

Date of Hearing: July 11, 2017

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

SB 318 (Portantino) – As Amended May 26, 2017

SENATE VOTE: 25-12

SUBJECT: California State University: personal services contracts

SUMMARY: Establishes standards for the use of personal services contracts by the California State University (CSU) Trustees. Specifically, **this bill:**

- 1) Specifies that the purpose of this section is to establish standards for the use of personal services contracts.
- 2) Provides that if the CSU Trustees enter into a new contract, or renew or extend an existing contract, for services that are currently or customarily performed by the CSU's employees, the following requirements shall apply:
 - a) The Trustees clearly demonstrate that the proposed contract will result in actual overall savings to the state, consistent with specific elements in comparing costs, including:
 - i) The university's additional cost of providing the same service as proposed by a contractor, as specified; and,
 - ii) Exclusion of the university'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 by university employees.
 - b) Proposals to contract out shall not be approved solely on the basis that savings will result from lower contractor pay rates or benefits. Provides that proposals to contract out work shall be eligible for approval if the contractor's wages are at the industry's level and does not significantly undercut university pay rates;
 - c) The contract does not cause the displacement of university employees, as specified;
 - d) The contract does not adversely affect the university's nondiscrimination standards;
 - e) The savings shall be large enough to ensure that they will not be eliminated by private sector and university cost fluctuations that could normally be expected during the contracting period;
 - f) The amount of savings clearly justifies the size and duration of the contracting agreement;
 - g) The contract is awarded through a publicized, competitive bidding process;

- h) 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 standards;
 - i) The potential for future economic risk to the university from potential contractor rate increases is minimal;
 - j) The contract is with a firm, defined as a corporation, partnership, nonprofit organization, or sole proprietorship; and,
 - k) The potential economic advantage of contracting is not outweighed by the public's interest in having a particular function performed directly by the university.
- 3) Permits personal services contracts when any of the following conditions can be met:
- a) The contract is for a new university function and the Legislature has specifically mandated or authorized the performance of the work by independent contractors;
 - b) The services contracted are not available within the university, cannot be performed satisfactorily by university employees, or are of a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available from the university's employees;
 - c) The services are incidental to a contract for the purchase or lease of real or personal property, as specified;
 - d) The legislative, administrative, or legal goals and purposes cannot be accomplished through the utilization of university employees because of the need to protect against a conflict of interest or to ensure independent and unbiased findings in cases where there is a clear need for a different, outside perspective, including obtaining expert witnesses in litigation;
 - e) Due to an emergency, a contract is necessary for the immediate preservation of the public health, welfare, or safety;
 - f) The contractor will provide equipment, materials, facilities, or support services that could not feasibly be provided by the university in the location where the services are to be performed;
 - g) The contractor will conduct training courses for which appropriately qualified university instructors are not available; and,
 - h) The services are of an urgent, temporary, or occasional nature, as specified.

EXISTING LAW:

- 1) Authorizes the CSU Trustees to enter into agreements with any public or private agency, officer, person, or institution, corporation, association, or foundation for the performance of acts or the furnishing of services, facilities, materials, goods, supplies, or equipment by

or for the Trustees or for the joint performance of an act or function or the joint furnishing of services and facilities by the Trustees and the other party to the agreement. Specifies that the Trustees shall prescribe policies and procedures for the acquisition of services, facilities, materials, goods, supplies, or equipment; and, said policies shall include competitive bids or proposals, as specified. (Education Code Section 89036)

- 2) Provides standards for the use of personal service contracts by state agencies with specific criteria for contracting outside state service. The criteria includes demonstration of cost savings, definition of costs, and requirements that work is not contracted out solely on the basis of lower pay rates or benefits, and justification of savings based on the size and duration of the contract. (Government Code Section 19130)
- 3) Establishes the State Civil Service Act and establishes the State Personnel Board, a 5 member body appointed by the Governor and approved by the Senate, to enforce and administer civil service statutes. The Constitution establishes several exemptions from the civil service, including officers and employees of the University of California and the California State University. (Article 7 of the California Constitution)

FISCAL EFFECT: According to the Senate Appropriations Committee, CSU indicates that the bill's restrictions on its ability to contract out for services will result in up to \$6.981 million in total General Fund costs. There would also be one-time costs of approximately \$100,000 General Fund for CSU to establish and implement the new process.

COMMENTS: *Need for the measure.* According to the author, "...existing statute does not require CSU to abide by the same standards of accountability that apply to state agencies when it enters into personal service contracts. In turn, on several occasions, the CSU has contracted out for services without either clearly expressing justification or proving fiscal savings, or has entered into contracts with financially unstable contractors that discontinue business, all of which prove losses to the taxpayer. This bill seeks to align the CSU's practice of contracting out with those required by other state agencies."

