

**SENATE BILL**

**No. 61**

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**Introduced by Senator Huff**

February 12, 2010

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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

SB 61, as introduced, Huff. Contracting for noninstructional services.

(1) Existing law authorizes school districts and community college districts to contract for personal services currently or customarily performed by classified employees to achieve cost savings when specified conditions are met. Existing law requires the overall cost savings to be clearly demonstrated and sets forth certain requirements relating to comparing costs.

This bill would repeal those provisions. The bill would instead authorize school districts and community college districts to contract for any noninstructional services of any type, if awarded pursuant to certain provisions of existing law governing public contracts, and if the governing board of the school district or community college determines that the contract will provide a benefit for the school district or community college district. The bill would prohibit the contract from being invalidated for specified circumstances relating to food service functions and positions.

(2) Existing law requires contracts for management consulting services relating to food services not exceed a term of one year, and that contract renewals be considered on a year-to-year basis. Existing law prohibits a contract for food service management consulting services

to eliminate any food service classified personnel or position, result in any adverse effect upon any food service classified food service personnel or position, or result in the supervision of food service classified personnel.

This bill would repeal those provisions. The bill would define the term “food service management services” to include specified functions, and would authorize school districts and community college districts to enter into contracts for food service management services for a mutually agreed upon term, subject to specified conditions. The bill would prohibit a contract for food service management services from being invalidated for specified circumstances, including that it results in or causes the elimination of a food service classified personnel or position.

(3) 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 3rd parties for noninstructional services, as prescribed.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on January 8, 2010.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on January 8, 2010, pursuant to the California Constitution.

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~~

1 cost savings is permissible, unless otherwise prohibited, when all  
2 the following conditions are met:

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

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

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

18 (C) In comparing costs, there shall be included in the cost of a  
19 contractor providing a service any continuing school district costs  
20 that would be directly associated with the contracted function.  
21 These continuing school district costs shall include, but not be  
22 limited to, those for inspection, supervision, and monitoring.

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

28 (3) The contract does not cause the displacement of school  
29 district employees. The term "displacement" includes layoff,  
30 demotion, involuntary transfer to a new classification, involuntary  
31 transfer to a new location requiring a change of residence, and  
32 time base reductions. Displacement does not include changes in  
33 shifts or days off, nor does it include reassignment to other  
34 positions within the same classification and general location or  
35 employment with the contractor, so long as wages and benefits  
36 are comparable to those paid by the school district.

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

- 1     ~~(5) The amount of savings clearly justify the size and duration~~  
2     ~~of the contracting agreement.~~
- 3     ~~(6) The contract is awarded through a publicized, competitive~~  
4     ~~bidding process.~~
- 5     ~~(7) The contract includes specific provisions pertaining to the~~  
6     ~~qualifications of the staff that will perform the work under the~~  
7     ~~contract, as well as assurance that the contractor's hiring practices~~  
8     ~~meet applicable nondiscrimination standards.~~
- 9     ~~(8) The potential for future economic risk to the school district~~  
10    ~~from potential contractor rate increases is minimal.~~
- 11    ~~(9) The contract is with a firm. A "firm" means a corporation,~~  
12    ~~limited liability corporation, partnership, nonprofit organization,~~  
13    ~~or sole proprietorship.~~
- 14    ~~(10) The potential economic advantage of contracting is not~~  
15    ~~outweighed by the public's interest in having a particular function~~  
16    ~~performed directly by the school district.~~
- 17    ~~(b) Notwithstanding any other provision of this chapter, personal~~  
18    ~~services contracting shall also be permissible when any of the~~  
19    ~~following conditions can be met:~~
- 20    ~~(1) The contract is for new school district functions and the~~  
21    ~~Legislature has specifically mandated or authorized the~~  
22    ~~performance of the work by independent contractors.~~
- 23    ~~(2) The services contracted are not available within the district,~~  
24    ~~cannot be performed satisfactorily by school district employees,~~  
25    ~~or are of such a highly specialized or technical nature that the~~  
26    ~~necessary expert knowledge, experience, and ability are not~~  
27    ~~available through the school district.~~
- 28    ~~(3) The services are incidental to a contract for the purchase or~~  
29    ~~lease of real or personal property. Contracts under this criterion,~~  
30    ~~known as "service agreements," shall include, but not be limited~~  
31    ~~to, agreements to service or maintain office equipment or~~  
32    ~~computers that are leased or rented.~~
- 33    ~~(4) The policy, administrative, or legal goals and purposes of~~  
34    ~~the district cannot be accomplished through the utilization of~~  
35    ~~persons selected pursuant to the regular or ordinary school district~~  
36    ~~hiring process. Contracts are permissible under this criterion to~~  
37    ~~protect against a conflict of interest or to ensure independent and~~  
38    ~~unbiased findings in cases where there is a clear need for a~~  
39    ~~different, outside perspective. These contracts shall include, but~~  
40    ~~not be limited to, obtaining expert witnesses in litigation.~~

