

ASSEMBLY BILL

No. 49

Introduced by Assembly Member Benoit

December 6, 2004

An act to repeal and add Sections 45103.1, 45103.5, 88003.1, and 88004.5 of the Education Code, and to add Section 3562.3 to the Government Code, relating to public education.

LEGISLATIVE COUNSEL'S DIGEST

AB 49, as introduced, Benoit. Contracting for noninstructional services

(1) Existing law authorizes school districts and community college districts to enter into contracts for personal services customarily performed by classified employees to achieve cost savings if prescribed conditions are met.

This bill would repeal these provisions and would, instead, authorize school districts and community college districts to contract for any noninstructional services, as prescribed.

(2) Existing law sets forth certain requirements relating to higher education employer-employee relations, including, but not limited to, the requirement to meet and confer in good faith regarding terms and conditions of employment.

This bill would declare that these employer-employee relations provisions do not limit the authority of the University of California, the Hastings College of the Law, and the California State University, to enter into contracts with third parties for noninstructional services, as prescribed.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 45103.1 of the Education Code is
2 repealed.

3 ~~45103.1. (a) Notwithstanding any other provision of this~~
4 ~~chapter, personal services contracting for all services currently or~~
5 ~~customarily performed by classified school employees to achieve~~
6 ~~cost savings is permissible, unless otherwise prohibited, when all~~
7 ~~the following conditions are met:~~

8 ~~(1) The governing board or contracting agency clearly~~
9 ~~demonstrates that the proposed contract will result in actual~~
10 ~~overall cost savings to the school district, provided that:~~

11 ~~(A) In comparing costs, there shall be included the school~~
12 ~~district's additional cost of providing the same service as~~
13 ~~proposed by a contractor. These additional costs shall include the~~
14 ~~salaries and benefits of additional staff that would be needed and~~
15 ~~the cost of additional space, equipment, and materials needed to~~
16 ~~perform the function.~~

17 ~~(B) In comparing costs, there shall not be included the school~~
18 ~~district's indirect overhead costs unless these costs can be~~
19 ~~attributed solely to the function in question and would not exist if~~
20 ~~that function was not performed by the school district. Indirect~~
21 ~~overhead costs shall mean the pro rata share of existing~~
22 ~~administrative salaries and benefits, rent, equipment costs,~~
23 ~~utilities, and materials.~~

24 ~~(C) In comparing costs, there shall be included in the cost of a~~
25 ~~contractor providing a service any continuing school district~~
26 ~~costs that would be directly associated with the contracted~~
27 ~~function. These continuing school district costs shall include, but~~
28 ~~not be limited to, those for inspection, supervision, and~~
29 ~~monitoring.~~

30 ~~(2) Proposals to contract out work shall not be approved solely~~
31 ~~on the basis that savings will result from lower contractor pay~~
32 ~~rates or benefits. Proposals to contract out work shall be eligible~~
33 ~~for approval if the contractor's wages are at the industry's level~~
34 ~~and do not undercut school district pay rates.~~

35 ~~(3) The contract does not cause the displacement of school~~
36 ~~district employees. The term "displacement" includes layoff,~~
37 ~~demotion, involuntary transfer to a new classification,~~
38 ~~involuntary transfer to a new location requiring a change of~~

1 ~~residence, and time base reductions. Displacement does not~~
2 ~~include changes in shifts or days off, nor does it include~~
3 ~~reassignment to other positions within the same classification and~~
4 ~~general location or employment with the contractor, so long as~~
5 ~~wages and benefits are comparable to those paid by the school~~
6 ~~district.~~

7 ~~(4) The savings shall be large enough to ensure that they will~~
8 ~~not be eliminated by private sector and district cost fluctuations~~
9 ~~that could normally be expected during the contracting period.~~

10 ~~(5) The amount of savings clearly justify the size and duration~~
11 ~~of the contracting agreement.~~

12 ~~(6) The contract is awarded through a publicized, competitive~~
13 ~~bidding process.~~

