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SB-682 Courts. (2015-2016)

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ENROLLED SEPTEMBER 04, 2015
PASSED IN SENATE SEPTEMBER 03, 2015
PASSED IN ASSEMBLY SEPTEMBER 02, 2015
AMENDED IN ASSEMBLY AUGUST 31, 2015
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AMENDED IN SENATE MAY 05, 2015

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

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, 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 provide that its provisions are severable.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 71621 is added to the Government Code, to read:

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

(a) Contracts for services that are currently or customarily performed by a trial court's employees are permissible to achieve cost savings in that trial court when all of the following conditions are met:

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

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

(B) In comparing costs, there shall not be included the trial court'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 the trial court. Indirect overhead costs shall mean the pro rata share of existing administrative salaries and benefits, rent, equipment costs, utilities, and materials.

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

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

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

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

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

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

(7) 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.

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

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

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

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

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

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

- (1) The contract is for a new trial court function and the Legislature has specifically mandated or authorized the performance of the work by independent contractors.
- (2) The contract is between a trial court and another trial court or government entity for services to be performed by employees of the other trial court or employees of the government entity.
- (3) The services contracted for cannot be satisfactorily performed by trial court employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability cannot be obtained from the court's trial court employees.
- (4) The services are incidental to a contract for the purchase or lease of real or personal property. Contracts described in this paragraph, known as "service agreements," shall include, but not be limited to, agreements to service or maintain office equipment or computers that are leased or rented. Service agreements do not include contracts to operate equipment or computers for purposes other than service or maintenance.
- (5) The legislative, administrative, or legal goals and purposes cannot be accomplished through the utilization of trial court 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 an independent, outside perspective. These contracts shall include, but not be limited to, obtaining expert witnesses in litigation.
- (6) Due to an emergency, a contract is necessary for the immediate preservation of the public health, welfare, or safety.
- (7) The contractor will conduct training courses for which appropriately qualified trial court employee instructors are not available from the court, provided that permanent instructor positions shall be filled through the process for hiring trial court employees.
- (8) The contractor will provide equipment, materials, facilities, or support services that could not feasibly be provided by the trial court in the location where the services are to be performed. This paragraph shall not apply to services contracted in order to open closed courthouses if those services were performed by trial court employees before the closure or for the ongoing operation of new or reopened courthouses.
- (9) The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation through the process for hiring trial court employees would frustrate their very purpose. This paragraph shall not apply to the services of official court reporters, except individual official reporters pro tempore may be used by a trial court when the criteria of this paragraph are met.
- (10) The contract is a personal services contract developed pursuant to rehabilitation programs in accordance with Sections 19403 and 19404 of the Welfare and Institutions Code, pursuant to habilitation programs in accordance with Chapter 13 (commencing with Section 4850) of Division 4.5 of the Welfare and Institutions Code, or pursuant to a program vendored or contracted through a regional center or the State Department of Developmental Services in accordance with the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code), and the contract will not cause an existing trial court employee to incur a loss of his or her employment or employment seniority; a reduction in wages, benefits, or hours; or an involuntary transfer to a new location requiring a change in residence.
- (11) The contract is for the services of any court interpreter. Contracts for the services of any court interpreter, and restrictions on contracting out interpreter services, shall be governed by the Trial Court Interpreter Employment and Labor Relations Act (Chapter 7.5 (commencing with Section 71800)) and any memorandum of understanding or agreement entered into pursuant to that act, or by the other provisions of this chapter, the Trial Court Employment Protection and Governance Act, and any memorandum of understanding or agreement entered into pursuant to that act, as applicable.
- (12) The contract is for services provided to a court by a traffic assistance program, as provided in Section 11205.2 of the Vehicle Code.

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