

Committee: Joint

Committee Review: Completed

Staff: Christine Wellons, Chief Legislative Attorney

Purpose: Final action – vote expected

AGENDA ITEM #2D September 16, 2025 Action

SUBJECT

Bill 22-25, Labor Peace Agreements – Hotel Development Projects

Lead Sponsors: Councilmember Fani-González, Council President Stewart, and Councilmember Katz

Co-Sponsors: Council Vice President Jawando and Councilmembers Mink, Luedtke, Glass, and Sayles

EXPECTED ATTENDEES

N/A

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

• The joint Economic Development (ECON) and Government Operations and Fiscal Policy (GO) Committee recommended (7-0) the enactment of Bill 22-25 with amendments.

DESCRIPTION/ISSUE

Bill 22-25 would:

- (1) require certain employers, as a condition of the County's economic participation in hotel development projects, to enter into labor peace agreements with labor organizations;
- (2) establish minimum requirements for labor peace agreements; and
- (3) generally amend the law regarding economic participation by the County in hotel development projects and labor peace agreements.

SUMMARY OF KEY DISCUSSION POINTS

- The joint Committee adopted amendments to Bill 22-25 to:
 - clarify the definition of "hotel projects" to which the bill's requirements apply;
 - o refine the standards used by the Chief Administrative Officer to determine when the County has a "proprietary interest" in a "hotel project"; and
 - make non-substantive clarifications to the bill.
- Councilmember Sayles asked Council staff to follow-up on several questions about Bill 22-25. The Councilmember's questions and staff's answers appear on page 7 of the Staff Report.
- At the request of the joint committee, the County Attorney submitted an opinion dated August 25, 2025, which clarifies the existing authority of the Executive to negotiate labor peace agreements. The opinion is at © 95.

This report contains:

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MEMORANDUM

September 11, 2025

TO: County Council

FROM: Christine Wellons, Chief Legislative Attorney

SUBJECT: Bill 22-25, Labor Peace Agreements – Hotel Development Projects

PURPOSE: Final action – roll call vote expected

Committee Recommendation:

The Government Operations and Fiscal Policy (GO) Committee and the Economic Development (ECON) Committee recommends (7-0) the enactment of Bill 22-25 with amendments.

Bill 22-25, Labor Peace Agreements – Hotel Development Projects, was introduced on June 17, 2025. The Lead Sponsors are Councilmember Fani-González, Council President Stewart, and Councilmember Katz. Co-Sponsors are Council Vice President Jawando and Councilmembers Mink, Luedtke, Glass, and Sayles. A public hearing on the bill occurred on July 8. At a joint committee worksession on July 24, the GO and ECON Committees (7-0) voted to recommend the enactment of the bill with amendments.

Bill 22-25 would:

- (1) require certain employers, as a condition of the County's economic participation in hotel development projects, to enter into labor peace agreements with labor organizations;
- (2) establish minimum requirements for labor peace agreements; and
- (3) generally amend the law regarding economic participation by the County in hotel development projects and labor peace agreements.

BACKGROUND

The County sometimes participates in, and may in the future participate in, hotel development projects, as a property owner, lessor, proprietor, lender, or guarantor, facing similar risks and liabilities as those faced by other business entities that participate in these ventures. In

these situations, the County has an ongoing proprietary interest in the development projects and must make prudent management decisions.

The purpose of Bill 22-25 is to establish a general requirement that, whenever the County has a proprietary interest in a hotel development project, the employers at the project must enter into labor peace agreements with unions. The purpose of the agreements is to avoid strikes, lock-outs, or other adverse economic actions that might affect the County's proprietary interests.

Other jurisdictions, including Baltimore City, have enacted legislation similar to Bill 22-25. See Baltimore City Code, Article 11 (at © 33). Prince George's County and the District of Columbia also have laws governing labor peace agreements. *See* Prince George's County Code § 10-292 (requiring labor peace agreements for certain real estate development in which the County has a proprietary interest); D.C. Code § 32-852 (requiring labor peace agreements for certain development projects in which the city has a "proprietary interest").

BILL SPECIFICS

The bill would define a hotel development project as any hotel or conference center located within the County. For each of these projects in which the County participates – through a lease, loan, financing, tax increment financing, underwriting, or guarantee – the Executive branch would have to determine whether the County has a "proprietary interest" in the project.

A proprietary interest generally would be present if – through a lease, loan, financing, tax increment financing, underwriting, or guarantee – the County is entitled to receive ongoing revenues from the project. A proprietary interest would not occur when the County's interest is regulatory (e.g., an interest in land use or taxation, except for tax increment financing).

If labor peace agreements are required under the bill, an employer on the project would be able to satisfy the requirements of the bill by: (1) entering into the agreements; (2) demonstrating that no labor organization requested an agreement; or (3) demonstrating that the labor organization insisted on terms of an agreement that are arbitrary and capricious.

