

Date of Hearing: June 27, 2023

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Mike Fong, Chair

SB 640 (Portantino) – As Amended May 18, 2023

**[Note: This bill is doubled referred to the Assembly Committee on Labor and Employment and will be heard by that Committee as it relates to issues under its jurisdiction.]**

**SENATE VOTE:** 28-10

**SUBJECT:** California State University: food service contracts and hotel development projects

**SUMMARY:** Prohibits the California State University (CSU) from entering into a food service contract or undertaking a hotel development project unless the food service employer or hotel employer is party to a labor peace agreement with a labor organization. Specifically, **this bill:**

- 1) Requires the CSU Trustees to make it a condition precedent to entering into each food service contract and to the Trustees' participation in a hotel development project, and an ongoing material requirement of that contract or participation, that the person contracting with the Trustees and each food service employer or hotel employer be party to a labor peace agreement with any labor organization that represents or seeks to represent food service employees performing work under the food service contract or hotel employees at the hotel development project.
- 2) Defines "food service contract" to mean a contract with the Trustees or the CSU for a cafeteria or food and beverage outlet on or serving a CSU campus.
- 3) Defines "food service employer" to mean a person who employs employees performing work at a food service venue under a food service contract or subcontract of that contract.
- 4) Defines "hotel" to mean any hotel, motel, bed and breakfast inn, or other similar commercial transient lodging establishment, and shall include any contracted, leased, or sublet premises connected to or operated in conjunction with the hotel's purpose.
- 5) Defines "hotel development project" to mean a real estate development project that includes or is planned to include one or more hotels and in which the Trustees or the CSU have a proprietary interest.
- 6) Define "hotel employer" to mean any person who owns, controls, or operates a hotel in a hotel development project and who employs employees at that hotel.
- 7) Defines "labor organization" to mean any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.
- 8) Defines "labor peace agreement" to mean a written agreement with a labor organization that contains, at a minimum, a provision prohibiting the labor organization and its members from engaging in any picketing, work stoppage, boycott, or other economic interference with the

performance of a food service contract or a hotel employer's operations at a hotel development project.

- 9) Defines "person" to mean an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, or other legal or commercial entity, whether domestic or foreign.
- 10) Defines "proprietary interest" to mean an interest in the efficient procurement of goods and services or a financial, nonregulatory interest as a market participant, such as a landlord, contractor, investor, owner, or financier. "Proprietary interest" may include, but is not limited to, a financial interest in the form of expected lease revenues, expected debt service on a loan provided by the trustees, and underwriting or guaranteeing the development of a hotel development project or loans related to the project.
- 11) Specifies that any food service contract or hotel development project in which the CSU or an auxiliary organization has a proprietary interest and that is performed pursuant to a contract entered into or awarded by an auxiliary organization is subject to the requirement outlined above.
- 12) States that if a food service employer or hotel employer cannot reach agreement with a labor organization on the terms of a labor peace agreement, the requirements may be waived by the office of the Chancellor of the California State University upon a finding, supported by the substantial evidence, that the employer has made a good faith effort to reach a labor peace agreement to protect the trustees' proprietary interest, but the labor organization is not interested in negotiations, has not negotiated in good faith, or has abused the negotiation process, such that the trustees' proprietary interest would no longer be served by insisting on satisfying the requirements of this subdivision. An employer or labor organization may appeal to the trustees the chancellor office's decision on whether to grant a waiver pursuant to this paragraph.

#### **EXISTING LAW:**

- 1) Provides several statutory frameworks under California law to provide public employees collective bargaining rights, govern public employer-employee relations, and limit labor strife and economic disruption in the public sector through a reasonable method of resolving disputes regarding wages, hours and other terms and conditions of employment between public employers and recognized public employee organizations or their exclusive representatives. These include the Higher Education Employer-Employee Relations Act (HEERA) which provides a statutory framework to regulate labor relations between University of California (UC), the CSU, and their respective employees. (Government Code (GC) § 3500 et seq.)
- 2) Prohibits a public employer from deterring or discouraging public employees or applicants to be public employees from becoming or remaining members of an employee organization, or from authorizing representation by an employee organization, or from authorizing dues or fee deductions to an employee organization. (GC § 3550)

