

Date of Hearing: April 18, 2017

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 848 (McCarty) – As Amended April 5, 2017

[Note: This bill is doubled referred to the Assembly Accountability and Administrative Review Committee and will be heard by that Committee as it relates to issues under its jurisdiction.]

SUBJECT: Public contracts: University of California: California State University: domestic workers

SUMMARY: Restricts the University of California (UC) and California State University (CSU) from entering into contracts for services if those services will not be completed by workers in the United States. Specifically, **this bill:**

- 1) Prohibits the UC, as a condition of receiving state funding, and the CSU:
 - a) From contracting for services with a contractor or subcontractor unless that contractor or subcontractor certifies under penalty of perjury in his or her bid for the contract that the contract, and any subcontract performed under that contract, will be performed solely with workers within the United States; and,
 - b) From allocating or expending funds for employment training for employees located in foreign countries.
- 2) Specifies that the above provisions do not apply to a contract, if refusing to award that contract would violate the specific terms of federal trade treaties, as specified.
- 3) Specifies that these provisions do not apply to agreements entered into by the Treasurer in connection with the sale of any evidence of indebtedness.

EXISTING LAW:

- 1) Requires a state agency to comply with specified procedures in awarding agency contracts. (Public Contracting Code (PCC) Section 10180 et seq)
- 2) Prohibits, with specified exceptions, a state agency authorized to enter into contracts relating to public benefit programs from contracting for services provided by a call center that directly serves applicants for, recipients of, or enrollees in, those public benefit programs unless the contractor or subcontractor certifies in its bid for the contract that the contract, and any subcontract performed under that contract, will be performed solely with workers employed in California. (PCC Section 12140)
- 3) Imposes a civil penalty, as provided, for knowingly providing false information in the above certification. (PCC Section 12140)
- 4) Also requires the contract to include a clause providing for a right by the state to terminate the contract for noncompliance, and specified penalties, if the contractor or

subcontractor performs the contract or the subcontract with workers not employed in California during the life of the contract. (PCC Section 12140)

FISCAL EFFECT: Unknown

COMMENTS: *Purpose.* This bill is intended to combat the outsourcing of U.S. jobs to foreign countries and foreign workers, a phenomenon known as "offshoring." The author argues that "...AB 848 would prohibit the offshoring of [UC] and [CSU] jobs to foreign countries. This bill would prohibit the UC and CSU from using state funds for services, unless the contractor certifies that the work will be performed solely with workers within the United States. In addition, this bill would prohibit both the segments from using state funds to train contract employees that plan to relocate to a foreign country."

Background. In November, 2016 UC San Francisco (UCSF) announced that they had "...entered into contracts with outside vendors for specified IT services, a move that will save the university more than \$30 million over five years and allow it to meet sharply increased demands for IT capacity and strength, while improving cyber security."

UCSF's contract with outside vendors resulted in the loss of 49 IT career positions and the elimination of 48 other positions that were either vacant or filled by contracted staff, and constitutes a 17% reduction in IT staffing.

UCSF noted that the clinical component of the university, UCSF Health, is self-supporting and receives no state funding. The \$30 million in savings realized over the course of UCSF's five year contract with HCL Technologies, an Indian outsourcing firm that is one of UCSF's three IT vendors, represents .01 percent of UCSF's \$5.8 billion budget in 2015-2016. The LA Times reported that UCSF Health recorded a \$42 million deficit in 2015-2016, in part as a byproduct of implementation of the Affordable Care Act (ACA).

UCSF indicated that all impacted UCSF career employees received six-months advance notice of intention to terminate, and that per UC policy the employees are eligible for job placement assistance including assistance in finding other positions from across the UC system. If the employees do not find alternative employment within the UC system, they may also be eligible for severance to assist in their transition. UCSF noted that between five campuses and the UC Office of the President, more than 100 IT positions have already been identified as open and available.

The contract for services between HCL Technologies and UCSF provides other UC campuses with an opportunity to take advantage of the same outsourced IT support services. According the measure's sponsor, the University Professional and Technical Employees (UPTE)-CWA Local 9119, applying the same 17% loss ratio across UC's 10 campuses and five medical centers could result in a total of 613 lost positions. UC Berkeley, UC Los Angeles, and UC San Diego could each lose over 100 career IT positions.

Examples of offshoring. Though UCSF's decision to contract out their IT services with HCL Technologies is precedent-setting for California's higher education institutions, there have been many recent examples of major companies working with vendors that use similar models. In October 2014, Disney announced the layoff of 250 IT employees after Disney entered into a contract with HCL America. Of those laid off, 120 took new jobs at Disney, and about 40 retired

or left the company before the end of the transition period, while about 90 did not find new Disney jobs.

In April 2014, Southern California Edison (SCE) announced it would be laying off 400-500 IT workers at its Irwindale, California location. SCE has also stated that an additional 100 employees would be leaving voluntarily. The 500 lost jobs reportedly represent just over a quarter to a third of the SCE Irwindale facility IT workforce of 1,500 to 1,800 employees.

In 2015, news reports in the Los Angeles Times, and other outlets, surfaced that SCE was replacing laid-off workers with outsourced contracted workers from two Indian companies, Infosys and Tata. Some of these news reports included claims by SCE laid off workers that they were being asked to train their replacements who were in the country on H-1B visas.

H-1B Visas. H-1B visas were introduced by the federal government in 1990, and over the years the annual cap on them has ranged up to 195,000, and currently stands at 65,000 (plus 20,000 for individuals with master's degrees). Under federal law, visa users must have specialized training or a bachelor's degree in the subject for which they are being hired. The visa holder must be offered the prevailing wage for the work, and they can only take jobs for which employers could not find a qualified American worker.

