

SENATE THIRD READING

SB 640 (Portantino)

As Amended May 18, 2023

Majority vote

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.

Major Provisions

- 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.

COMMENTS

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.

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.

According to the Author

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."

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

The California State Student Association (CSSA) wrote in opposition, noting that "Associated Students Inc. (AS/I) are student-led nonprofit auxiliaries on each campus that frequently oversee the Student Unions (buildings) where nearly all food options are located. 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 re-signing lease agreements within the Unions and/or increasing on campus food prices. Our students are already facing a basic needs crisis on campuses, with 41.6% of CSU students experiencing food insecurity, so any additional limitations or price increases will have a negative impact on the daily lives of our students. 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. Additionally, there are concerns from our students that this bill may inadvertently result in the loss of student jobs on campuses."

The California Restaurant Association and California Chamber of Commerce wrote jointly in opposition, stating that they are "concerned that SB 640 will lead to increased labor and operational costs for restaurants on CSU campuses. Restaurants across California are currently grappling with operating challenges including workforce shortages, supply chain issues and inflationary cost pressures, as well as ongoing increases in labor costs. SB 640 will only add to these cost pressures and our concern is it will lead to higher food prices for CSU students and loss of on campus employment opportunities. It is important to consider some restaurants may choose to not renew or discontinue their lease in order to mitigate these cost increases and operational restrictions. The impact of this decision would create limitations in on campus food options for CSU students and a loss in lease revenue for Associated Students Inc on CSU campuses."

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

Potential General Fund cost increases to CSU campuses for more expensive food service and hotel contracts to the extent this bill results in increased labor costs for food service and hotel development employees. Some of the increase in labor costs may be passed down to students in the form of higher food prices or more expensive meal plans.

VOTES

SENATE FLOOR: 28-10-2

YES: Archuleta, Ashby, Atkins, Becker, Blakespear, Bradford, Cortese, Dodd, Durazo, Eggman, Gonzalez, Hurtado, Laird, Limón, McGuire, Menjivar, Min, Newman, Padilla, Portantino, Roth, Rubio, Skinner, Smallwood-Cuevas, Stern, Umberg, Wahab, Wiener

NO: Alvarado-Gil, Dahle, Glazer, Grove, Jones, Nguyen, Niello, Ochoa Bogh, Seyarto, Wilk

ABS, ABST OR NV: Allen, Caballero

ASM HIGHER EDUCATION: 8-3-1

YES: Mike Fong, Addis, Arambula, Gabriel, Irwin, Ortega, Santiago, Weber

NO: Ta, Sanchez, Wallis

ABS, ABST OR NV: Low

ASM LABOR AND EMPLOYMENT: 6-0-1

YES: Kalra, Flora, Haney, Ortega, Reyes, Ward

ABS, ABST OR NV: Chen

ASM APPROPRIATIONS: 12-3-1

YES: Holden, Bryan, Calderon, Wendy Carrillo, Mike Fong, Hart, Lowenthal, Papan, Pellerin, Soria, Weber, Wilson

NO: Megan Dahle, Dixon, Sanchez

ABS, ABST OR NV: Mathis

UPDATED

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FN: 0001564