

This measure:

- 1) Enacts the UC Equal Employment Opportunity Standards Act to require that the Regents ensure that all contract workers who are paid to perform support services, as defined, for students, faculty, patients, or the general public at any campus, dining hall, medical center, clinic, research facility, laboratory, or other university location, are subject to and afforded the same equal employment opportunity standards, as defined, as university employees performing similar services.
- 2) Defines support services as including but not necessarily limited to, all of the following: cleaning or custodial services; food services; groundskeeping; building maintenance; transportation; security services; billing and coding services; sterile processing; hospital or nursing assistant services; medical imaging or respiratory therapy technician services; and other patient care technical and service bargaining unit work, as defined.
- 3) Provides that the Regents, or any campus or other entity of the UC, may contract for labor to perform support services only if authorized to do so by statute, and only for limited exceptions that include, among other things, a bona fide emergency circumstance or unanticipated special event, as specified, a student housing development, as specified, or to provide licensed, clinically trained workers.
- 4) Requires that any contractual arrangement for a person, firm, or other entity to supply the university with contract labor for one of the exceptions specified above shall not cause or facilitate the displacement of university employees, as defined.
- 5) Provides that nothing precludes the UC from using per diem university employees to complement career or limited term university employees when necessary for staffing levels for temporary or emergency periods.
- 6) Requires that each proposal and the resulting contractual arrangement, and documentation, as specified, shall be, at all times, available to the public.
- 7) Requires that such documentation shall specify that all persons who perform support services under the contractual arrangement shall be compensated in an amount equivalent to the hourly wage rate and the value of benefits provided to university employees who perform the same or similar work or duties on a full-time basis.
- 8) Requires that any person who performs support services under the contractual or other arrangement as described above for more than 10 days in a calendar year shall be employed directly by the university for all periods of work in excess of those 10 days. The use of contract labor shall not adversely affect the university's nondiscrimination standards.
- 9) States that the provisions of this measure, upon voter approval, shall become effective on January 1, 2021. However, if any contract that is in effect on

January 1, 2021, would be impaired by the enforcement of this measure, then it shall not apply to that contract until a later date, as specified.

- 10) Provides that the Legislature may enact statutes to further the purposes of, and to aid the enforcement of, this measure.
- 11) Contains a severability clause stating that if any provision 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.
- 12) Makes specified declarations.

BACKGROUND

Related Study. According to a 2012 study by the UC Berkeley Labor Center, *Temporary Workers in California are Twice as Likely as Non-Temps to Live in Poverty: Problems with Temporary and Subcontracted Work in California*, almost one-quarter of a million people worked in the temporary help services industry in California in 2010. These workers were slightly younger, more likely to be female, less likely to be white non-Hispanic, and less likely to have a high school diploma or GED than the average non-temp worker. These workers were also more susceptible to workplace illness and injury, earned less than their non-temp counterparts, and were less likely to get benefits. The report notes that lowered wages mean that these workers rely more on the state safety net than their direct-hire counterparts and that these employment arrangements undermine worker protections by allowing employers to avoid certain provisions of worker protection and making it difficult to enforce other protections. The report also notes that these employment relationships create downward pressure on wages.

UC's Fair Wage/Fair Work Plan. In July 2015, the UC adopted a Fair Wage/Fair Work Plan. Under the Plan, the UC has established a minimum level of pay for employees to ensure that all UC workers are provided a fair wage with a goal of reaching a minimum wage of \$15 per hour on October 1, 2017. In addition, the UC reports that it is implementing annual compensation audits and interim audits, paid for by the contractor, to monitor wage and working conditions as well as compliance with federal, state, and UC workplace laws and policies for contracted employees working pursuant to contracts entered into or renewed after October 2015. The UC has also established a phone hotline and central online system to report complaints directly to the Office of the President.