To implement the bill's requirements, any contract, lease, loan, guarantee, or other written instrument between the County and the beneficiary of the County's economic participation in the hotel development project would be required to include provisions governing default, damages, or recission that the County considers appropriate to assure that the requirements of the bill are met.

The bill would apply prospectively. It would not apply to a bid or solicitation issued, a contract awarded, or a loan, guarantee, or other legally binding written instrument executed, prior to the effective date of this bill.

SUMMARY OF IMPACT STATEMENTS

Fiscal Impact. The Office of Management and Budget (OMB) found that Bill 22-25 "is expected to have a modest fiscal impact related to administrative responsibilities and contract

enforcement." However, unless the frequency of instances increases "[t]he affected departments anticipate being able to absorb and additional responsibilities with existing resources."

Economic Impact. "The Office of Legislative Oversight (OLO) anticipates that Bill 22-25 would have an indeterminate impact on economic conditions in the County, as measured by the Council's priority economic indicators. The Bill would require employers of hotel development projects, in which the County has a proprietary interest, to enter into labor peace agreements (LPAs) with unions. Based on a review of studies on the economic impacts of card check and neutrality agreements—provisions typically included in LPAs—and the broader impacts of unions, the requirement would likely have mixed economic outcomes for certain residents and private organizations."

Racial Equity and Social Justice Impact. The Office of Legislative Oversight (OLO) "anticipates Bill 22-25 will have a positive impact on racial equity and social justice (RESJ) in the County. Latinx community members could disproportionately benefit from decreasing barriers to organize unions in County-supported hotel development projects. The economic benefits of union formation could help reduce economic disparities experienced by Latinx community members in the County." Due to the anticipated positive impact, OLO does not offer any amendments related to racial equity for Bill 22-25

Climate Assessment. OLO "anticipates that Bill 22-25 will have a small, positive impact on the County's community climate resilience as labor peace agreements can promote job security, which can have a positive impact on community climate resilience." OLO caveats that Bill 22-25 does not make certain that "the proposed changes would lead to a collective bargaining agreement that would increase job security and stability for employers" and that "the proposed changes would only apply to hotel development projects where the County has a proprietary interest, so it would impact a small number of County employees."

SUMMARY OF PUBLIC HEARING

A public hearing for Bill 22-25 was held on July 8, 2025 where seven speakers testified. In addition to the public hearing, the Council also received written testimony both in support and opposition of Bill 22-25. Ken Hartman-Espada, representing the County Executive, testified regarding the bill, highlighting the County's commitment to fostering a fair and equitable workplace for all employees.

Arguments in support of the bill emphasized that the bill would protect interests in county development projects, as well as the rights of employees. Supporters highlight that similar labor peace agreements are common in other jurisdictions in the region.

Speakers in opposition of the bill expressed concerns about what they viewed as the broad nature of the language in the bill, specifically regarding the "expansive" definition of economic participation. Additionally, opponents expressed that the bill unfairly targets the hospitality industry even though the County partners with many different industries.

ISSUES FOR THE COMMITTEE'S CONSIDERATION

The Committee considered the following issues and adopted several amendments in connection with Bill 22-25.

1. <u>Definition of "Hotel Development Project"</u>

The Committee adopted the following amendment to clarify the definition of "hotel development project" under the bill:

<u>Hotel</u> [[<u>development</u>]] <u>project</u> [[or <u>project</u>]] <u>means</u> <u>the development, financing, construction, renovation, or operation of a hotel or conference center located within the County.</u>

2. <u>Discretion of the CAO to Determine when the County has a Proprietary Interest in a Project – When an Interest is Present</u>

The OCA had noted that, under the bill as originally drafted, the CAO would have broad discretion to determine whether the County has a proprietary interest in a particular project, thus triggering the requirement for a labor peace agreement. Council staff noted that the criteria for determining a proprietary interest are objective, with the exception of the standard under subparagraph (F), below.

(c) Determination of proprietary interest.

