

House Bill 2754

Sponsored by COMMITTEE ON BUSINESS AND LABOR (at the request of Oregon School Employees Association)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Specifies requirements for school district entering into personal services contract. Provides exceptions.

A BILL FOR AN ACT

1
2 Relating to personal services contracts entered into by school districts.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. (1) Except as provided in section 2 of this 2007 Act, a school district may**
5 **enter into a personal services contract, as defined in ORS 279C.100, for services customarily**
6 **performed by classified school employees only if all of the requirements of this section are**
7 **met.**

8 (2) The school district board shall demonstrate that the proposed contract will result in
9 actual overall cost savings to the school district. In comparing costs:

10 (a) The school district shall include the cost of providing the services proposed to be
11 provided by a contractor. These costs shall include the salaries and benefits of additional
12 staff and the cost of additional space, equipment and materials needed to perform the ser-
13 vices.

14 (b) The school district may not include the school district's indirect overhead costs un-
15 less these costs can be attributed solely to the services in question and would not exist if
16 those services were not performed by the school district. As used in this paragraph, "indirect
17 overhead costs" means the pro rata share of existing administrative salaries and benefits,
18 rent, equipment costs, utilities and materials.

19 (c) The school district shall include in the cost of a contractor's providing personal ser-
20 vices any continuing school district costs that would be directly associated with the con-
21 tracted services. These continuing school district costs shall include, but need not be limited
22 to, costs for inspection, supervision and monitoring.

23 (3) A school district may not approve a contract solely on the basis that savings will re-
24 sult from lower contractor pay rates or benefits. A school district may approve a personal
25 services contract if the contractor's wages are at the industry's level and do not undercut
26 school district pay rates.

27 (4)(a) The contract shall include a provision that requires the contractor to offer any
28 district employee who is displaced by the contract a position with the contractor that main-
29 tains the employee's existing wages and benefits.

30 (b) As used in this subsection:

31 (A) "Displaced" includes layoff, demotion, involuntary transfer to a new classification,

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 involuntary transfer to a new location requiring a change of residence and time base re-
2 ductions.

3 (B) "Displaced" does not include changes in shifts or days off and does not include reas-
4 signment to other positions within the same classification and general location.

5 (5)(a) The contract shall include a provision that requires the contractor to agree to a
6 card check recognition process for employees who perform work pursuant to the contract.

7 (b) The contractor may not support or discourage employees in signing union authori-
8 zation cards during the card check recognition process.

9 (c) As used in this subsection, "card check recognition process" means a process by
10 which the contractor voluntarily agrees to recognize a union if the union presents signed
11 union authorization cards from a majority of the employees the contractor employs.

12 (6) The school district shall demonstrate that:

13 (a) The savings resulting from the contract are large enough to ensure that the savings
14 will not be eliminated by private sector and school district cost fluctuations that can
15 normally be expected during the time period of the contract; and

16 (b) The amount of savings clearly justifies the size and duration of the contract.

17 (7) The process used by the school district for awarding the contract shall meet the re-
18 quirements of ORS chapters 279A, 279B and 279C.

19 (8) The contract shall include specific provisions pertaining to the qualifications of the
20 staff who will perform the work under the contract.

21 (9) The contract shall include assurance that the contractor's hiring practices meet ap-
22 plicable nondiscrimination standards.

23 (10) The contract shall include provisions to ensure that the potential for future eco-
24 nomic risk to the school district from potential contractor rate increases is minimal.

25 (11)(a) The contract shall be with a firm.

26 (b) As used in this subsection, "firm" means a corporation, limited liability corporation,
27 partnership, nonprofit organization or sole proprietorship.

28 (12) The school district shall demonstrate that the potential economic advantage of en-
29 tering into the contract is not outweighed by the public's interest in having the school dis-
30 trict directly perform a particular function.

31 **SECTION 2.** A school district may enter into a personal services contract, as defined in
32 ORS 279C.100, when any of the following conditions are met:

33 (1) The contract is for new district functions and state or federal law requires inde-
34 pendent contractors to perform the work.

35 (2) The services contracted for are not available within the district, cannot be performed
36 satisfactorily by district employees or are of such a highly specialized or technical nature
37 that the necessary expert knowledge, experience and ability are not available through the
38 school district.

39 (3) The contract is a service agreement to provide services that are incidental to a con-
40 tract for the purchase or lease of real or personal property. Contracts described in this
41 subsection may include, but are not limited to, agreements to service or maintain office
42 equipment or computers that are leased or rented.

43 (4) The policy, administrative or legal goals and purposes of the school district cannot
44 be accomplished by using a person selected pursuant to the school district's regular or or-
45 dinary hiring process. The school district may enter into a personal services contract using

1 this criterion to protect against a conflict of interest or to ensure independent and unbiased
2 findings in cases where there is a clear need for a perspective that is different from and
3 outside that of the school district. These contracts shall include, but need not be limited to,
4 obtaining expert witnesses in litigation.

5 (5)(a) The contract is for work to which the criteria for an emergency appointment of
6 an employee apply. The district shall determine the method of selection and the qualification
7 standards for an emergency appointment of an employee. The frequency of appointment, the
8 length of employment and the circumstances appropriate for appointment of firms or indi-
9 viduals under emergency appointments shall be restricted so as to prevent the use of emer-
10 gency appointments to circumvent the school district's regular or ordinary hiring process.

11 (b) As used in this subsection, "emergency appointment" means an appointment that is
12 made for a period not to exceed 60 working days either to prevent the stoppage of public
13 business during an actual emergency or because of the limited duration of the work.

14 (6) The contractor can provide equipment, materials, facilities or support services that
15 cannot feasibly be provided by the school district in the location where the services are to
16 be performed.

17 (7) The services are of such an urgent, temporary or occasional nature that the delay
18 incumbent in the implementation of the services under the school district's regular or ordi-
19 nary hiring process would frustrate the purpose of the services.

20 **SECTION 3.** (1) If a school district employee displaced by a personal services contract
21 or the employee's exclusive representative, as defined in ORS 243.650, asserts that the school
22 district has failed to comply with any of the requirements of section 1 or 2 of this 2007 Act,
23 the employee or the employee's exclusive representative may submit an allegation of non-
24 compliance and a request for arbitration to the school district.

25 (2) Within 10 days following receipt of an allegation of noncompliance and a request for
26 arbitration, the school district shall contact the American Arbitration Association to request
27 an arbitrator to resolve the dispute.

28 (3) An arbitrator assigned to resolve the dispute shall hold a hearing within 90 days of
29 the school district's request for an arbitrator.

30 (4) An arbitrator assigned to resolve the dispute shall determine whether the district has
31 complied with the conditions imposed by this section.

32 (5) The costs of the arbitration shall be the responsibility of the school district.

33 **SECTION 4.** Sections 1 to 3 of this 2007 Act apply to personal service contracts:

34 (1) Entered into by a school district on or after January 1, 2008.

35 (2) Renewed on or after January 1, 2008, irrespective of whether the contract is renewed
36 or rebid with the existing contractor or with a new contractor.

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