, Gipson, and
Jones-Sawyer)

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 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 *proposed* 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 of the Joint Legislative Budget Committee, and the 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 a contract for any services
5 that are currently or have been customarily performed by that trial
6 court's employees.
7 (a) Contracts for services that are currently or customarily
8 performed by ~~a trial court~~ *court's* employees are permissible ~~to~~
9 *achieve cost savings* in ~~a that~~ trial court when all of the following
10 conditions are met:
11 (1) The trial court clearly demonstrates that the *proposed*
12 contract will result in actual overall cost savings to the trial court,
13 provided that:

1 (A) In comparing costs, there shall be included the trial court's
2 additional costs of providing the same service as proposed by a
3 contractor. These additional costs shall include the salaries and
4 benefits of additional staff that would be needed and the costs of
5 additional space, equipment, and materials needed to perform the
6 function.

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

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

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

23 (3) The contract does not cause the displacement of trial court
24 employees. The term "displacement" includes layoff, demotion,
25 loss of employment or employment seniority, involuntary transfer
26 to a new class, involuntary transfer to a new location requiring a
27 change of residence, and time base reductions. Displacement does
28 not include changes in shifts or days off, nor does it include
29 reassignment to other positions within the same class and general
30 location.

31 (4) The savings shall be large enough to ensure that they will
32 not be eliminated by private sector and trial court *cost* fluctuations
33 that could normally be expected during the contracting period.

34 (5) The amount of savings clearly justifies the size and duration
35 of the contracting agreement.

36 (6) The contract is awarded through a publicized, competitive
37 bidding process.

38 (7) The contract includes specific provisions pertaining to the
39 qualifications of the staff that will perform the work under the

1 contract, as well as assurance that the contractor’s hiring practices
2 meet applicable nondiscrimination standards.

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

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

7 (10) The potential economic advantage of contracting out is not
8 outweighed by the public’s interest in having a particular function
9 performed directly by the trial court.

10 (11) *The contract shall also comply with any additional*
11 *requirements imposed by the Judicial Branch Contracting Manual*
12 *adopted pursuant to Section 19206 of the Public Contract Code*
13 *to the extent those requirements are applicable to the contract.*

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

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

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

22 (2) The contract is between a trial court and another trial court
23 or government entity for services to be performed by employees
24 of the other trial court or employees of the government entity.

25 (3) The services contracted for cannot be satisfactorily
26 performed by trial court employees, or are of such a highly
27 specialized or technical nature that the necessary expert knowledge,
28 experience, and ability cannot be obtained from the court’s trial
29 court employees.

30 (4) The services are incidental to a contract for the purchase or
31 lease of real or personal property. Contracts described in this
32 paragraph, known as “service agreements,” shall include, but not
33 be limited to, agreements to service or maintain office equipment
34 or computers that are leased or rented. Service agreements do not
35 include contracts to operate equipment or computers for purposes
36 other than service or maintenance.

37 (5) The legislative, administrative, or legal goals and purposes
38 cannot be accomplished through the utilization of trial court
39 employees because of the need to protect against a conflict of
40 interest or to ensure independent and unbiased findings in cases

1 where there is a clear need for an independent, outside perspective.
2 *These contracts shall include, but not be limited to, obtaining*
3 *expert witnesses in litigation.*

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

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

11 (8) The contractor will provide equipment, materials, facilities,
12 or support services that could not feasibly be provided by the trial
13 court in the location where the services are to be performed. This
14 paragraph shall not apply to services contracted in order to open
15 closed courthouses if those services were performed by trial court
16 employees before the closure or for the ongoing operation of new
17 or reopened courthouses.

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

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

39 (11) The contract is for the services of any court interpreter.
40 Contracts for the services of any court interpreter, and restrictions

1 on contracting out interpreter services, shall be governed by the
 2 Trial Court Interpreter Employment and Labor Relations Act
 3 (Chapter 7.5 (commencing with Section 71800)) and any
 4 memorandum of understanding or agreement entered into pursuant
 5 to that act, or by the other provisions of this chapter, the Trial Court
 6 Employment Protection and Governance Act, and any
 7 memorandum of understanding or agreement entered into pursuant
 8 to that act, as applicable.

9 *(12) The contract is for services provided to a court by a traffic*
 10 *assistance program, as provided in Section 11205.2 of the Vehicle*
 11 *Code.*

12 ~~SEC. 2. If a trial court entered into, or renewed or extended, a~~
 13 ~~contract between July 1, 2015, and December 31, 2015, inclusive,~~
 14 ~~for services that were provided or are customarily provided by its~~
 15 ~~trial court employees and that contract has a term extending beyond~~
 16 ~~March 31, 2016, the trial court shall provide a report by no later~~
 17 ~~than February 1, 2016, to the Department of Finance, Chairperson~~
 18 ~~of the Joint Legislative Budget Committee and the Chairpersons~~
 19 ~~of the Senate Committee on Judiciary and Assembly Committee~~
 20 ~~on Judiciary. The report shall provide all of the following:~~

21 ~~(a) A copy of the contract.~~

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

25 ~~(c) An analysis of whether the contract resulted in the~~
 26 ~~displacement of trial court employees.~~

27 ~~(d) An analysis of whether the contract involves the use of~~
 28 ~~contractors to perform the type of services that were customarily~~
 29 ~~performed by trial court employees.~~

30 ~~SEC. 3.~~

31 *SEC. 2.* The provisions of this act are severable. If any
 32 provision of this act or its application is held invalid, that invalidity
 33 shall not affect other provisions or applications that can be given
 34 effect without the invalid provision or application.