* * *

- (2) The Chief Administrative Officer must determine that the County has a proprietary interest in a hotel development project if:
 - (A) through a lease of real property that is owned by the County and used for the project, the County receives ongoing revenue, excluding government fees, tax revenue, assessment revenue, or similar fees and revenues, except for tax revenue under the circumstances specified in subparagraphs (C) and (D) of this paragraph;
 - (B) through a contract to manage or operate a hotel or conference center, situated on or in real property owned by the County, the County receives ongoing revenue, excluding government fees, tax revenue, assessment revenue, or similar fees and revenues, except for tax revenue under the circumstances specified in subparagraphs (C) and (D) of this paragraph;
 - ongoing revenues from the project, including incremental tax revenues generated by the project, are used to repay loans provided by the County to assist the development of the project;

- (D) ongoing revenues from the project, including incremental tax revenues generated by the project, are used to pay debt ser vice on bonds provided by the County to assist the development of the project;
- (E) the County has significant assets at risk because it has agreed to underwrite or guarantee the development of the project or loans related to the project; or
- (F) the County has a significant ongoing economic and nonregulatory interest that is at risk in the project's financial success and is likely to be adversely affected by labor-management conflict, except that no interest is considered economic and nonregulatory if it arises from the exercise of regulatory or police powers, such as taxation (except as set forth in subparagraphs (C) and (D) of this paragraph), zoning, or the issuance of permits or licenses.

* * *

After discussion, the Committee voted (7-0) to delete subparagraph (F), and to adopt the following amendments to subparagraphs (A) and (B).

Amend lines 85-99 to read as follows.

- (2) The Chief Administrative Officer must determine that the County has a proprietary interest in a hotel development project if:
 - (A) through a lease of real property that is owned by the County and used for the project, the County receives [[ongoing revenue]] operating profit based on the financial performance of the project, excluding government fees, tax revenue, assessment revenue, or similar fees and revenues, except for tax revenue under the circumstances specified in subparagraphs (C) and (D) of this paragraph;
 - (B) through a contract to manage or operate a hotel or conference center, situated on or in real property owned by the County, the County receives [[ongoing revenue]] operating profit based on the financial performance of the project, excluding government fees, tax revenue, assessment revenue, or similar fees and revenues, except for tax

revenue under the circumstances specified in subparagraphs (C) and (D) of this paragraph;

* * *

3. <u>Discretion of the CAO to Determine when the County Does Not Have a Proprietary Interest in a Project – When an Interest is Not Present</u>

OCA further noted that the CAO would have broad discretion, under subparagraph (B) of the following provision, to determine if the County lacks a proprietary interest in a project.

- (3) The Chief Administrative Officer must determine that the County does not have a proprietary interest in a hotel development project if the Chief Administrative Officer finds that:
 - (A) the present value of the County's proprietary interest is less than \$100,000; or
 - (B) the risk to the County's financial or other nonregulatory interest resulting from labor-management conflict is so minimal or speculative that a labor peace agreement would not support the County's proprietary interest in the project.

After discussion, the Committee decided (7-0) to retain the discretion under subparagraph (B), but to increase the dollar threshold under subparagraph (A) as follows.

Amend lines 119-127 as follows.

- (3) The Chief Administrative Officer must determine that the County does not have a proprietary interest in a hotel development project if the Chief Administrative Officer finds that:
 - (A) the present value of the County's proprietary interest is less than [[\$100,000]] \$1,000,000 annually; or
 - (B) the risk to the County's financial or other nonregulatory interest resulting from labor-management conflict is so minimal or speculative that a labor peace agreement would not support the County's proprietary interest in the project.

4. The Meaning of "Nonregulatory Interest"

OCA further noted that the term "nonregulatory interest" used in Sections 11B-91A(c)(2)(F) includes a clarification of what is **not** considered a nonregulatory interest. Under subparagraph (F), an interest must not be considered nonregulatory if it arises from the exercise of regulatory or police powers, such as taxation (except for TIF financing), zoning, or the issuance of permits or licenses.

The use of the term "nonregulatory interest" under 11B-91A(c)(3), however, does not include the same clarification that appears under subparagraph (F). To make the uses of the term "nonregulatory interest" parallel in the two subparagraphs, the Committee adopted (7-0) the following amendment.

Amend lines 119 through 127 to read as follows.

- (3) The Chief Administrative Officer must determine that the County does not have a proprietary interest in a hotel development project if the Chief Administrative Officer finds that:
 - (A) the present value of the County's proprietary interest is less than \$100,000; or
 - (B) the risk to the County's financial or other nonregulatory interest resulting from labor-management conflict is so minimal or speculative that a labor peace agreement would not support the County's proprietary interest in the project. No interest is considered economic and nonregulatory if it arises from the exercise of regulatory or police powers, such as taxation (except as set forth in subparagraphs (C) and (D) of paragraph (2) of this subsection), zoning, or the issuance of permits or licenses.

5. Follow-up Information

The office of Councilmember Sayles asked Council staff to address three follow-up questions regarding Bill 22-25. The questions, with answers by Council staff, are as follows:

Question 1: What jurisdictions that are comparable to Montgomery County have Labor Peace Agreements besides Baltimore, particularly in Virginia?