Related audit. The Joint Legislative Audit Committee has previously investigated specified employment contracts at the UC. The audit, report number 2016-125.1, titled "The University of California Office of the President - It Has Not Adequately Ensured Compliance With Its Employee Displacement and Services Contract Policies," was completed in August 2017, and found in its review of 31 service contracts at six university locations all of the following:

- The university's decentralized approach to contract management has resulted in its inability to report even the most basic contract information in the aggregate without a manual review of all of its contracts. Staff notes that the UC began implementation

of its new software in July 2017.

- The university has not fully followed its policy for justifying its decisions to displace university employees with service contract workers. Two of the reviewed service contracts contained documentation that university employees were displaced. The two university locations administering these contracts did not fully adhere to the displacement guidelines in either contract.
- The Office of the President has not enforced compliance with the displacement guidelines and weaknesses in the guidelines may undermine their effectiveness.
- Low-wage service contract workers received hourly wages that were \$3.86 lower than comparable university employees received.
- The university generally adhered to the Office of the President's contract policy, but it could make improvements, such as ensuring the standard terms and conditions are included in services contracts.
- Some university locations avoided competitive bidding by repeatedly amending contracts and through sole-source exceptions.
- The Office of the President lacks a system wide database that would allow it to track contracts at all university locations and report basic contract data.
- The Office of the President could not substantiate \$109 million in benefits it claimed as resulting from its system wide procurement program.

The report recommends that the Legislature revise state law to specify the conditions under which the university may amend contracts without competition and more narrowly define the professional and personal services that the university may exempt from competitive bidding.

COMMENTS

- 1) According to the author: In recent years, the UC has increasingly replaced employees that provide critical support services for the university and its medical centers with an estimated 7,000 support jobs outsourced by the UC. Despite UC policies that aim to mitigate the negative impacts of outsourcing, the UC continues to show disregard for its own policies and institutes policies that have significant deficiencies. As a result of outsourcing practices of the UC, the economic disparities faced by outsourced, low-wage workers become especially clear. Neither the Legislature nor the Governor can address the systemic inequities that occur at the UC due to their autonomy under Article IX of the Constitution. However, Article II of the Constitution give the Legislature the power and responsibility to allow the voters the opportunity to protect the vulnerable residents of our state. ACA 14 will simply allow the voters to decide whether low-income service workers at the UC – those that clean the toilets, mow the lawn, serve our food, and clean the bedpans – should enjoy the same Equal Employment Opportunity Standards enjoyed by UC employees doing the same work.

- 2) Argument in Support. In a letter supporting ACA 14, the American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO, stated the following, in part:

Unfortunately, the University of California has outsourced an estimated 7,000 support jobs to contract workers who are not provided the same benefits as employees. Additionally, UC is in the process of adding an additional 3,000 more support service jobs to that total. Contract workers are provided lower compensation and inferior benefits, with a 2017 report by the State Auditor finding that they are paid on average \$3.86 less than University employees. The "Fair Wage/Fair Work Plan" (FW/FW), established by the University of California in 2015, was intended to mitigate the problems of contract workers by establishing a minimum wage of \$15 an hour. However, the State Auditor found that although these workers were not being provided equal compensation or sufficient benefits, their contracts were still in compliance with FW/FW. This disparity has allowed the University of California to increase its administrative payroll by \$64 million despite cuts to services.

ACA 14 would allow the people of California to address these issues. ACA 14 requires any worker contracted by the University of California to perform support services to be subject to the Equal Employment Opportunity Standards set for employees at the UC. The amendment would also establish the provisions for which contract work is permitted by the university. Contract labor for support services would only be authorized to provide for the following needs: to address an emergency circumstance, to support a student housing development, to perform services for an unanticipated special event, to supply the university with licensed, clinically trained workers from a clinical registry, or to train university employees in the use of new or specialized equipment.

- 3) Argument in Opposition. In a letter opposing ACA 14, the Office of the President of the University of California stated the following, in part:

The University of California (UC) has reviewed ACA 14 (Gonzalez), which proposes to amend the California Constitution to prohibit UC from entering into contracts for a broad array of support and clinical services that are defined in the measure. Potential exceptions to this general prohibition would be extremely limited, and only if authorized by the passage of subsequent state statute. In light of the significant impact this constitutional amendment would have on the UC, we must strongly oppose this measure.