14 ~~(7) The contract includes specific provisions pertaining to the~~
15 ~~qualifications of the staff that will perform the work under the~~
16 ~~contract, as well as assurance that the contractor's hiring~~
17 ~~practices meet applicable nondiscrimination standards.~~

18 ~~(8) The potential for future economic risk to the school district~~
19 ~~from potential contractor rate increases is minimal.~~

20 ~~(9) The contract is with a firm. A "firm" means a corporation,~~
21 ~~limited liability corporation, partnership, nonprofit organization,~~
22 ~~or sole proprietorship.~~

23 ~~(10) The potential economic advantage of contracting is not~~
24 ~~outweighed by the public's interest in having a particular~~
25 ~~function performed directly by the school district.~~

26 ~~(b) Notwithstanding any other provision of this chapter,~~
27 ~~personal services contracting shall also be permissible when any~~
28 ~~of the following conditions can be met:~~

29 ~~(1) The contract is for new school district functions and the~~
30 ~~Legislature has specifically mandated or authorized the~~
31 ~~performance of the work by independent contractors.~~

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

37 ~~(3) The services are incidental to a contract for the purchase or~~
38 ~~lease of real or personal property. Contracts under this criterion,~~
39 ~~known as "service agreements," shall include, but not be limited~~

1 to, ~~agreements to service or maintain office equipment or~~
2 ~~computers that are leased or rented.~~

3 ~~(4) The policy, administrative, or legal goals and purposes of~~
4 ~~the district cannot be accomplished through the utilization of~~
5 ~~persons selected pursuant to the regular or ordinary school~~
6 ~~district hiring process. Contracts are permissible under this~~
7 ~~criterion to protect against a conflict of interest or to ensure~~
8 ~~independent and unbiased findings in cases where there is a clear~~
9 ~~need for a different, outside perspective. These contracts shall~~
10 ~~include, but not be limited to, obtaining expert witnesses in~~
11 ~~litigation.~~

12 ~~(5) The nature of the work is such that the criteria for~~
13 ~~emergency appointments apply. “Emergency appointment”~~
14 ~~means an appointment made for a period not to exceed 60~~
15 ~~working days either during an actual emergency to prevent the~~
16 ~~stoppage of public business or because of the limited duration of~~
17 ~~the work. The method of selection and the qualification standards~~
18 ~~for an emergency employee shall be determined by the district.~~
19 ~~The frequency of appointment, length of employment, and the~~
20 ~~circumstances appropriate for the appointment of firms or~~
21 ~~individuals under emergency appointments shall be restricted so~~
22 ~~as to prevent the use of emergency appointments to circumvent~~
23 ~~the regular or ordinary hiring process.~~

24 ~~(6) The contractor will provide equipment, materials, facilities,~~
25 ~~or support services that could not feasibly be provided by the~~
26 ~~school district in the location where the services are to be~~
27 ~~performed.~~

28 ~~(7) The services are of such an urgent, temporary, or~~
29 ~~occasional nature that the delay incumbent in their~~
30 ~~implementation under the district’s regular or ordinary hiring~~
31 ~~process would frustrate their very purpose.~~

32 ~~(e) This section shall apply to all school districts, including~~
33 ~~districts that have adopted the merit system.~~

34 ~~(d) This section shall apply to personal service contracts~~
35 ~~entered into after January 1, 2003. This section shall not apply to~~
36 ~~the renewal of personal services contracts subsequent to January~~
37 ~~1, 2003, where the contract was entered into before January 1,~~
38 ~~2003, irrespective of whether the contract is renewed or rebid~~
39 ~~with the existing contractor or with a new contractor.~~

1 SEC. 2. Section 45103.1 is added to the Education Code, to
2 read:

3 45103.1. (a) As used in this section, “school district” means a
4 school district or a county office of education.

5 (b) Notwithstanding any provision of law to the contrary, a
6 school district may contract for any noninstructional services of
7 any type, if the contract is awarded in accordance with the
8 applicable provisions of the Public Contract Code, and the
9 governing board of the school district has determined, in its sole
10 discretion, that the contract will provide a benefit for the school
11 district.