Answer: As noted during the joint Committee worksession, Prince George's County, Baltimore City, and the District of Columbia have laws requiring labor peace agreements when the jurisdictions have proprietary interests in certain development projects. Council staff have not identified any jurisdictions in Virginia requiring labor peace agreements by law. According to the website of UNITE HERE Local 25, the following hotels in Northern Virginia have union-represented employees:

- Doubletree Crystal City at National Airport (Arlington, VA)
- Embassy Suites Crystal City-National Airport (Arlington, VA)
- Hilton Crystal City at National Airport (Arlington, VA)
- Hilton McLean Tysons Corner (McLean, VA)

See DC Metro — UNITE HERE Local 25.

Question 2: Baltimore passed their LPA legislation years before the pandemic, when the hotel industry was more stable. Given the economic downturn that the hospitality industry is still recovering from, what economic impacts can we anticipate in response to the passage of this legislation?

Answer. The Office of Legislative Oversight (OLO) submitted an Economic Impact Statement (EIS) to explain the expected effects of Bill 22-25 on the local economy. The expected net impact is "indeterminant" – with potential increased wages expected for hotel workers, and potential increased costs expected for hotel employers. OLO explains:

The policy change would benefit some residents employed by affected hotel development projects. Requiring LPAs would increase the likelihood of hotel workers obtaining union representation. In turn, this would likely raise wages and household income for these workers, which would be especially significant given that hotel workers receive lower-than-average wages.

Certain unions would also benefit by increasing their membership and revenues, and some County-based businesses may experience revenue gains due to greater household spending.

Conversely, the Bill would likely negatively affect certain businesses involved in affected hotel development projects. A greater share of employees with union representation would likely increase operating expenses in the form of labor compensation. While higher union representation may improve labor productivity and reduce turnover and costs associated with labor disputes, it is probable that higher labor costs would outweigh these benefits and reduce business profits.

In addition, studies reviewed for this analysis do not indicate whether requiring LPAs would deter or encourage new hotel development or affect the industry's ability to compete with other markets. However, OLO notes that requiring LPAs for certain projects may increase business compliance costs related to labor regulations and, consequently, may negatively influence perceptions of the County's "business friendliness"—a priority emphasized in the Council's economic development platform.

Ultimately, OLO cannot anticipate the net effect of the policy change on overall local economic conditions due to several factors, such as uncertainty regarding the contents of

future LPAs and the number of firms/employees affected as well as conflicting findings regarding the economic impacts of LPAs and unions.

Question 3: Have businesses raised concerns about how LPAs like this have been implemented or enforced in other jurisdictions?

Answer. Yes, several local chambers of commerce, the Maryland Chamber of Commerce, and the Maryland Hotel and Lodging Association raised various concerns about Bill 22-25 in their public testimony. *See, e.g.*, © 21.

The U.S. Chamber of Commerce has released a *White Paper* claiming that labor peace agreements damage economic competition; the paper includes a discussion of labor peace requirements in various jurisdictions, including in San Francisco, New York, Maryland, Pittsburgh, Los Angeles, the District of Columbia, and Delaware. *See* © 55.

6. <u>Opinion of the County Attorney – Clarification of Existing Authority to Negotiate Labor Peace Agreements</u>

During the GO/ECON worksession on Bill 22-25, Committee members asked for clarification from the County Attorney about the authority of the County Executive to negotiate labor peace agreements under existing law. In an opinion dated August 25, 2025, the County Attorney clarified the Executive's existing authority. In summary, the Executive currently has the authority to negotiate such agreements, but the agreements are not mandated under County law. If enacted, Bill 22-25 will mandate the agreements in certain contexts when the County has a proprietary interest in a hotel project.

NEXT STEP: Roll call vote on whether to enact Bill 22-25 with amendments, as unanimously recommended by the joint GO-ECON Committee.

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Bill No	22-25		
Concerning	g: <u>Labor Peac</u>	e Agreemen	<u>ts –</u>
Hotel D	Development P	rojects	
Revised: _	7/24/2025	Draft No.	3
Introduced:	<u>June 17, 2</u>	2025	
Expires: _	Decembe	r 7, 2026	
Enacted: _			
Executive:			
Effective: _			
Sunset Dat	te:		
Ch	Laws of Mont	Co	

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmember Fani-González, Council President Stewart, and Councilmembers Katz

Co-Sponsors: Council Vice President Jawando, and Councilmembers Mink, Luedtke, Glass, and Sayles

AN ACT to:

- (1) require certain employers, as a condition of the County's economic participation in hotel development projects, to enter into labor peace agreements with labor organizations;
- (2) establish minimum requirements for labor peace agreements; and
- (3) generally amend the law regarding economic participation by the County in hotel development projects and labor peace agreements.

