
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2019 - 2020 Regular Session

ACA 14 (Gonzalez) - University of California: support services: equal employment opportunity standards

Version: August 13, 2019

Urgency:

Hearing Date: August 26, 2019

Policy Vote: ED. 6 - 0, E. & C.A. 4 - 1

Mandate: No

Consultant: Lenin Del Castillo

Bill Summary: This measure would add Section 9.5 to Article IX of the State Constitution to require the Regents of the University of California (UC) to ensure that all contract workers who are paid to perform support services are afforded the same equal employment opportunity standards as university employees performing similar services.

Fiscal Impact:

- The UC estimates systemwide costs of \$172.6 million as a result of this measure. This estimate assumes that UC would have to increase the wage and benefit levels by 25 percent and 30 percent, respectively, to bring the work in-house or perform the functions going forward with UC employees.
- The UC also estimates that campuses and hospitals would incur additional costs, potentially in the range of several million each year, resulting from the need to hire additional supervisorial staff, purchase specialized equipment and curtail clinical procedures due to lack of necessary staffing.
- This bill would result in one-time General Fund costs to the Secretary of State in the range of \$400,000 to \$550,000 for printing and mailing costs to place the measure on the ballot in a statewide election. This estimate reflects the addition of 6-8 pages in the Voter Information Guide. However, actual costs may be higher or lower, depending on the length of required elements and the overall size of the ballot.

Background: Existing law establishes the UC as a public trust under the administration of the Regents and grants them all the powers necessary or convenient for the effective administration of this public trust.

Existing law provides that the Regents are subject only to such legislative control as may be necessary to insure the security of its funds and compliance with the terms of the endowments of the university and such competitive bidding procedures as may be made applicable to the university by statute for the letting of construction contracts, sales of real property, and purchasing of materials, goods, and services.

Existing law provides that the Regents are comprised of seven ex officio members, as specified, 18 appointive members appointed by the Governor and approved by the Senate, a majority of the membership concurring, and permits a student representative if appointed by the Regents.

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.

The Joint Legislative Audit Committee has investigated specified employment contracts at the UC. The audit 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. 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.

Proposed Law: ACA 14 would add Section 9.5, the UC Equal Employment Opportunity Standards Act, to the California Constitution. The measure includes the following provisions:

- 1) 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) Provide 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, including a bona fide emergency circumstance or unanticipated special event, a student housing development, and to supply licensed, clinically trained workers, as specified.
- 3) Require 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.
- 4) Define support services as including but not necessarily limited to: 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.
- 5) Provide 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) Require that each proposal and the resulting contractual arrangement, and documentation, as specified, shall be, at all times, available to the public.
- 7) Require 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) Provides that the section shall become operative on January 1, 2021. However, if any contract that is in effect on January 1, 2021 would be impaired by this section, then it shall not apply to that contract until the earliest date on which the immediate contract term expires; the contract is amended, extended, renewed or permitted to renew; or additional funding is authorized or a substantial change is made to the scope of work that had been expressly authorized or actually performed under the contract before January 1, 2021.
- 9) Provides that if any part of this section are found to be in conflict with federal law or the Constitution of the United States, the section shall be implemented to the maximum extent that federal law and the Constitution of the United States permit. This measure also provides that its provisions are severable, as specified.

Related Legislation: AB 2361 (Weber, 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. The bill was vetoed by the Governor with the following message:

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, 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.

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

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

Staff Comments: The UC indicates it has approximately \$523 million in overall systemwide contract spending within the job categories outlined in this measure (i.e. custodial, food service, sterile processing, patient care technical, etc). Of this amount, approximately \$313 million is attributable to labor costs and the remaining contract value is for equipment, materials, supplies, uniforms, profit, etc. Additionally, these contracts are split between the general campuses (\$227 million or 43 percent) and UC Health (\$296 million or 57 percent). If ACA 14 were to pass, the UC indicates that it would be prohibited from contracting out for services and bring this work in-house or perform the functions going forward with UC employees. In doing so, the UC believes it would have to increase the wage and benefit levels by 25 percent and 30 percent, respectively. Applying these wage and benefit inflators to the \$313 million in labor costs, the UC estimates systemwide costs of \$172.6 million. Of this amount, \$98.4 would be borne by UC Health hospitals and medical centers and the remaining \$74.2 million would impact the general campuses.

The UC also estimates that campuses and hospitals would incur additional costs, potentially in the range of several million each year, resulting from the need to hire additional supervisorial staff, purchase specialized equipment and curtail clinical procedures due to lack of necessary staffing.

The Secretary of State indicates that printing and mailing costs associated with placing a measure on the statewide ballot are approximately \$69,000 per page, depending on the length of the ballot. Actual costs would depend upon the length of the title and summary, analysis by the Legislative Analyst's Office, proponent and opponent arguments, and text of the proposal.

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