12 (c) The authority to contract for noninstructional services
13 granted by this section, includes, but is not limited to, the right to
14 contract for consulting, management, supervision, and the direct
15 provision of services, in any noninstructional area, including, but
16 not limited to, any of the following:

- 17 (1) Facilities construction and renovation.
- 18 (2) Engineering, mechanical, maintenance, and repair.
- 19 (3) Food preparation and food service.
- 20 (4) Procurement, distribution, and transportation.
- 21 (5) Information technology, clerical, payroll, security,
22 accounting, skilled trades, and landscaping.

23 (d) The contract shall be for a mutually agreed upon term,
24 unless otherwise set forth in this chapter or as may be required by
25 federal law.

26 (e) The following circumstances may not be the basis for
27 invalidating a contract entered into pursuant to this section:

- 28 (1) That it results in or causes the elimination of any food
29 service classified personnel or position.
- 30 (2) That it results in or causes any adverse effect upon any
31 food service classified personnel or position with respect to
32 wages, benefits, or other terms and conditions of employment.
- 33 (3) That food service functions, either managerial or direct, are
34 to be performed under the contract by nondistrict personnel.

35 (f) This section is to be administered in a manner that is
36 consistent with Section 35160 authorizing the governing board of
37 any school district to initiate and carry on any program or
38 activity, or to otherwise undertake any action in a manner that is
39 not in conflict with or inconsistent with the purposes for which
40 school districts are established.

1 (g) Sections 45122 to 45126, inclusive, and any other health
2 criteria established by the school district, are applicable to all
3 persons providing food service management consulting services
4 under contracts entered into pursuant to this section.

5 (h) The section shall apply only to contracts entered into or
6 amended after January 1, 2006.

7 (i) This section shall apply to all school districts, including,
8 but not limited to, school districts that have adopted the merit
9 system. Notwithstanding subdivision (e), this section may not be
10 implemented in a manner that conflicts with the merit system
11 adopted by the school district, or that impairs preexisting
12 contractual rights or obligations.

13 SEC. 3. Section 45103.5 of the Education Code is repealed.

14 ~~45103.5. All contracts for management consulting services~~
15 ~~relating to food service shall be governed by this section.~~

16 ~~(a) Notwithstanding Sections 39902, 45103, 45104, and~~
17 ~~45256, any school district may enter into a contract for~~
18 ~~management consulting services relating to food service for a~~
19 ~~term not to exceed one year. Any renewal of that contract, or~~
20 ~~further requests for proposals to provide food service~~
21 ~~management consulting services, shall be considered on a~~
22 ~~year-to-year basis. A contract for food service management~~
23 ~~consulting services shall not cause or result in the elimination of~~
24 ~~any food service classified personnel or position. A contract for~~
25 ~~food service management consulting services shall not cause or~~
26 ~~result in any adverse effect upon any food service classified~~
27 ~~personnel or position with respect to wages, benefits, or other~~
28 ~~terms and conditions of employment.~~

29 ~~(b) A contract made pursuant to subdivision (a) shall not~~
30 ~~provide for or result in the supervision of food service classified~~
31 ~~personnel by the food service management consultant. This~~
32 ~~section shall not be construed to prevent an entity providing food~~
33 ~~service management consulting services from interacting or~~
34 ~~consulting with the food service manager or director, supervisors,~~
35 ~~or food service classified employees of a school district on~~
36 ~~matters relating to food services except those prohibited by~~
37 ~~subdivision (a).~~

38 ~~(e) Sections 45122, 45123, 45124, 45125, 45125.5, and 45126,~~
39 ~~and any other health criteria established by the school district, are~~

1 ~~applicable to all persons providing food service management~~
2 ~~consulting services under this section.~~

3 ~~(d) This section shall apply to all school districts, including~~
4 ~~districts that have adopted the merit system.~~

5 SEC. 4. Section 45103.5 is added to the Education Code, to
6 read:

7 45103.5. (a) For the purposes of this section, “school district”
8 means a school district or a county office of education.

9 (b) Notwithstanding any other provision of law to the contrary,
10 in furtherance of, and without limiting, the authority to enter into
11 contracts pursuant to Section 45103.1, this section shall also
12 govern all contracts entered into by a district for management
13 services relating to food service.