By amending

Chapter 11B, Contracts and Procurement Sections 11B-89, 11B-90, and 11B-91

By adding

Section 11B-91A

Boldface
Underlining
[Single boldface brackets]
Double underlining
[[Double boldface brackets]]

* * * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:

1	Sec. 1	1. Sections 11B-89, 11B-90, and 11B-91 are amended, and Section 11B-				
2	91A is adde	ed, as follows:				
3	11B-89. Pu	rpose.				
4	This	Article is intended to:				
5	<u>(a)</u>	prevent the interruption of services to County residents provided by				
6		private contractors due to concerted economic action or a lock-out during				
7		a labor dispute; and				
8	<u>(b)</u>	protect the County's proprietary interests against economic risks and				
9		delays associated with concerted economic action or lock-outs during a				
10		labor dispute.				
11	11B-90. De	finitions.				
12	In [th	is Section] Sections 11B-89 and 11B-91, the following words have the				
13	mean	ings indicated:				
14		* * *				
15	11B-91. La	bor Peace Agreement <u>— Residential Waste or Recycling Collection</u> .				
16		* * *				
17	<u>11B-91A.</u> <u>L</u>	<u> Labor Peace Agreement – Hotel Development.</u>				
18	<u>(a)</u>	<u>Definitions</u> . In this Section, the following terms have the meanings				
19		indicated.				
20	Economic participation means the participation of the County in a hotel					
21	[[development]] project through a lease, loan, financing, tax increment					
22	financing, underwriting, or guarantee.					
23		Employee means an individual whose primary place of work is at the site				
24		of a hotel [[development]] project and who is employed by an employer.				
25		Employer means any person who employs employees at the site of a hotel				
26		[[development]] project. Employer does not include a person:				

27	<u>(1)</u>	who employs fewer than the equivalent of 15 employees at a hotel
28		[[development]] project;
29	<u>(2)</u>	who has entered into [[1]] one or more agreements with [[1]] one
30		or more labor organizations regarding the employees at the hotel
31		[[development]] project, if the Chief Administrative Officer
32		determines that the agreement provides protection from the risks
33		of labor-management conflict that is at least equal to the protection
34		provided by the minimum terms of a labor peace agreement; or
35	<u>(3)</u>	whose ongoing economic performance and potential for labor-
36		management conflict at the site will not, in the determination of the
37		Chief Administrative Officer, substantially affect the County's
38		proprietary interest in the hotel [[development]] project.
39	<u>Hotel</u>	[[development]] project [[or project]] means the development,
40	financ	cing, construction, renovation, or operation of a hotel or conference
41	cente	r located within the County.
12	Labor	r organization means a labor organization as defined under the
43	<u>Natio</u>	nal Labor Management Relations Act, 29 U.S.C. §152(5), as
14	amen	<u>ded.</u>
45	Labor	r peace agreement means a written agreement that:
46	<u>(1)</u>	is enforceable between an employer and a labor organization under
1 7		the National Labor Management Relations Act, 29 U.S.C. §
48		185(a), as amended; and
19	<u>(2)</u>	contains, at a minimum, a provision prohibiting the labor
50		organization and its members from engaging in any picketing,
51		work stoppage, boycott, or other economic interference with the
52		employer's operations in which the County has a proprietary
53		interest, for the duration of that interest.

54	<u>(b)</u>	<u>Fina</u>	<u>lings.</u>
55		<u>(1)</u>	The County participates in, and may in the future participate in,
56			hotel [[development]] projects, as a property owner, lessor,
57			proprietor, lender, or guarantor, facing similar risks and liabilities
58			as those faced by other business entities that participate in these
59			ventures.
60		<u>(2)</u>	In these situations, the County:
61			(A) has an ongoing proprietary interest in the [[development]]
62			projects and a direct interest in their financial performance;
63			<u>and</u>
64			(B) must make prudent management decisions, similar to any
65			private business entity, to ensure efficient management of
66			its business concerns and to maximize benefits and
67			minimize risks.
68		<u>(3)</u>	One risk to the County's proprietary interests is the possibility of
69			labor-management conflict, which can result in delays, work
70			stoppages, picketing, strikes, consumer boycotts, increased costs,
71			reduced revenues, and other forms of adverse economic pressure.
72		<u>(4)</u>	The risks of labor-management conflict are heightened in the hotel
73			industry because of a documented history of labor-management
74			conflict in this industry and because tourism and conventions are
75			critical to the County's economy.
76		<u>(5)</u>	One way of reducing risks to the County's proprietary interests is
77			to require, as a condition of the County's economic participation
78			in a hotel [[development]] project, that employers participating in
79			the hotel project seek agreements with labor organizations in