- 3) Prohibits a California higher education employer from imposing or threatening to impose reprisals on employees, discriminating or threatening to discriminate against employees, or otherwise interfering with, restraining, or coercing employees because of their exercise of rights guaranteed by HEERA. Nor may the employer dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another. (GC § 3571)
- 4) Provides that the expression of any views, arguments, or opinions, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute, or be evidence of, an unfair labor practice under any provision of HEERA, unless such expression contains a threat of reprisal, force, or promise of benefit; provided, however, that the employer shall not express a preference for one employee organization over another employee organization. (GC § 3575.5)
- 5) Authorizes the Trustees of the CSU to enter into agreements for the performance of acts or for the furnishing of services, facilities, materials, goods, supplies, or equipment under certain conditions, and requires the Trustees to prescribe policies and procedures for the acquisition of services, facilities, materials, goods, supplies, or equipment, subject to specified criteria. (Education Code (EDC) Section 89036)

**FISCAL EFFECT:** According to the Senate Committee on Appropriations, this bill could result in indeterminate costs to the CSU. To the extent that it creates an increase in union membership by food service and hotel development employees, the bill could result in increased labor costs at the CSU. This could then lead to cost increases by the food service providers which could, in turn, be passed along to students in the form of higher food prices or more expensive meal plans.

**COMMENTS:** *Purpose.* According to the author, “In 2022 alone, there were over 20 strikes across the country – with the largest higher education strike happening in California. Siting unfair labor practices, wanting better pay and benefits, and job security, UC academic workers (many whom are graduate students themselves) made the decision to strike. Across the nation, Starbucks employees are organizing and striking for better working conditions. Strikes bring work stoppage, and for California’s higher education system, this brought canceled classes, delayed grading, interrupted course finals season and wasted tax dollars.”

“As CSU campuses continue to grow and evolve, more campus will develop campus plans with more hospitality and food service needs. Because the State of California has a proprietary interest in the activities and business of CSUs, it is essential to minimize future labor disruptions as much as possible through labor peace agreements. By requiring CSU and their auxiliaries to enter a labor peace agreement, the CSU, its auxiliaries, and associated labor organizations, will then have mechanisms in place to avoid disruptive actions and ensure the State can continue fulfilling its mission without interruption.”

*Food service contracts at CSU.* According to the CSU, most campuses contract their food service and hospitality programs to service management companies, whereas other campuses provide these services to students and staff “in-house”. It has become increasingly common for self-operating campuses to engage in hospitality assessments to determine whether their food service programs are efficient enough to maintain profitability, particularly as student housing needs expand. In-house providers typically employ CSU workers and students. For campuses

that contract out, the three food service management companies being used are Chartwells Higher Education, Aramark, and Sodexo. In addition, CSU campuses have food and beverage tenants, such as Starbucks, Panda Express, and Subway that lease retail space.

As currently drafted, this bill applies to all “food service contracts”, defined to mean a contract with the Trustees of the CSU for a cafeteria or food and beverage outlet on or serving a CSU campus, and “food service employers” defined to mean a person who employs employees performing work at a food service venue under a food service contract. Would food and beverage retailers be required to comply with this bill?

*Hotel development projects at CSU.* Currently, the CSU operates two hotels—the Kellogg West Conference Center & Hotel at CSU Pomona and the CSU Fullerton Marriot. The Pomona hotel is operated exclusively by CSU students of the Collins College of Hospitality Management. The Fullerton Marriot is not operated by college students or staff, but is located on the CSU campus. Because the CSU Fullerton Marriot is located on the campus, the CSU collects lease revenue and, therefore, has a proprietary interest. There are also a number of CSU campuses with hotel development projects included in their facilities master plans. It is unclear if this bill would apply to the two existing hotels, one of which is exclusively run by students, or only prospective hotel projects on CSU campuses.

*Do labor peace agreements require all workers to unionize and collectively bargain?* Generally, a labor peace agreement is a contract between an employer and a union, in which the employer agrees to be neutral during a union organizing campaign and not interfere with union organizing. The union agrees not to engage in picketing, work stoppages, boycotts, and any other economic interference with the employer.

This bill requires each food service employer (either a CSU campus, its auxiliary, or the entity it contracts with for food service) or hotel employer be party to a labor peace agreement with a labor union. This bill defines a labor peace agreement as “a written agreement with a labor organization that contains, at a minimum, a provision prohibiting the labor organization and its members from engaging in any picketing, work stoppage, boycott, or other economic interference with food service or hotel operations in which the trustees have a proprietary interest.”

