

Date of Hearing: July 12, 2023

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

Ash Kalra, Chair

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

**SENATE VOTE:** 28-10

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

**SUMMARY:** Requires the Trustees of the California State University (CSU) when entering into food service contracts or hotel development projects, to require the person contracting with the trustees and each food service employer or hotel employer to be party to a labor peace agreement with a labor organization. Specifically, **this bill:**

- 1) Finds and declares, among other things, that the CSU trustees must make prudent management decisions, similar to any private business entity, to ensure efficient management of these business concerns and to maximize benefits and minimize risks.
- 2) Defines “food service contract” to mean a contract with the trustees or 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) Defines “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.
  - a) Specifies that “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) Requires the CSU trustees to make as a condition precedent to entering into each food service contract or hotel development project, that the counterparty and each food service employer or hotel employer be party to a labor peace agreement with labor organizations representing or seeking to represent the corresponding food service or hotel employees, as specified.
- 12) Provides that in specified situations where a food service employer or hotel employer cannot reach an agreement with a labor organization on the terms of the labor peace agreement, the Chancellor of the CSU may waive the requirement in 11) above.
- 13) Defines “auxiliary organization” to mean, among other things, any entity in which any official of the CSU participates as a director as part of their official position.
- 14) Provides that any food service contract or hotel development project in which the CSU or the State of California 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 in 11) above.

**EXISTING LAW:**

- 1) Authorizes the CSU trustees to enter into contracts, as specified, for the performance of acts or the furnishing of services, facilities, materials, goods, supplies, or equipment. (Education Code, § 89036 (a)(1).)
- 2) Requires the CSU trustees to prescribe policies and procedures for the acquisition of services, facilities, materials, goods, supplies, or equipment; and for the procedures to include competitive bids or proposals, as specified. (Education Code, § 89036(a)(2).)
- 3) Establishes the Higher Education Employer-Employee Relations Act (HEERA) of 1979, which, among other things, grants collective bargaining rights to employees of the CSU and University of California (UC). (Gov. Code, § 3560 et seq.)
- 4) 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. (Gov. Code, § 3571.)
- 5) Prohibits public employers 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. (Gov. Code, § 3550.)

**FISCAL EFFECT:** According to the Senate Appropriations Committee, 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:** According to the author, “In 2022, 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. Strikes bring work stoppage, and for California’s higher education system, this meant 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 and its interests can continue fulfilling its mission continuously and without interruption.”

In addition, the author notes that this bill will promote equity solutions and maximize benefits for underserved and marginalized communities because “CSU’s across the state provide many services for their students and many of which come from underserved and marginalized communities. By establishing a labor peace agreement, the CSU, its auxiliaries and associated labor organizations will be able to have the tools in place to avoid disruptive actions and ensure the State and its interests can continue fulfilling its mission without interruption.”

### **Labor Peace Agreements**

A labor peace agreement is an arrangement between a labor organization and an employer under which one or both sides agree to waive certain rights under federal law with regard to union organizing and related activity. Under labor peace agreements, employers typically pledge to respect the labor organization's endeavors to communicate, organize, and represent their employees. In reciprocation, the labor organization and its members agree to refrain from engaging in picketing, work stoppages, boycotts, or any other activities that could cause economic disruption to the employer's operations.

Labor peace agreements often arise when a government entity asserts a proprietary interest in a particular facility or development project, usually as the result of financial assistance to a private sector employer. The government entity then requires firms doing business at this location to sign a labor peace agreement with a labor organization. The idea is that these agreements are desirable because they ensure that labor disruptions such as strikes, pickets, or protests will not disturb the government entity’s financial interest. Labor peace ordinances and laws have been passed in multiple jurisdictions nationwide and typically cover hotels, restaurants, casinos, other hospitality facilities, and airports.

It is important to note that labor peace agreements are not equal to or a substitution for collective bargaining agreements. Labor peace agreements are far more limited in scope than collective bargaining agreements because they only cover parties' rights with respect to union organizing. By contrast, collective bargaining agreements are broader and include the terms and conditions of employment, such as wages, hours, benefits, working conditions, and more.

### **Food Service Contracts at CSU**

According to the Senate Education Committee analysis, 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.

### **Hotel Development Projects at CSU**

As noted in the Senate Education Committee analysis, the CSU currently operates two hotels—the Kellogg West Conference Center & Hotel at CSU Pomona and the CSU Fullerton Marriott. The Pomona hotel is operated exclusively by CSU students of the Collins College of Hospitality Management. The Fullerton Marriott is not operated by college students or staff, but is located on the CSU campus. Since the CSU Fullerton Marriott 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.

### **Arguments in Support**

The California Faculty Association, in support, states “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. [This bill] 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 food service contractor with six locations in the CSU system, states, “Shake Smart, like many foodservice operations on universities, heavily employs college students. In fact, 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. [This bill] 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 businesses 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.”

## Committee Comments

The author may wish to further define the term “labor peace agreement” as it applies under this bill. As currently drafted, the definition provided in the bill solely prohibits labor organizations from striking or participating in work stoppages. However, this definition aligns more closely with a no-strike provision rather than a comprehensive labor peace agreement.

As highlighted in this analysis, typical labor peace agreements encompass various components to ensure adherence to specified terms by both the employer and the labor organization. To better align with established definitions of labor peace agreements, it may be advisable for the author to incorporate the employer's obligations into the definition of "labor peace agreement" within the bill.

Additionally, the author might consider providing a specific effective date for the implementation of this bill's requirements, taking into account that numerous contracts have already been executed or will soon take effect. For example, the author may wish to consider adding the following language for clarification: “This section shall apply to contracts awarded, extended, or renewed on or after January 1, 2024.”

## Prior Legislation

SB 1444 (Durazo) of 2020 was nearly identical to this bill and would have required the Trustees of the CSU when entering into food service contracts or hotel development projects, to require the person contracting with the trustees and each food service employer or hotel employer, to be party to a labor peace agreement with a labor organization. This bill died in the Senate Education Committee.

AB 195 (Committee on Budget) Chapter 56, Statutes of 2022, requires, among other things, beginning on July, 1, 2024, an applicant for a state cannabis license with 10 or more employees to provide a notarized statement that the applicant will enter into, or demonstrate that it has already entered into, and abide by the terms of a labor peace agreement.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Faculty Association

**Opposition**

Power Plant Restaurant Group  
Shake Smart Inc.

**Analysis Prepared by:** Martin Vindiola / L. & E. /