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SB-422 Personal services contracts: state employees: physician registry for state hospitals. (2021-2022)

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CALIFORNIA LEGISLATURE— 2021–2022 REGULAR SESSION

SENATE BILL

NO. 422

Introduced by Senator Pan

February 12, 2021

An act to amend Section 19130 of the Government Code, relating to state employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 422, Pan. Personal services contracts: state employees: physician registry for state hospitals.

Existing law, the State Civil Service Act, regulates employment with the state and vests in the Department of Human Resources all powers, duties, and authority necessary to operate the state civil service system. Existing law permits the use of personal services contracts for purposes of cost savings when specified conditions are met, including when the potential economic advantage of contracting is not outweighed by the public's interest in having a particular function performed directly by the state government.

Existing law establishes the State Department of State Hospitals within the California Health and Human Services Agency, and provides the department with jurisdiction over specified facilities for the care and treatment of persons with mental health disorders, including the Patton State Hospital.

This bill would require the State Department of State Hospitals to establish, by January 1, 2024, a physician registry for the Patton State Hospital to be composed of members of State Bargaining Unit 16, and would establish compensation for registry work. The bill would require the department to conduct and post on its internet website a semiannual survey of managers and employees to determine the efficacy of the registry, and would also require the department, by January 10 of 2025, 2026, and 2027, to submit a report to the Legislature that includes a study of the effectiveness of the registry to determine if the registry compensation rates were successful in addressing the operational needs for flexible services at a lower cost than contract registries. The bill would, if the pilot program is demonstrated to save the state money overall based on the report due to the

Legislature by January 10, 2026, require the department to extend and maintain the use of the physician registry for all state hospitals under its jurisdiction commencing January 1, 2027. The bill would make implementation of these provisions subject to an appropriation by the Legislature in the annual Budget Act or another statute for these purposes.

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

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

SECTION 1. The Legislature finds and declares the following:

(a) There is a need for flexibility in physician staffing in state hospitals to meet changing patient census numbers and requirements for specialty services. This need has typically been met through contract registries rather than state employees.

(b) A physician registry composed of state employees can provide a more effective continuity of patient care at less cost than a contract registry.

SEC. 2. Section 19130 of the Government Code is amended to read:

19130. The purpose of this article is to establish standards for the use of personal services contracts.

(a) Personal services contracting is permissible to achieve cost savings when all the following conditions are met:

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

(A) In comparing costs, there shall be included the state'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, there shall not be included the state'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 in state service. 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 cost of a contractor providing a service any continuing state costs that would be directly associated with the contracted function. These continuing state 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 state pay rates.

(3) The contract does not cause the displacement of civil service 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 state's affirmative action efforts.

(5) The savings shall be large enough to ensure that they will not be eliminated by private sector and state 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, affirmative action standards.

(9) The potential for future economic risk to the state 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 state government.

(b) Personal services contracting also shall be permissible when any of the following conditions are met:

- (1) The functions contracted are exempted from civil service by Section 4 of Article VII of the California Constitution, which describes exempt appointments.
- (2) The contract is for a new state function and the Legislature has specifically mandated or authorized the performance of the work by independent contractors.
- (3) The services contracted are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system.
- (4) 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.
- (5) The legislative, administrative, or legal goals and purposes cannot be accomplished through the utilization of persons selected pursuant to the regular civil service system. Contracts are permissible under this criterion 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.
- (6) The nature of the work is such that the standards of this code for emergency appointments apply. These contracts shall conform with Article 8 (commencing with Section 19888) of Chapter 2.5 of Part 2.6.
- (7) State agencies need private counsel because a conflict of interest on the part of the Attorney General's office prevents it from representing the agency without compromising its position. These contracts shall require the written consent of the Attorney General, pursuant to Section 11040.
- (8) The contractor will provide equipment, materials, facilities, or support services that could not feasibly be provided by the state in the location where the services are to be performed.
- (9) The contractor will conduct training courses for which appropriately qualified civil service instructors are not available, provided that permanent instructor positions in academies or similar settings shall be filled through civil service appointment.
- (10) The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under civil service would frustrate their very purpose.

(c) (1) Notwithstanding subdivision (a) or (b), by January 1, 2024, the State Department of State Hospitals shall establish a physician registry for the Patton State Hospital under a three-year pilot program. The physician registry shall be maintained by the department and composed of members of State Bargaining Unit 16 - Physicians, Dentists, and Podiatrists (BU 16), who may elect to join the registry.

(2) A physician who works additional hours as a result of being on the registry shall be paid 135 percent of their normal base hourly wage without benefits of any kind. The department may pay a higher rate if it determines that the higher rate is necessary to attract employee participation in the registry.

(3) The department shall conduct a semiannual survey of managers and employees to determine the efficacy of the registry. A major factor in the surveys will be whether the registry provides cost savings to the state. The survey shall be jointly developed between the department and BU 16. The department shall post the survey results on its internet website.

(4) (A) By January 10 of 2025, 2026, and 2027, the department shall submit a report to the Legislature that includes a study of the effectiveness of the registry to determine if the registry compensation rates were successful in addressing the operational needs for flexible services at a lower cost than contract registries.

(B) A report to be submitted pursuant to subparagraph (A) shall be submitted in compliance with Section 9795 of the Government Code.

(5) If the pilot program established pursuant to paragraph (1) is demonstrated to save the state money overall based on the report due to the Legislature by January 10, 2026, the department shall, commencing January 1, 2027, extend and maintain the use of the physician registry for all state hospitals under its jurisdiction.

(6) Implementation of this subdivision is subject to an appropriation by the Legislature in the annual Budget Act or another statute for these purposes. The department shall make a budget request for the funds necessary to establish and maintain the registry for the duration of the pilot program.

(d) All persons who provide services to the state under conditions the board determines constitute an employment relationship, unless exempted from civil service by Section 4 of Article VII of the California Constitution, shall be retained under an appropriate civil service appointment.

(e) This section shall remain in effect only until January 1, 2027, and as of that date is repealed.