Personal services contract. A personal services contract is any contract, requisition, purchase order, etc. (except public works contracts) under which labor or personal services is a significant, separately identifiable element. The business or person performing these contractual services must be an independent contractor that does not have status as an employee of the State. A cost-savings based personal services contract is a personal services contract proposed to achieve cost savings and subject to the provisions of existing law.

Current CSU practice. According to the CSU, in 2012-13 it had over 7,000 personal services contracts valued at a cost of over \$500 million for various services within the University. These contracts are for services that include animal boarding, agricultural chemicals, archaeologists, portable toilet suppliers, demolition contractors, stonemasons, furniture suppliers, fire protection providers, pest and vermin control, hazardous waste disposal providers, and more. The CSU contends that, per the requirements of Higher Education Employer-Employee Relations Act (HEERA), the University meets and confers with unions to negotiate the various provisions in the collective bargaining agreements. Under HEERA, terms and conditions of employment, such as wages, hours and working conditions are considered to be within the mandatory scope of bargaining or scope of representation. HEERA was passed to promote "harmonious and

cooperative labor relations between the public institutions of higher education and their employees.”

Collective bargaining. Provisions regarding contracting out are addressed in Article 3 of the California State University Employees Union (CSUEU) and Article 4 of the State Employees Trades Council (SETC) collective bargaining agreements. The CSUEU agreement authorizes contracting out provided that it does not displace bargaining unit employees, and defines displacement to include layoff, demotion, involuntary transfer to a new classification, or to a new satellite campus location, or a location requiring a change of residence, and involuntary time base reductions. The CSU is required to notify the Union when contracting out is to be on a long-term basis and the Union is authorized to request to meet and confer on the impacts of long-term contracting out work. Prior to meeting, the CSU is required to provide CSUEU all existing relevant information, including requests for proposals, copies of bids received, and any cost analysis used to evaluate the need for contracting out.

The SETC agreement, prior to contracting out, requires a campus to consider the availability of SETC employees to perform the work, whether they have the special skills and licensure necessary, whether the work can be completed within time constraints applicable to the project, the availability of required materials and/or equipment, and the cost involved in performing the work in-house versus contracting out. Notification of the Chief Campus Steward is required prior to the start of any such contracted work.

CSU notes that it “is in the midst of negotiations with the CSU Employees Union, and the union has requested that this issue be an element of current negotiations (Article 3: Management Rights), seriously undermining the current collective bargaining process.”

Civil Service exemption. This bill is modeled on State Civil Service Act language used to govern personal services contracting within the state. Provisions of the California Constitution specifically exclude officers and employees of the CSU from State Civil Service, and the Legislature has granted the CSU other exemptions from civil service provisions, including:

- 1) Exclusion from Public Contract Code provisions regarding the acquisition of goods and services.
- 2) Authority to promulgate regulations without having to utilize the procedures outlined in the Administrative Procedures Act, thereby exempting CSU from Office of Administrative Law review.

Arguments in support. According to the author’s office, “existing statute does not require the CSU to abide by the same standards of accountability that apply to state agencies when it enters into personal service contracts. In turn, on several occasions, the CSU has contracted out for services without either clearly expressing justification or proving fiscal savings, or has entered into contracts with financially unstable contractors that discontinue business, all of which prove losses to the taxpayer.” Further, the author contends that “Notable instances of wasteful spending and shortsighted contracts prompted the need for this legislation.” The intent of this bill is to provide CSU employees the same contracting out protections that apply to state workers.

Arguments in opposition. The CSU has indicated previously that provisions identical to those included in this bill places it into its own version of state civil service contracting-out laws and

restricts the Trustees' authority to manage the system. "Current law already allows for a contracting-out process at the CSU and protections for our employees through our labor contracts. These changes would subject the system to contrary statutes, reduce our ability to leverage limited resources in cost-effective ways, and result in increased administrative costs without any benefit to students."

Previous legislation. AB 2183 (Gatto) of 2016, which failed to receive enough votes for passage out of the Senate Education Committee, was nearly identical to this bill.

SB 376 (Lara) of 2015, would have modified the requirements for qualifying as a lowest responsible bidder or best value awardee for contracts for specified services at the University of California (UC). This measure was vetoed by the Governor.

SB 669 (Pan) of 2015, which never had a vote in the Senate Education Committee, is very similar in nature to this measure.

SB 943 (Beall) of 2014, which failed to receive enough votes for passage out of the Senate Education Committee, was similar to this bill; and, SB 943 assigned the State Personnel Board oversight of CSU contracting practices.

AB 2225 (Lowenthal) of 2002, which was held in the Senate Education Committee, proposed similar personal services contracting standards for the CSU.

REGISTERED SUPPORT / OPPOSITION:

Support

AFSCME
California State University Employees Union
SEIU California

Opposition

California State University

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