14 (c) A school district may enter into a contract for management
15 services related to food service for a mutually agreed upon term,
16 unless otherwise set forth in this chapter or as may be required by
17 federal law.

18 (d) A contract for food service management services may
19 include, but need not be limited to, management services that
20 provide for, or result in, the supervision of district food service
21 classified personnel by the food service management contractor.

22 (e) “Food service management services” pursuant to this
23 section means any of the following related to the delivery of
24 meals and other food to pupils, but only to the extent that
25 providing the food service management services by the
26 contractor is not inconsistent with, or prohibited by, federal law:

27 (1) Assistance, direction, supervision, or other conduct related
28 to the procurement, menu planning and selection, food
29 preparation, presentation, and serving of food products.

30 (2) Maintenance of food service and preparation facilities.

31 (3) Recordkeeping and inventory.

32 (4) Reimbursements, financial transactions, and the
33 administration of working capital.

34 (5) Any and all other component services associated with the
35 food service function traditionally provided by a school district.

36 (f) The following circumstances may not invalidate a contract
37 entered into pursuant to this section:

38 (1) That it results in or causes the elimination of any food
39 service classified personnel or position.

1 (2) That it results in or causes any adverse effect upon any
2 food service classified personnel or position with respect to
3 wages, benefits, or other terms and conditions of employment.

4 (3) That food service functions, either managerial or direct, are
5 to be performed under the contract by nondistrict personnel.

6 (g) This section is to be administered in a manner that is
7 consistent with Section 35160 authorizing the governing board of
8 any school district to initiate and carry on any program or
9 activity, or to otherwise undertake any action in a manner that is
10 not in conflict with or inconsistent with the purposes for which
11 school districts are established.

12 (h) This section does not release a school district from the
13 obligation to retain authority, oversight, and control over its food
14 service program as otherwise required by federal law.

15 (i) This section applies to all school districts, including
16 districts that have adopted the merit system. Notwithstanding
17 subdivision (f), this section may not be implemented in a manner
18 that conflicts with the merit system adopted by the school
19 district, or that impairs preexisting contractual rights or
20 obligations.

21 SEC. 5. Section 88003.1 of the Education Code is repealed.

22 ~~88003.1. (a) Notwithstanding any other provision of this~~
23 ~~chapter, personal services contracting for all services currently or~~
24 ~~customarily performed by classified school employees to achieve~~
25 ~~cost savings is permissible, unless otherwise prohibited, when all~~
26 ~~the following conditions are met:~~

27 ~~(1) The governing board or contracting agency clearly~~
28 ~~demonstrates that the proposed contract will result in actual~~
29 ~~overall cost savings to the community college district, provided~~
30 ~~that:~~

31 ~~(A) In comparing costs, there shall be included the community~~
32 ~~college district's additional cost of providing the same service as~~
33 ~~proposed by a contractor. These additional costs shall include the~~
34 ~~salaries and benefits of additional staff that would be needed and~~
35 ~~the cost of additional space, equipment, and materials needed to~~
36 ~~perform the function.~~

37 ~~(B) In comparing costs, there shall not be included the~~
38 ~~community college district's indirect overhead costs unless these~~
39 ~~costs can be attributed solely to the function in question and~~
40 ~~would not exist if that function was not performed by the~~

1 ~~community college district. Indirect overhead costs shall mean~~
2 ~~the pro rata share of existing administrative salaries and benefits,~~
3 ~~rent, equipment costs, utilities, and materials.~~

4 ~~(C) In comparing costs, there shall be included in the cost of a~~
5 ~~contractor providing a service any continuing community college~~
6 ~~district costs that would be directly associated with the contracted~~
7 ~~function. These continuing community college district costs shall~~
8 ~~include, but not be limited to, those for inspection, supervision,~~
9 ~~and monitoring.~~

10 ~~(2) Proposals to contract out work shall not be approved solely~~
11 ~~on the basis that savings will result from lower contractor pay~~
12 ~~rates or benefits. Proposals to contract out work shall be eligible~~
13 ~~for approval if the contractor's wages are at the industry's level~~
14 ~~and do not undercut community college district pay rates.~~

