

---

# SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

---

**Bill No:** SB 318 **Hearing Date:** April 5, 2017  
**Author:** Portantino  
**Version:** February 13, 2017  
**Urgency:** No **Fiscal:** Yes  
**Consultant:** Ian Johnson

**Subject:** California State University: personal services contracts

## SUMMARY

This bill establishes standards for the use of personal services contracts by the California State University (CSU).

## BACKGROUND

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 § 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 § 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)

## ANALYSIS

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 California State University (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.
    - 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 do 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 justify 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.

- 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.
  - h) The services are of an urgent, temporary, or occasional nature, as specified.

## STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author's office, "existing statute does not require the California State University (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.

- 2) **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.
- 3) **Current CSU practice.** According to the California State University (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.”
- 4) **Collective Bargaining.** Provisions regarding contracting out are an element of both the California State University Employees Union - CSUEU (Article 3) and State Employees Trades Council - SETC (Article 4) 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 discuss the impacts of long-term contracting out work. Prior to meeting, the CSU is required to provide the CSUEU all existing relevant information, including request 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.

Further, the CSU notes that it “is in the midst of negotiations with the California State University 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.”

Given that these contracting out provisions already exist through collective bargaining, and the CSU is currently in the midst of negotiations, the Committee may wish to consider whether this bill is necessary.

- 5) **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 California State University (CSU) from State Civil Service, and the Legislature has granted the CSU other exemptions from civil service provisions, including:
- a) Exclusion from Public Contract Code provisions regarding the acquisition of goods and services.
  - b) 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.

Therefore, the Committee may wish to consider whether the CSU's current contracting out practices rise to a level of concern that warrants the CSU being subject to civil service-like provisions.

- 6) **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."
- 7) **Purview of the Trustees?** The provisions of this bill are substantively similar to the requirements outlined for state agencies under the Civil Service Act. However, unlike state agencies, statute extends the authority to administer the CSU and to adopt rules and regulations consistent with the laws of the state, to the CSU Trustees, a body appointed by the Governor and confirmed by the Senate.

If the Committee believes there is a need for greater clarity around the use of personal services contracts at the CSU, **staff recommends** that the bill be amended to: 1) authorize the Trustees to enter into personal services contracts; 2) require the Trustees to establish standards and conditions for their use by January 1, 2019, while specifying that the standards and conditions included in the bill shall be considered by the Trustees; and 3) require the Trustees to submit a report on the standards and conditions established to the relevant policy and budget committees of the Legislature, the Legislative Analyst's Office, the Governor, and the Department of Finance no later than June 30, 2019.

- 8) ***Fiscal impact.*** According to previous analyses of similar bills, CSU would likely incur one-time and ongoing costs of around \$100,000 to establish and implement the new process, including establishing new policy followed by training of procurement personnel throughout the system.
- 9) ***Related and prior legislation.***

AB 2183 (Gatto, 2016) was identical to this bill. The bill was heard by this Committee on June 22, 2016 and failed passage.

SB 376 (Lara, 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 with the following message:

***Senate Bill 376 seeks to bring wage and benefit parity to the University of California's contracted workers in specific job categories, such as custodial, clerical and food services, and other services associated with the University's medical enterprises. The bill touches several issues - from contracting out service industry work that could be performed by employees, to the pay and working conditions of contracted workers, to the need for more vigorous oversight of contract employers.***

***Without a doubt, these are all serious matters to consider, and they reflect the difficulty in balancing things we commonly value, such as increasing the wages of low-income workers and keeping operational costs down. It's worth noting that the University of California recently responded to criticisms of its wage and contracting practices with a plan to incrementally increase its minimum wage for both employees and contract workers, and a pledge to better oversee contracts generally.***

***The effort to provide increased compensation to those who work for UC - either directly or on a contract basis - is well-intentioned, but I'm not prepared to embrace the provisions of this bill.***

***I would caution the University, however, to provide a transparent accounting of its contracts and clearly demonstrate how the interests of all its lower paid workers are being protected.***

SB 669 (Pan, 2015) was substantively similar to this bill and proposed to establish standards for the use of personal services contracts by the CSU. SB 669 was scheduled to be heard in this Committee on April 22, 2015, but canceled at the author's request.

SB 943 (Beall, 2014) was also substantively similar to this bill. In addition it assigned the State Personnel Board oversight of California State University (CSU) contracting practices. SB 943 was heard by this Committee on April 30, 2014 and failed passage by a vote of 2-2.

AB 2225 (Lowenthal, 2002) proposed similar personal services contracting standards for the CSU. AB 2225 was heard by this Committee in June 2002, and was held without recommendation.

**SUPPORT**

American Federation of State, County, and Municipal Employees  
California State University Employees Union (co-sponsor)  
Service Employees International Union (co-sponsor)

**OPPOSITION**

California State University

**-- END --**