1     ~~(5) The nature of the work is such that the criteria for emergency~~  
2 ~~appointments apply. “Emergency appointment” means an~~  
3 ~~appointment made for a period not to exceed 60 working days~~  
4 ~~either during an actual emergency to prevent the stoppage of public~~  
5 ~~business or because of the limited duration of the work. The method~~  
6 ~~of selection and the qualification standards for an emergency~~  
7 ~~employee shall be determined by the district. The frequency of~~  
8 ~~appointment, length of employment, and the circumstances~~  
9 ~~appropriate for the appointment of firms or individuals under~~  
10 ~~emergency appointments shall be restricted so as to prevent the~~  
11 ~~use of emergency appointments to circumvent the regular or~~  
12 ~~ordinary hiring process.~~

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

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

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

23     ~~(d) This section shall apply to personal service contracts entered~~  
24 ~~into after January 1, 2003. This section shall not apply to the~~  
25 ~~renewal of personal services contracts subsequent to January 1,~~  
26 ~~2003, where the contract was entered into before January 1, 2003,~~  
27 ~~irrespective of whether the contract is renewed or rebid with the~~  
28 ~~existing contractor or with a new contractor.~~

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

31     45103.1. (a) As used in this section, “school district” means  
32 a school district or a county office of education.

33     (b) Notwithstanding any provision of law to the contrary, a  
34 school district may contract for any noninstructional services of  
35 any type, if the contract is awarded in accordance with the  
36 applicable provisions of the Public Contract Code, and the  
37 governing board of the school district has determined, in its sole  
38 discretion, that the contract will provide a benefit for the school  
39 district.

1 (c) The authority to contract for noninstructional services granted  
2 by this section includes, but is not limited to, the right to contract  
3 for consulting, management, supervision, and the direct provision  
4 of services, in any noninstructional area, including, but not limited  
5 to, any of the following:

- 6 (1) Facilities construction and renovation.
- 7 (2) Engineering, mechanical, maintenance, and repair.
- 8 (3) Food preparation and food service.
- 9 (4) Procurement, distribution, and transportation.
- 10 (5) Information technology, clerical, payroll, security,  
11 accounting, skilled trades, and landscaping.

12 (d) The contract shall be for a mutually agreed upon term, unless  
13 otherwise provided by this chapter or required by federal law.

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

- 16 (1) That it results in or causes the elimination of any food service  
17 classified personnel or position.
- 18 (2) That it results in or causes any adverse effect upon any food  
19 service classified personnel or position with respect to wages,  
20 benefits, or other terms and conditions of employment.
- 21 (3) That food service functions, either managerial or direct, are  
22 to be performed under the contract by nondistrict personnel.

23 (f) This section is to be administered in a manner that is  
24 consistent with Section 35160 authorizing the governing board of  
25 any school district to initiate and carry on any program or activity,  
26 or to otherwise undertake any action in a manner that is not in  
27 conflict with or inconsistent with the purposes for which school  
28 districts are established.

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

33 (h) The section shall apply only to contracts entered into or  
34 amended after January 1, 2010.

35 (i) This section shall apply to all school districts, including, but  
36 not limited to, school districts that have adopted the merit system.  
37 Notwithstanding subdivision (e), this section may not be  
38 implemented in a manner that conflicts with the merit system  
39 adopted by the school district, or that impairs preexisting  
40 contractual rights or obligations.

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

2 ~~45103.5. All contracts for management consulting services~~  
3 ~~relating to food service shall be governed by this section.~~

4 ~~(a) Notwithstanding Sections 39902, 45103, 45104, and 45256,~~  
5 ~~any school district may enter into a contract for management~~  
6 ~~consulting services relating to food service for a term not to exceed~~  
7 ~~one year. Any renewal of that contract, or further requests for~~  
8 ~~proposals to provide food service management consulting services,~~  
9 ~~shall be considered on a year-to-year basis. A contract for food~~  
10 ~~service management consulting services shall not cause or result~~  
11 ~~in the elimination of any food service classified personnel or~~  
12 ~~position. A contract for food service management consulting~~  
13 ~~services shall not cause or result in any adverse effect upon any~~  
14 ~~food service classified personnel or position with respect to wages,~~  
15 ~~benefits, or other terms and conditions of employment.~~

16 ~~(b) A contract made pursuant to subdivision (a) shall not provide~~  
17 ~~for or result in the supervision of food service classified personnel~~  
18 ~~by the food service management consultant. This section shall not~~  
19 ~~be construed to prevent an entity providing food service~~  
20 ~~management consulting services from interacting or consulting~~  
21 ~~with the food service manager or director, supervisors, or food~~  
22 ~~service classified employees of a school district on matters relating~~  
23 ~~to food services except those prohibited by subdivision (a).~~

24 ~~(c) Sections 45122, 45123, 45124, 45125, 45125.5, and 45126,~~  
25 ~~and any other health criteria established by the school district, are~~  
26 ~~applicable to all persons providing food service management~~  
27 ~~consulting services under this section.~~

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

30 SEC. 4. Section 45103.5 is added to the Education Code, to  
31 read:

32 45103.5. (a) For the purposes of this section, “school district”  
33 means a school district or a county office of education.