The New York Times reported that in 2014, 13 outsourcing firms accounted for one-third of all H-1B visas. In many cases, their employees are paid slightly more than the \$60,000-a-year minimum salary required by the visa program for dependent companies seeking a waiver from having to recruit Americans first, but less than what American technology workers make.

Lawmakers and the public have raised concerns about potential abuses with the H-1B visa program after several news reports have noted the potential widespread abuse of the program by companies who are looking to reduce their costs at the expense of American workers. Many of these news stories have included claims by laid off employees that they are required to train their replacements who are H-1B visa holders in exchange for their severance or other benefits package, and/or on condition of confidentiality. At UCSF, the New York Times reported that employees losing their positions had to attend "knowledge transfer sessions" where HCL staff members in India were trained via videoconference - by the employees - on how to do their new jobs.

In March 2015, the U.S. Senate Judiciary Committee held a hearing on "Immigration Reforms Needed to Protect Skilled American Workers." The hearing focused on the H-1B visa program, the ability to bring high-skilled workers in the country to help companies compete, but also noted concerns with stories of abuse by employers who are displacing American workers in a manner inconsistent with the requirements or intent of the visa program.

Committee staff notes that, while H1-B visa holders were brought in on a temporary basis, UCSF has indicated that neither it nor HCL plan to replaced their laid-off workers with H1-B visa holders.

Arguments in support. The author writes that, "...the state must prevent the abuse of public funds and ensure oversight of the use of tax payer dollars by our public universities. The [UC] is establishing a precarious precedent by contracting out good paying, middle class IT jobs, not only out of California, but to a foreign country."

The California Labor Federation writes that "...offshoring has devastating impacts on our workforce and economy. California has lost hundreds of thousands of jobs and nation-wide job losses are in the tens of millions due to this practice. In addition to the widespread job losses, offshoring unfairly burdens taxpayers and our local safety net program while eroding labor standards and worker safety protections... state funding should not be used to fund contractors and subcontractors such as HCL, at the expense of taxpayer dollars to create jobs in foreign countries. State funds should be used to create jobs in the United States and in California."

Concerns raised by the segments. The CSU writes that "...per the Government Code and collective bargaining agreements, the CSU is prohibited from displacing represented employees, which is defined to include layoff, demotion, involuntary transfer to a new classification, or change in location requiring change in residence and involuntary time base reductions. Second, the current language of the bill is so expansive that it would impact contracts and programs that we understand are beyond those intended by the author. For example, the CSU would be prohibited from engaging in international contracts such as study abroad agreements, which by their nature must be performed outside the United States. In addition, the realities of operation in a global economy are that many large U.S. vendors (often the best qualified and most cost-effective service providers) have divisions in countries outside of the U.S. that perform secondary services. Our desktop software provider, for example, uses secondary support services offshore. In its current form, the bill would severely limit the pool of qualified contractors, potentially compelling CSU to contract with less qualified and more expensive vendors. "

Related legislation: SB 574 (Lara, 2017), pending in Senate Appropriations, modifies the requirements for qualifying as a lowest responsible bidder or best value awardee for contracts for specified types of service contracts at the UC.

SB 959 (Lara, 2016), and SB 376 (Lara, 2015), which were substantively similar to SB 574, were vetoed.

AB 853 (Hernández, 2015), was held on the Senate Floor. This bill requires an electrical and gas investor-owned utility to utilize employees of the utility for any work associated with the design, engineering, and operation of its nuclear, electrical and gas infrastructure, unless the utility has prior approval from the California Public Utilities Commission to contract out that work.

AB 1829 (Liu, 2004), was vetoed. This bill would have prohibited a state agency or local government, as defined, from allocating or expending state funds for employment training for employees located in foreign countries.

Policy considerations: As presently drafted, the provisions of AB 848 broadly apply to any contract for services. By requiring contracted work to be completed solely by workers in the United States, AB 848 has the potential to impact study abroad programs, vendor contracts, and other services outside of the intent articulated by the author.

The committee recommends, and the author has agreed to accept, the following substantive amendments.

- 1) The author has agreed to insert language into PCC Section 12147(a), PCC Section 12147(b), and PCC Section 12147(c) that clarifies that those provisions only apply to contracts where career UC and CSU employees are displaced.

As the provisions of AB 848 are in the PCC and address issues applicable to the "...university by statute for the letting of construction contracts, sales of real property, and purchasing of materials, goods, and services," the UC is required under Article 9 of the California Constitution to follow the provisions of this legislation. Therefore, the committee recommends, and the author has agreed to accept, the following language:

- 2) Strike all existing language in PCC Section 12147(e) regarding conditions on UC funding, and instead replace with language specifically exempting study abroad programs from the provisions of this bill.

The following technical changes have been proposed by the committee and agreed to by the author:

- 3) Removal of any reference to the provisions of this bill in Section 5703 of the Government Code.
- 4) Amending the intent language to reflect the estimated cost of outsourcing IT jobs be \$1.36 billion dollars.
- 5) Technical changes striking "contact that the" from PCC Section 12147(a) and adding the word "contract" before "...employees located in..." in PCC Section 12147(b)

Amendments note. In order to best meet Assembly deadlines, the amendments accepted by the author will be processed in the Assembly Accountability and Administrative Review Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Labor Federation
California Nurses Association
Communication Workers of America
Union of American Physicians and Dentists
UPTE-CWA Local 9119 (Sponsor)

Opposition

None on file

Analysis Prepared by: Kevin J. Powers / HIGHER ED. / (916) 319-3960