15 ~~(3) The contract does not cause the displacement of~~
16 ~~community college district employees. The term "displacement"~~
17 ~~includes layoff, demotion, involuntary transfer to a new~~
18 ~~classification, involuntary transfer to a new location requiring a~~
19 ~~change of residence, and time base reductions. Displacement~~
20 ~~does not include changes in shifts or days off, nor does it include~~
21 ~~reassignment to other positions within the same classification and~~
22 ~~general location or employment with the contractor, so long as~~
23 ~~wages and benefits are comparable to those paid by the school~~
24 ~~district.~~

25 ~~(4) The savings shall be large enough to ensure that they will~~
26 ~~not be eliminated by private sector and community college~~
27 ~~district cost fluctuations that could normally be expected during~~
28 ~~the contracting period.~~

29 ~~(5) The amount of savings clearly justify the size and duration~~
30 ~~of the contracting agreement.~~

31 ~~(6) The contract is awarded through a publicized, competitive~~
32 ~~bidding process.~~

33 ~~(7) The contract includes specific provisions pertaining to the~~
34 ~~qualifications of the staff that will perform the work under the~~
35 ~~contract, as well as assurance that the contractor's hiring~~
36 ~~practices meet applicable nondiscrimination standards.~~

37 ~~(8) The potential for future economic risk to the community~~
38 ~~college district from potential contractor rate increases is~~
39 ~~minimal.~~

1 ~~(9) The contract is with a firm. A “firm” means a corporation,~~
2 ~~limited liability corporation, partnership, nonprofit organization,~~
3 ~~or sole proprietorship.~~

4 ~~(10) The potential economic advantage of contracting is not~~
5 ~~outweighed by the public’s interest in having a particular~~
6 ~~function performed directly by the community college district.~~

7 ~~(b) Notwithstanding any other provision of this chapter,~~
8 ~~personal services contracting shall also be permissible when any~~
9 ~~of the following conditions can be met:~~

10 ~~(1) The contract is for new community college district~~
11 ~~functions and the Legislature has specifically mandated or~~
12 ~~authorized the performance of the work by independent~~
13 ~~contractors.~~

14 ~~(2) The services contracted are not available within~~
15 ~~community college districts, cannot be performed satisfactorily~~
16 ~~by community college district employees, or are of such a highly~~
17 ~~specialized or technical nature that the necessary expert~~
18 ~~knowledge, experience, and ability are not available through the~~
19 ~~community college district.~~

20 ~~(3) The services are incidental to a contract for the purchase or~~
21 ~~lease of real or personal property. Contracts under this criterion,~~
22 ~~known as “service agreements,” shall include, but not be limited~~
23 ~~to, agreements to service or maintain office equipment or~~
24 ~~computers that are leased or rented.~~

25 ~~(4) The policy, administrative, or legal goals and purposes of~~
26 ~~the community college district cannot be accomplished through~~
27 ~~the utilization of persons selected pursuant to the regular or~~
28 ~~ordinary hiring process. Contracts are permissible under this~~
29 ~~criterion to protect against a conflict of interest or to ensure~~
30 ~~independent and unbiased findings in cases where there is a clear~~
31 ~~need for a different, outside perspective. These contracts shall~~
32 ~~include, but not be limited to, obtaining expert witnesses in~~
33 ~~litigation.~~

34 ~~(5) The nature of the work is such that the criteria for~~
35 ~~emergency appointments apply. “Emergency appointment”~~
36 ~~means an appointment made for a period not to exceed 60~~
37 ~~working days either during an actual emergency to prevent the~~
38 ~~stoppage of public business or because of the limited duration of~~
39 ~~the work. The method of selection and the qualification standards~~
40 ~~for an emergency employee shall be determined by the~~

1 ~~community college district. The frequency of appointment,~~
2 ~~length of employment, and the circumstances appropriate for the~~
3 ~~appointment of firms or individuals under emergency~~
4 ~~appointments shall be restricted so as to prevent the use of~~
5 ~~emergency appointments to circumvent the regular or ordinary~~
6 ~~hiring process.~~