UC takes its responsibility to maintain a strong in-house workforce very seriously – and to utilize contractors for specific business purposes in both a limited and responsible manner. Managing costs is a priority; however, UC does not contract out on this basis alone. UC only contracts out in instances where there is a need for special expertise or experience, for short-term or temporary staffing needs, for special services and equipment

that are not available internally, or for services at a leased facility where the services are provided by the owner.

There is a variety of situations where it makes business sense for the University to utilize contract workers for short term assignments that are not needed throughout the year, a practice that would be prohibited under ACA 14. Examples include cleaning of dormitory rooms at the end of the school year, or additional security services needed occasionally for large events such as concerts or commencements. Beyond short term needs, there are other examples, such as landscaping maintenance where, due to the nature of the activity (utilizing equipment that is not needed frequently, employing workers with specialized expertise, and that entails traveling to several different locations) it makes sense to engage in service contracts on an as-needed basis rather than purchase expensive equipment and insurance in-house.

Within the setting of the University's hospitals, the needs for flexible staffing to respond to changes in patient census and condition severity are critically important – oftentimes changing on a daily or even shift by-shift basis. UC hospitals treat higher percentages of very sick patients – and have longer average lengths of stay compared to other California acute care hospitals. The restrictions established by ACA 14 would prevent UC hospitals from being able to obtain the staff they need on short notice and could force UC hospitals to divert ambulances away from University emergency rooms and trauma centers, cancel and reschedule important medical procedures and transfer patients to facilities outside of the community.

There is a misconception that the number of UC workers represented by union bargaining units has declined because the University's contracts effectively displace those employees. In fact, there has been a steady increase in UC's unionized workforce. In the last five years, the number of represented full-time employees within UC has steadily grown from 77,333 to 85,020 workers – a 9.9% increase. With respect to AFSCME in particular, the number of represented workers between the Service and Patient Care units grew from 21,323 to 24,979 workers during the same 5-year period – an increase of 17.1%.

In addition to the University's policy concerns, it is important to also acknowledge the significant fiscal impact to the UC if ACA 14 were to be approved. Specifically, UC calculates the increased operating costs at \$172.6 million per year based on the additional wage and benefit premiums associated with bringing contracted work in-house.

- 4) Appropriate for the Constitution? The California Constitution arguably contains numerous, disparate provisions that could just as effectively be statutes. Some of these were enacted via the initiative process while others were the product of legislative ballot measures. Once a provision is added to the Constitution, it can be repealed or amended only with voter approval. Given the aforementioned Public Contract Code provisions that govern the UC's procedures for the acquisition of

materials, goods and services, is it more appropriate for the provisions of ACA 14 to be statutory rather than constitutional?

RELATED/PRIOR LEGISLATION

AB 2361 (Weber) of 2018 would have required a contractor to agree to provide the UC with specified information regarding each active contract for outsourcing in order to qualify as the lowest responsible bidder or the best value awardee, or otherwise to perform any service work for the university and requested that the UC report through a publicly accessible website specified information or lose money from its General Fund appropriation. The bill was vetoed by Governor Brown. In his veto message the Governor stated the following, in part:

This bill would require vendors to provide, and the Regents of the University of California to collect and report on, information about outsourcing contracts, including the wages, employee classifications and nature of work being provided by the vendor.

I have vetoed similar bills three times before because of what I view as unreasonable interference into university management on this topic. While I support the goal of the author to increase transparency into the possible pay disparities between university employees and contracted workers, I believe this bill goes too far and could potentially limit the UC's appropriate contracting.

Since my veto last year, the University has reviewed their contracting practices and have taken appropriate steps to improve transparency and reduce pay disparities.