Labor peace agreements appear far more limited in scope than collective bargaining agreements because they only cover parties’ rights with respect to union organizing. Collective bargaining agreements, by contrast, are broader and include the terms and conditions of employment, such as wages, hours, benefits, working conditions, and more.

*Arguments in support.* The California Faculty Association writes that “...higher education institutions have not been immune from labor strikes in recent years. Disruptions resulting from such labor conflicts have profound impacts, from canceled classes to delayed grading, all of which inhibit our primary mission of education. SB 640 provides a clear mechanism to minimize these disruptions by mandating labor peace agreements within CSU's expanding hospitality and food service sectors.”

“We acknowledge that a number of CSU campuses currently contract their food service and hospitality programs to service management companies while others operate these services in-house. However, regardless of the operational structure, we believe that fostering labor peace is essential for continuity of services and the overall stability of our campuses. We also recognize

that CSU operates two hotels and is planning for additional ones. Ensuring labor peace within these facilities is equally critical. Students, faculty, staff, and visitors who utilize these establishments should not be inconvenienced by labor conflicts.”

*Arguments in opposition.* Shake Smart, a foodservice vendor with locations at five CSU campuses, wrote that “Shake Smart’s entire staff is student employees except for our General Manager. We employ over 700 students across our company, with over 300 specifically being CSU students. These are individuals who in many cases [must] work to stay in school. They enjoy working on campus (vs. off campus) as concepts on campus are familiar with working around their class schedules, are accommodating to them only able to work 10 – 20 hours a week, etc. SB 640 would give priority to union employees, taking opportunities away from the students, which the students are why we are all here in the first place.”

“Aside from that, the cost increase with hiring non-students as part of a labor union will dramatically increase costs to operations. Food service is already a small margin business. Any increase in labor will require a raise in prices, which may create uneconomical solutions for students across campus. This would not only create a major cost increase to these students, but it would also create unfair financial models from concepts on campus vs. off campus. Furthermore, many small business are unfamiliar with how to navigate or manage labor peace agreements. These type of agreements can be very confusing, have many barriers, and are unviable for small businesses to learn how to navigate. Ultimately, as a small business that operates a Food Service operation on [five CSU] campuses, this bill would severely impact our ability to provide quality food services to Students at a reasonable price.”

*Concerns from CSU Students?* The Cal State Student Association (CSSA), an organization comprised of elected student leaders representing all 23 CSU campuses, wrote to the Committee regarding SB 640. Though they do not have an official position on the measure, CSSA noted that “most Associated Students Inc. (AS/I) oversee the Student Unions (buildings) on our campuses where most food options are located, others are a separate entity from the AS/I. The Unions (buildings) have either a separate student governing board or are part of the larger Associated Students board. In conversations with several of our campuses, if enacted, this bill could result in vendors pulling out or not resigning lease agreements within the Unions or increasing food prices. All options ultimately are a detriment to students, both in their student experience on the campus but also in their fiduciary responsibilities as governing board members of these Boards.”

“With potential unintended consequences, we believe that additional time is needed to evaluate those and the impacts this may have on students. The CSU is reviewing proposals to increase tuition beginning academic year 2024/2025 and in the midst of this, campuses and the legislature should not adopt measures that would increase the cost of attendance for students.”

*Committee comments.* As noted in CSSA’s comments to the Committee, staff understands that CSU is contemplating a tuition increase that would impact students in the 24-25 academic year. While it is unknown what direct impact this measure would have on food prices, the Senate Appropriations Committee noted that “...the bill could result in increased labor costs at the CSU. This could then lead to cost increases by the food service providers which could, in turn, be passed along to students in the form of higher food prices or more expensive meal plans.”

Committee staff also notes that the definition of labor peace agreement provided in SB 640 (Portantino) makes no mention of the employer's obligations under the labor peace agreement. *Moving forward, the author may wish to consider working with stakeholders to expand the definition of labor peace agreement to include both labor organizations and the employer.*

*Prior Legislation.* SB 1444 (Durazo, 2020), was substantially identical to this bill. The Senate Rules Committee referred the bill to the Senate Education which held the bill without a hearing during the Covid pandemic.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Faculty Association

**Opposition**

Shakesmart INC.

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