7 ~~(6) The contractor will provide equipment, materials, facilities,~~
8 ~~or support services that could not feasibly be provided by the~~
9 ~~community college district in the location where the services are~~
10 ~~to be performed.~~

11 ~~(7) The services are of such an urgent, temporary, or~~
12 ~~occasional nature that the delay incumbent in their~~
13 ~~implementation under the community college district's regular or~~
14 ~~ordinary hiring process would frustrate their very purpose.~~

15 ~~(e) This section shall apply to all community colleges,~~
16 ~~including community college districts that have adopted the merit~~
17 ~~system.~~

18 ~~(d) This section shall apply to personal service contracts~~
19 ~~entered into after January 1, 2003. This section shall not apply to~~
20 ~~the renewal of personal services contracts subsequent to January~~
21 ~~1, 2003, where the contract was entered into before January 1,~~
22 ~~2003, irrespective of whether the contract is renewed or rebid~~
23 ~~with the existing contractor or with a new contractor.~~

24 SEC. 6. Section 88003.1 is added to the Education Code, to
25 read:

26 88003.1. (a) Notwithstanding any provision of law to the
27 contrary, a community college district may contract for any
28 noninstructional services of any type, without any limitation, if
29 the contract is awarded in accordance with the applicable
30 provisions of the Public Contract Code, and the governing board
31 of the community college district has determined, in its sole
32 discretion, that the contract will provide a benefit for the
33 community college district.

34 (b) The authority to contract for noninstructional services
35 pursuant to this section includes, but is not be limited to, the right
36 to contract for consulting, management, supervision, and the
37 direct provision of services in any noninstructional area,
38 including, but not limited to, any of the following:

39 (1) Facilities construction and renovation.

40 (2) Engineering, mechanical, maintenance, and repair.

1 (3) Food preparation and food service.

2 (4) Procurement, distribution, and transportation.

3 (5) Information technology, clerical, payroll, security,
4 accounting, skilled trades, and landscaping.

5 (c) The contract shall be for a mutually agreed upon term.

6 (d) The following circumstances may not be the basis for
7 invalidating a contract entered into pursuant to this section:

8 (1) That it results in or causes the elimination of any food
9 service classified personnel or position.

10 (2) That it results in or causes any adverse effect upon any
11 food service classified personnel or position with respect to
12 wages, benefits, or other terms and conditions of employment.

13 (3) That food service functions, either managerial or direct, are
14 to be performed under the contract by nondistrict personnel.

15 (e) This section is to be administered in a manner that is
16 consistent with Section 70902 authorizing the governing board of
17 any community college district to initiate and carry on any
18 program or activity, or to otherwise undertake any action in a
19 manner which is not in conflict with or inconsistent with the
20 purposes for which community college districts are established.

21 (f) Sections 88021 to 88025, inclusive, and any other health
22 criteria established by the community college district, are
23 applicable to all persons providing services under contracts
24 entered into pursuant to this section.

25 (g) This section applies only to contracts entered into,
26 renewed, or amended after January 1, 2006.

27 (h) This section applies to all community college districts,
28 including, but not limited to, community college districts that
29 have adopted the merit system. Notwithstanding subdivision (d),
30 this section may not be implemented in a manner that conflicts
31 with the merit system adopted by the community college district
32 or that impairs preexisting contractual rights or obligations.

33 SEC. 7. Section 88004.5 of the Education Code is repealed.

34 ~~88004.5. All contracts for management consulting services~~
35 ~~relating to food service shall be governed by this section.~~

36 ~~(a) Notwithstanding Sections 88003, 88004, 88020.5, and~~
37 ~~88076, any community college district may enter into a contract~~
38 ~~for management consulting services relating to food service for a~~
39 ~~term not to exceed one year. Any renewal of that contract, or~~
40 ~~further requests for proposals to provide food service~~