80			which	h the labor organizations agree to forbear from adverse
81			econo	omic action against the employer's operations.
82	<u>(c)</u>	<u>Dete</u>	<u>rminati</u>	<u>ion of proprietary interest.</u>
83		<u>(1)</u>	If the	County participates economically in a hotel [[development]]
84			proje	ct, the Chief Administrative Officer must determine, under
85			parag	graphs and (2) and (3) of this subsection, whether the County
86			<u>has</u> <u>a</u>	proprietary interest in the hotel project.
87		<u>(2)</u>	The C	Chief Administrative Officer must determine that the County
88			<u>has</u> <u>a</u>	proprietary interest in a hotel [[development]] project if:
89			<u>(A)</u>	through a lease of real property that is owned by the County
90				and used for the hotel project, the County receives [[ongoing
91				revenue]] operating profit based on the financial
92				performance of the project, excluding government fees, tax
93				revenue, assessment revenue, or similar fees and revenues,
94				except for tax revenue under the circumstances specified in
95				subparagraphs (C) and (D) of this paragraph;
96			<u>(B)</u>	through a contract to manage or operate a hotel or
97				conference center, situated on or in real property owned by
98				the County, the County receives [[ongoing revenue]]
99				operating profit based on the financial performance of the
100				project, excluding government fees, tax revenue,
101				assessment revenue, or similar fees and revenues, except for
102				tax revenue under the circumstances specified in
103				subparagraphs (C) and (D) of this paragraph;
104			<u>(C)</u>	ongoing revenues from the hotel project, including
105				incremental tax revenues generated by the project, are used

106			to repay loans provided by the County to assist the
107			development of the hotel project;
108		<u>(D)</u>	ongoing revenues from the hotel project, including
109			incremental tax revenues generated by the hotel project, are
110			used to pay debt service on bonds provided by the County
111			to assist the development of the hotel project; or
112		<u>(E)</u>	the County has significant assets at risk because it has
113			agreed to underwrite or guarantee the development of the
114			hotel project or loans related to the hotel project[[; or
115		<u>(F)</u>	the County has a significant ongoing economic and
116			nonregulatory interest that is at risk in the hotel project's
117			financial success and is likely to be adversely affected by
118			labor-management conflict, except that no interest is
119			considered economic and nonregulatory if it arises from the
120			exercise of regulatory or police powers, such as taxation
121			(except as set forth in subparagraphs (C) and (D) of this
122			paragraph), zoning, or the issuance of permits or licenses]].
123	<u>(3)</u>	The C	Chief Administrative Officer must determine that the County
124		does	not have a proprietary interest in a hotel [[development]]
125		projec	et if the Chief Administrative Officer finds that:
126		<u>(A)</u>	the present value of the County's proprietary interest is less
127			than [[\$100,000]] \$1,000,000 annually; or
128		<u>(B)</u>	the risk to the County's financial or other nonregulatory
129			interest resulting from labor-management conflict is so
130			minimal or speculative that a labor peace agreement would
131			not support the County's proprietary interest in the project.
132			No interest is considered economic and nonregulatory if it

133			arises from the exercise of regulatory or police powers, such
134			as taxation (except as set forth in subparagraphs (C) and (D)
135			of paragraph (2) of this subsection), zoning, or the issuance
136			of permits or licenses.
137	<u>(d)</u>	Labor	r peace agreements required. If the Chief Administrative Officer
138		deten	mines that the County has a proprietary interest in a hotel
139		[[dev	elopment]] project under subsection (c), the County must require, as
140		a con	dition of its economic participation in the hotel project, that each
141		emplo	oyer on the hotel project, including each subcontractor or sublessee,
142		<u>enter</u>	into a labor peace agreement with each labor organization that
143		repres	sents, or seeks to represent, the employer's employees at the hotel
144		proje	<u>ct.</u>
145	<u>(e)</u>	<u>Imple</u>	ementation.
146		<u>(1)</u>	A contract, including a renewal, extension, or material amendment
147			to a contract, a lease, a loan, a guarantee, or another written
148			instrument between the County and the beneficiary of the County's
149			economic participation in a hotel [[development]] project must
150			include provisions governing default, damages, or recission that
151			the County considers appropriate to assure that the requirements of
152			this Section are met.
153		<u>(2)</u>	A request for proposals, invitation to bid, or similar document
154			issued by the County regarding a hotel [[development]] project
155			must include a reference to and summary of this Section.
156		<u>(3)</u>	Failure to include a reference or summary in a document under
157			paragraph (2) of this subsection does not exempt an employer
158			otherwise subject to the requirements of this Section.
159	<u>(f)</u>	<u>Comp</u>	<u>pliance.</u>