34 (b) Notwithstanding any other provision of law to the contrary,  
35 in furtherance of, and without limiting, the authority to enter into  
36 contracts pursuant to Section 45103.1, this section shall also govern  
37 all contracts entered into by a district for food service management  
38 services.

- 1 (c) A school district may enter into a contract for food service
- 2 management services for a mutually agreed upon term, unless
- 3 otherwise provided by this chapter or required by federal law.
- 4 (d) A contract for food service management services may
- 5 include, but need not be limited to, management services that
- 6 provide for, or result in, the supervision of district food service
- 7 classified personnel by the food service management contractor.
- 8 (e) “Food service management services” pursuant to this section
- 9 means any of the following related to the delivery of meals and
- 10 other food to pupils, but only to the extent that providing the food
- 11 service management services by the contractor is not inconsistent
- 12 with, or prohibited by, federal law:
- 13 (1) Assistance, direction, supervision, or other conduct related
- 14 to the procurement, menu planning and selection, food preparation,
- 15 presentation, and serving of food products.
- 16 (2) Maintenance of food service and preparation facilities.
- 17 (3) Recordkeeping and inventory.
- 18 (4) Reimbursements, financial transactions, and the
- 19 administration of working capital.
- 20 (5) Any and all other component services associated with the
- 21 food service function traditionally provided by a school district.
- 22 (f) The following circumstances may not invalidate a contract
- 23 entered into pursuant to this section:
- 24 (1) That it results in or causes the elimination of any food service
- 25 classified personnel or position.
- 26 (2) That it results in or causes any adverse effect upon any food
- 27 service classified personnel or position with respect to wages,
- 28 benefits, or other terms and conditions of employment.
- 29 (3) That food service functions, either managerial or direct, are
- 30 to be performed under the contract by nondistrict personnel.
- 31 (g) This section is to be administered in a manner that is
- 32 consistent with Section 35160 authorizing the governing board of
- 33 any school district to initiate and carry on any program or activity,
- 34 or to otherwise undertake any action in a manner that is not in
- 35 conflict with or inconsistent with the purposes for which school
- 36 districts are established.
- 37 (h) This section does not release a school district from the
- 38 obligation to retain authority, oversight, and control over its food
- 39 service program as otherwise required by federal law.

1 (i) This section applies to all school districts, including districts  
2 that have adopted the merit system. Notwithstanding subdivision  
3 (f), this section may not be implemented in a manner that conflicts  
4 with the merit system adopted by the school district, or that impairs  
5 preexisting contractual rights or obligations.

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

7 ~~88003.1.—(a) Notwithstanding any other provision of this~~  
8 ~~chapter, personal services contracting for all services currently or~~  
9 ~~customarily performed by classified school employees to achieve~~  
10 ~~cost savings is permissible, unless otherwise prohibited, when all~~  
11 ~~the following conditions are met:~~

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

15 ~~(A) In comparing costs, there shall be included the community~~  
16 ~~college district’s additional cost of providing the same service as~~  
17 ~~proposed by a contractor. These additional costs shall include the~~  
18 ~~salaries and benefits of additional staff that would be needed and~~  
19 ~~the cost of additional space, equipment, and materials needed to~~  
20 ~~perform the function.~~

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

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

34 ~~(2) Proposals to contract out work shall not be approved solely~~  
35 ~~on the basis that savings will result from lower contractor pay rates~~  
36 ~~or benefits. Proposals to contract out work shall be eligible for~~  
37 ~~approval if the contractors wages are at the industry’s level and~~  
38 ~~do not undercut community college district pay rates.~~

39 ~~(3) The contract does not cause the displacement of community~~  
40 ~~college district employees. The term “displacement” includes~~

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

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

12 (5) The amount of savings clearly justify the size and duration  
13 of the contracting agreement.

14 (6) The contract is awarded through a publicized, competitive  
15 bidding process.

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

20 (8) The potential for future economic risk to the community  
21 college district from potential contractor rate increases is minimal.

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

25 (10) The potential economic advantage of contracting is not  
26 outweighed by the public's interest in having a particular function  
27 performed directly by the community college district.

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

31 (1) The contract is for new community college district functions  
32 and the Legislature has specifically mandated or authorized the  
33 performance of the work by independent contractors.