I have no doubt that there is more work to be done and I encourage the Office of the President and the Regents to move forward on the remaining recommendations from the auditor. To that end, I urge the Regents to promptly turn their attention to this matter.

SB 574 (Lara) of 2017, would have modified contractor requirements, including establishing thresholds for employee compensation, for qualifying as a lowest responsible bidder or best value awardee for contracts for materials, goods, and services at the UC. The bill was vetoed by the Governor. The bill was vetoed by Governor Brown. In his veto message the Governor stated the following, in part:

This bill seeks to equalize, or at least greatly minimize, the wage and benefit disparity between employees of the University of California (UC) and its contracted workers in specific job categories. This is the third time this policy, with some modification, has been passed by the Legislature.

After twice vetoing prior attempts, I am tempted to sign this measure, for no other reason than it is a well-intentioned bill that seeks to improve the financial security of contracted workers, or, alternatively, expand direct employment at the UC for lower wage workers. As the UC prides itself on being an agent of social mobility for students, it might follow that UC could

similarly be an agent of social mobility for lower-wage workers at its campuses.

Good intentions, however, aren't always enough. The mechanism to create this social change locks in cumbersome and overly costly contracting rules that provide little flexibility, regardless of circumstance. This will not serve the university or the state well.

In the best of worlds, the UC would make greater efforts to control its cost structure and find the means to better compensate lower wage workers, both employed and contracted -- so that fewer would be concerned about housing, hunger and healthcare. Though UC has made some attempts in this regard, much work remains, including holding flat executive compensation and benefits that near many hundreds of thousands of dollars and more, far beyond what the average Californian would think reasonable for an employee of a public university.

What the state requires of the university's contracting policy should be more carefully considered, thoughtfully debated and weighed against other high value programs of expenditure. The State Auditor's recent report made some useful recommendations on contracting practices, which the UC can act on now. Other actions to improve UC's policies can be considered when the UC's total budget is considered by the state.

SB 959 (Lara) of 2016, was nearly identical to SB 574 and was also vetoed by the Governor. SB 376 (Lara) of 2015, also vetoed, was nearly identical to SB 959.

PRIOR ACTION

Senate Education Committee:	6 - 0
Assembly Floor:	57 - 12
Assembly Appropriations Committee:	13 - 4
Assembly Labor and Employment Committee:	7 - 0

POSITIONS

Sponsor: American Federation of State, County and Municipal Employees, AFL-CIO
Local 3299

Support: Alameda Labor Council
American Federation of State, County, and Municipal
Employees, AFL-CIO
American Federation of State, County, and Municipal
Employees Council 57
Bay Area Black Worker Center
California Faculty Association

California Federation of Teachers
California Immigrant Policy Center
California Labor Federation
California Nurses Association
California School Employees Association
Health Access California
National Nurses United
North Valley Labor Federation
Orange County Labor Federation, AFL-CIO
Sacramento Central Labor Council, AFL-CIO
Service Employees International Union
UAW 2865
UAW 5810

Oppose: American Medical Response
Berkeley Chamber of Commerce
BizFed
California Asian Pacific Chamber of Commerce
California Association of Public Hospitals and Health Systems
California Chamber of Commerce
California Hospital Association
Carlsbad Chamber of Commerce
Chamber of Commerce Alliance
City of Laguna Niguel
Fontana Chamber of Commerce
Greater Irvine Chamber
Greater Riverside Chamber of Commerce
Los Angeles Area Chamber of Commerce
Los Angeles Business Council
Oceanside Chamber of Commerce
Orange County Business Council
Oxnard Chamber of Commerce
Pacific Association of Building Service Contractors
Palm Desert Area Chamber of Commerce
Pleasanton Chamber of Commerce
Rancho Cordova Chamber of Commerce
Redondo Beach Chamber of Commerce
San Diego Regional Chamber of Commerce
Santa Cruz County Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Silicon Valley Leadership Group
Simi Valley Chamber of Commerce
South Bay Association of Chambers of Commerce

Southwest California Legislative Council
The Chamber Newport Beach
University of California

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