160	<u>(</u>	<u>l) lt a la</u>	abor peace agreement is required under subsection (d), each
161		emplo	oyer on the hotel project must execute a labor peace
162		agree	ment with a labor organization within 60 days after the later
163		<u>of:</u>	
164		<u>(A)</u>	receiving written notice from the County that agreements
165			are required under this Section; or
166		<u>(B)</u>	receiving a request for a labor peace agreement from a labor
167			organization that already represents or seeks to represent the
168			employees performing services on the hotel project.
169	<u>(2</u>	2) <u>The e</u>	mployer may satisfy the requirements under paragraph (1) of
170		<u>this</u> sı	ubsection by providing to the County:
171		<u>(A)</u>	copies of existing labor peace agreements that meet the
172			requirements of this Section for the hotel project;
173		<u>(B)</u>	documentation that no labor organization requested a labor
174			peace agreement for the hotel project; or
175		<u>(C)</u>	documentation from which the Chief Administrative
176			Officer finds that the labor organization insisted on terms in
177			the labor peace agreement that would be arbitrary and
178			capricious.
179	<u>(g)</u> <u>E</u>	<u>Inforcemen</u>	t. The County may include appropriate sanctions and
180	ro	emedies ag	ainst an employer for a violation of the requirements of this
181	<u>S</u>	ection in ar	ny contract, lease, loan, guarantee, or other written instrument
182	ro	elated to the	e hotel development.
183	Sec. 2.	Transition	. This Act must not apply to a bid or solicitation issued, a
184	contract award	ded, or a lo	oan, guarantee, or other legally binding written instrument
185	executed, prior	r to the effe	ective date of this Act.

Sec. 3. Existing <u>hotel</u> projects. Notwithstanding Section 2 of this Act, the County encourages employers on existing hotel [[development]] projects, in which the County has a proprietary interest, to enter into labor peace agreements with labor organizations representing, or seeking to represent, employees on the <u>hotel</u> projects.

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Climate Assessment

Office of Legislative Oversight

BILL 22-25: LABOR PEACE AGREEMENTS – HOTEL

DEVELOPMENT PROJECTS

SUMMARY

The Office of Legislative Oversight (OLO) anticipates Bill 22-25 will have a small, positive impact on the County's community climate resilience as labor peace agreements can promote job security, which can have a positive impact on community climate resilience. However, it is not guaranteed a union will form after a labor peace agreement is signed, so it is uncertain if the proposed changes would lead to a collective bargaining agreement that would increase job security and stability for employees. Further, the proposed changes only apply to hotel development projects where the County has a proprietary interest, so it would impact a small number of County employees.

BACKGROUND AND PURPOSE OF BILL 22-25

A labor peace agreement (LPA) is a contract between an employer and a labor union. In an LPA, an employer agrees to not interfere with a campaign to organize a union in the workplace. In exchange, a union agrees to not engage in picketing, strikes, or other activities that would disrupt the employer's operations. LPAs do not automatically lead to the formation of a union. Even with an LPA, a majority of workers must still choose to be represented by a union. After a union is formed and its leaders are elected, it can negotiate a collective bargaining agreement with the employer.¹

Occasionally, the County has a financial stake, or a proprietary interest, in hotel development projects. This happens when the County participates in a project as a property owner, lessor, proprietor, lender, or guarantor.² For example, the County is the leasehold owner of the land where the Montgomery County Conference Center and the Bethesda North Marriott Hotel are located. The County shares costs and revenues with Marriott International for the operation of both businesses.³

The purpose of Bill 22-25 is to require employers of hotel development projects to enter into LPAs with unions when the County has a proprietary interest in the project. The Bill would set guidelines for determining if the County has a proprietary interest that requires an LPA.⁴ If required, the LPA would need to contain a provision that prohibits the union from "any picketing, work stoppage, boycott, or other economic interference with the employer's operations."⁵ The Bill would allow an employer to satisfy the LPA requirement by providing copies of existing LPAs, documenting that no labor union requested an LPA, or documenting that the union "insisted on terms of an agreement that are arbitrary and capricious."⁶ If enacted, the LPA requirement would apply after the Bill's effective date.⁷

Bill 22-25 was introduced following recent calls from a local union for a consumer boycott of the Montgomery County Conference Center.⁸ The sponsors note the Bill is intended to minimize the County's financial risk by preventing similar labor disputes in County-supported hotel development projects in the future.⁹

The Council introduced Bill 22-25 on June 17, 2025.

METHODOLOGIES, ASSUMPTIONS, AND UNCERTAINTIES

Methodology. OLO reviewed literature on unions, collective bargaining agreements, and labor peace agreements (LPA) to assess their impact on job security and stability for unionized employees. OLO also reviewed literature on community climate resilience and how financial and human capital impact resilience.

Assumptions. OLO assumes the LPA will lead to an increase in job security and stability for employees belonging to a union in hotels where the County has a proprietary interest in.

Uncertainties. OLO is unable to ascertain the following: (1) How many jobs will be created from future hotel developments who would be required to enter into a LPA (2) How many unions will be created from the proposed LPA; and (3) How many employees would be represented by unions created from the proposed LPA.