1 ~~management consulting services, shall be considered on a~~
2 ~~year-to-year basis. A contract for food service management~~
3 ~~consulting services shall not cause or result in the elimination of~~
4 ~~any food service classified personnel or position. A contract for~~
5 ~~food service management consulting services shall not cause or~~
6 ~~result in any adverse effect upon any food service classified~~
7 ~~personnel or position with respect to wages, benefits, or other~~
8 ~~terms and conditions of employment.~~

9 ~~(b) A contract made pursuant to subdivision (a) shall not~~
10 ~~provide for, or result in the supervision of, food service classified~~
11 ~~personnel by the food service management consultant. This~~
12 ~~section shall not be construed to prevent an entity providing food~~
13 ~~service management consulting services from interacting or~~
14 ~~consulting with the food service manager or director, supervisors,~~
15 ~~or food service classified employees of the community college~~
16 ~~district on matters relating to food services except those~~
17 ~~prohibited by subdivision (a).~~

18 ~~(c) Sections 88021, 88022, 88023, 88024, and 88025, and any~~
19 ~~other health criteria established by the local community college~~
20 ~~district, are applicable to all persons providing food service~~
21 ~~management consulting services under this section.~~

22 ~~(d) This section shall apply to all community college districts,~~
23 ~~including districts that have adopted the merit system.~~

24 SEC. 8. Section 88004.5 is added to the Education Code, to
25 read:

26 88004.5. (a) Notwithstanding any other provision of law to
27 the contrary, in furtherance of, and without limiting, the authority
28 to enter into contracts pursuant to Section 88003.1, this section
29 shall also govern all contracts entered into by a community
30 college district for management services relating to food service.

31 (b) A community college district may enter into a contract for
32 management services related to food service for a mutually
33 agreed upon term.

34 (c) A contract for food service management services may
35 include, but need not be limited to, management services that
36 provide for or result in the supervision of district food service
37 classified personnel by the food service management contractor.

38 (d) “Food service management services” pursuant to this
39 section means any of the following related to the delivery of
40 meals and other food to students:

1 (1) Assistance, direction, supervision, or other conduct related
2 to procurement, menu planning and selection, food preparation,
3 and the serving of food products.

4 (2) Maintenance of food service and preparation facilities.

5 (3) Recordkeeping and inventory.

6 (4) Reimbursements, financial transactions, and the
7 administration of working capital.

8 (5) Any and all other component services associated with the
9 food service function traditionally provided by a community
10 college district.

11 (e) The following circumstances may not be the basis for
12 invalidating a contract entered into pursuant to this section:

13 (1) That it results in or causes the elimination of any food
14 service classified personnel or position.

15 (2) That it results in or causes any adverse effect upon any
16 food service classified personnel or position with respect to
17 wages, benefits, or other terms and conditions of employment.

18 (3) That food service functions, either managerial or direct, are
19 to be performed under the contract by nondistrict personnel.

20 (f) This section is to be administered in a manner that is
21 consistent with Section 70902 authorizing the governing board of
22 any community college district to initiate and carry on any
23 program or activity, or to otherwise undertake any action in a
24 manner that is not in conflict with or inconsistent with the
25 purposes for which community college districts are established.

26 (g) This section applies to all community college districts,
27 including districts that have adopted the merit system.
28 Notwithstanding subdivision (e), this section may not be
29 implemented in a manner that conflicts with the merit system
30 adopted by the community college district, or that impairs
31 preexisting contractual rights or obligations.

32 SEC. 9. Section 3562.3 is added to the Government Code, to
33 read:

34 3562.3. (a) This chapter does not limit the authority, power,
35 right, or ability, of the University of California, the Hastings
36 College of the Law, and the California State University, to enter
37 into contracts with third parties for any noninstructional services,
38 regardless of whether those services were previously performed
39 or could be performed by an employee of the University of

1 California, the Hastings College of the Law, or the California
2 State University.

3 (b) Notwithstanding Section 3562, for purposes of the
4 University of California, the Hastings College of the Law, or the
5 California State University, “scope of representation” shall not
6 include a decision by the covered entity to contract out for
7 noninstructional services.

8 (c) This section may not be implemented in a manner that
9 conflicts with the merit system, as applicable, or that impairs
10 preexisting contractual rights or obligations.

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