



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

**SB-318 California State University: personal services contracts.** (2017-2018)

SHARE THIS:  

Date Published: 09/18/2017 09:00 PM

ENROLLED SEPTEMBER 18, 2017

PASSED IN SENATE SEPTEMBER 14, 2017

PASSED IN ASSEMBLY SEPTEMBER 13, 2017

AMENDED IN ASSEMBLY SEPTEMBER 05, 2017

AMENDED IN SENATE MAY 26, 2017

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

**SENATE BILL**

**NO. 318**

**Introduced by Senator Portantino**  
**(Coauthors: Assembly Members Bocanegra, Cristina Garcia, and Voepel)**

**February 13, 2017**

An act to add Section 89036.5 to the Education Code, relating to postsecondary education.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 318, Portantino. California State University: personal services contracts.

Existing law, the State Civil Service Act, establishes standards for the use of personal services contracts by state agencies. The act provides that personal services contracting is permissible to achieve cost savings when certain conditions are met, including, but not limited to, that the contracting agency demonstrates that the proposed contract will result in actual overall cost savings to the state and that the contract will not cause the displacement of civil service employees. The act also authorizes state agencies to enter into personal services contracts for functions exempted from civil service. The California Constitution excludes the officers and employees of the California State University from the state civil service.

Existing law authorizes the Trustees of the California State University to enter into agreements with any public or private agency, person, or institution for the furnishing of services, facilities, goods, supplies, or equipment, among others, and requires the trustees to prescribe policies and procedures for the acquisition of those services, facilities, materials, goods, supplies, or equipment.

This bill would establish standards for the use of personal services contracts by the trustees similar to those in the State Civil Service Act for services that are currently or customarily performed by employees of the university.

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

### **SECTION 1.** Section 89036.5 is added to the Education Code, to read:

**89036.5.** (a) The purpose of this section is to establish standards for the use of personal services contracts.

(b) If the trustees enter into a new contract, or renew or extend an existing contract, for services that are currently or customarily performed by the university's employees, all of the following requirements shall apply:

(1) The trustees shall clearly demonstrate that the proposed contract will result in actual overall cost savings to the California State University, consistent with all of the following:

(A) In comparing costs, the trustees shall include the university's additional cost 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 cost of additional space, equipment, and materials needed to perform the function.

(B) In comparing costs, the trustees shall not include 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. "Indirect overhead costs" means the pro rata share of existing administrative salaries and benefits, rent, equipment costs, utilities, and materials.

(C) In comparing costs, the trustees shall include in the cost of a contractor providing a service any continuing university costs that would be directly associated with the contracted function. These continuing 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. 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.

(3) The contract does not cause the displacement of university employees. The term "displacement" includes layoff, demotion, 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 contract does not adversely affect the university's nondiscrimination standards.

(5) 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.

(6) The amount of savings clearly justify the size and duration of the contracting agreement.

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

(8) 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.

(9) The potential for future economic risk to the university from potential contractor rate increases is minimal.

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

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

(c) The trustees may also enter into personal services contracts when any of the following conditions can be met:

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

(2) 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.

(3) The services are incidental to a contract for the purchase or lease of real or personal property. Contracts under this criterion, 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.

(4) 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. These contracts shall include, but not be limited to, obtaining expert witnesses in litigation.

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

(6) 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.

(7) The contractor will conduct training courses for which appropriately qualified university instructors are not available. Permanent instructor positions in academies or similar settings shall be filled through the process for hiring university employees.

(8) The services are of an urgent, temporary, or occasional nature that the delay incumbent in their implementation through the process for hiring university employees would frustrate their very purpose.

(9) The contract is for construction, alteration, demolition, installation, repair, or maintenance work that is subject to Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.