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

39 (3) The services are incidental to a contract for the purchase or  
40 lease of real or personal property. Contracts under this criterion,

1 known as “service agreements,” shall include, but not be limited  
2 to, agreements to service or maintain office equipment or  
3 computers that are leased or rented.

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

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

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

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

33 (e) This section shall apply to all community colleges, including  
34 community college districts that have adopted the merit system.

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

1 SEC. 6. Section 88003.1 is added to the Education Code, to  
2 read:

3 88003.1. (a) Notwithstanding any provision of law to the  
4 contrary, a community college district may contract for any  
5 noninstructional services of any type, without any limitation, if  
6 the contract is awarded in accordance with the applicable provisions  
7 of the Public Contract Code, and the governing board of the  
8 community college district has determined, in its sole discretion,  
9 that the contract will provide a benefit for the community college  
10 district.

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

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

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

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

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

32 (e) This section is to be administered in a manner that is  
33 consistent with Section 70902 authorizing the governing board of  
34 any community college district to initiate and carry on any program  
35 or activity, or to otherwise undertake any action in a manner which  
36 is not in conflict with or inconsistent with the purposes for which  
37 community college districts are established.

38 (f) Sections 88021 to 88025, inclusive, and any other health  
39 criteria established by the community college district, are

1 applicable to all persons providing services under contracts entered  
2 into pursuant to this section.

3 (g) This section applies only to contracts entered into, renewed,  
4 or amended after January 1, 2010.

5 (h) This section applies to all community college districts,  
6 including, but not limited to, community college districts that have  
7 adopted the merit system. Notwithstanding subdivision (d), this  
8 section may not be implemented in a manner that conflicts with  
9 the merit system adopted by the community college district or that  
10 impairs preexisting contractual rights or obligations.

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

12 ~~88004.5. All contracts for management consulting services~~  
13 ~~relating to food service shall be governed by this section.~~

14 ~~(a) Notwithstanding Sections 88003, 88004, 88020.5, and 88076,~~  
15 ~~any community college district may enter into a contract for~~  
16 ~~management consulting services relating to food service for a term~~  
17 ~~not to exceed one year. Any renewal of that contract, or further~~  
18 ~~requests for proposals to provide food service management~~  
19 ~~consulting services, shall be considered on a year-to-year basis. A~~  
20 ~~contract for food service management consulting services shall~~  
21 ~~not cause or result in the elimination of any food service classified~~  
22 ~~personnel or position. A contract for food service management~~  
23 ~~consulting services shall not cause or result in any adverse effect~~  
24 ~~upon any food service classified personnel or position with respect~~  
25 ~~to wages, benefits, or other terms and conditions of employment.~~

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

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

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

1 SEC. 8. Section 88004.5 is added to the Education Code, to  
2 read:

3 88004.5. (a) Notwithstanding any other provision of law to  
4 the contrary, in furtherance of, and without limiting, the authority  
5 to enter into contracts pursuant to Section 88003.1, this section  
6 shall also govern all contracts entered into by a community college  
7 district for food service management services.

8 (b) A community college district may enter into a contract for  
9 food service management services for a mutually agreed upon  
10 term.

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

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

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

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

22 (3) Recordkeeping and inventory.

23 (4) Reimbursements, financial transactions, and the  
24 administration of working capital.

25 (5) Any and all other component services associated with the  
26 food service function traditionally provided by a community  
27 college district.

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

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

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

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

37 (f) This section is to be administered in a manner that is  
38 consistent with Section 70902 authorizing the governing board of  
39 any community college district to initiate and carry on any program  
40 or activity, or to otherwise undertake any action in a manner that

1 is not in conflict with or inconsistent with the purposes for which  
2 community college districts are established.

3 (g) This section applies to all community college districts,  
4 including districts that have adopted the merit system.  
5 Notwithstanding subdivision (e), this section may not be  
6 implemented in a manner that conflicts with the merit system  
7 adopted by the community college district, or that impairs  
8 preexisting contractual rights or obligations.

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

11 3562.3. (a) This chapter does not limit the authority, power,  
12 right, or ability, of the University of California, the Hastings  
13 College of the Law, and the California State University, to enter  
14 into contracts with third parties for any noninstructional services,  
15 regardless of whether those services were previously performed  
16 or could be performed by an employee of the University of  
17 California, the Hastings College of the Law, or the California State  
18 University.

19 (b) Notwithstanding Section 3562, for purposes of the University  
20 of California, the Hastings College of the Law, or the California  
21 State University, “scope of representation” shall not include a  
22 decision by the covered entity to contract out for noninstructional  
23 services.

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

27 SEC. 10. This act addresses the fiscal emergency declared by  
28 the Governor by proclamation on January 8, 2010, pursuant to  
29 subdivision (f) of Section 10 of Article IV of the California  
30 Constitution.

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