UNIONS, COLLECTIVE BARGAINING AGREEMENTS, AND COMMUNITY RESILIENCE

Unions can lead to better pay, benefits, safer working conditions, and job stability for employees represented by unions. ¹⁰ Unions protect workers against wage theft and other workplace law violations. Researchers have found that higher average wages, lower labor market concentration, and a higher union coverage rate are all associated with fewer workplace violations. ¹¹ Further, the Economic Policy Institute found on average, the seventeen U.S. states that have the highest union densities:

- Have state minimum wages that are approximately 19% higher than the national average and 40% higher than states with low-union densities;
- Have median annual incomes that are \$6,000 higher than the national average; and
- Have an uninsured populations that is 4.5% lower compared to states with low-union densities.¹²

Labor peace agreements (LPA) are an agreement between a union and an employer where both sides agree to certain terms, such as unions agreeing not to strike and employers agreeing not to interfere with the formation of unions. The presence of a LPA does not necessarily mean a union will not form. However, LPAs help facilitate collective bargaining, which allows workers to negotiate for better wages, benefits, and safer working conditions. An employer where both sides agree to certain terms, such as union safer agreeing not to interfere with the

Labor peace agreement ordinances have passed in multiple jurisdictions including Washington D.C. and Baltimore, MD.¹⁵ The goals of these ordinances are to compel employers to "grant organizing concessions to a union, concessions they otherwise would be unlikely to make."¹⁶ Further, labor peace ordinances can avoid strikes or other adverse economic actions which might affect a local government's proprietary interests, such as the proposed legislation by the Montgomery County Council.¹⁷

Community climate resilience is measured by the ability to adapt and bounce back from an emergency or disaster, such as an extreme weather event, by both the community and individuals residing within the community. On the individual level, a stable income which can come from stable employment with benefits, allows individuals and households to save money and have cash on hand to withstand shocks from extreme weather events, such as property damage. As unions can allow workers to negotiate for better pay and benefits and provide stable employment, this can lead to individuals' ability to withstand shocks from extreme weather events.

ANTICIPATED IMPACTS

According to 2023 Costar data presented by Montgomery Planning, there were 2,351 employees across the County's 54 hotels.²⁰ This is a small percentage of the County's workforce, which was reported by the Maryland Department of Labor as 461,817 for the 4th quarter in 2024.²¹

Further, while LPAs can promote job security and better wages by facilitating the formation of unions and collective bargaining agreements, it is not guaranteed a union will form after a LPA is signed. Also, the proposed changes would only apply to hotel development projects where the County has a proprietary interest, so overall these changes would impact a small number of individuals employed in the County.

For these reasons, OLO anticipates the Bill would have a small, positive impact on the County's community climate resilience.

RECOMMENDED AMENDMENTS

The Climate Assessment Act requires OLO to offer recommendations, such as amendments or other measures to mitigate any anticipated negative climate impacts.²² OLO does not offer recommendations or amendments as Bill 22-25 is likely to have a small, positive impact on the County's contribution to addressing climate change, including the reduction and/or sequestration of greenhouse gas emissions, community resilience, and adaptative capacity.

CAVEATS

OLO notes two caveats to this climate assessment. First, predicting the impacts of legislation upon climate change is a challenging analytical endeavor due to data limitations, uncertainty, and the broad, global nature of climate change. Second, the analysis performed here is intended to inform the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

PURPOSE OF CLIMATE ASSESSMENTS

The purpose of the Climate Assessments is to evaluate the anticipated impact of legislation on the County's contribution to addressing climate change. These climate assessments will provide the Council with a more thorough understanding of the potential climate impacts and implications of proposed legislation, at the County level. The scope of the Climate Assessments is limited to the County's contribution to addressing climate change, specifically upon the County's contribution to greenhouse gas emissions and how actions suggested by legislation could help improve the County's adaptative capacity to climate change, and therefore, increase community resilience.

While co-benefits such as health and cost savings may be discussed, the focus is on how proposed County bills may impact GHG emissions and community resilience.

CONTRIBUTIONS

OLO staffer Kaitlyn Simmons drafted this assessment.

¹ "Labor Peace Agreements (LPA)," Labor and Employment Law Program, Cornell University School of Industrial and Labor Relations.

² Introduction Staff Report for Bill 22-25, Montgomery County Council, Introduced June 17, 2025, pg. 1.

³ "Marriott Conference Center Management Agreement Cost and Revenue Sharing Audit," Office of Internal Audit, Office of the County Executive, August 28, 2023.

⁴ Introduction Staff Report for Bill 22-25, pgs. 1-2.

⁵ Bill 22-25, Introduction Staff Report for Bill 22-25, pg. (3).

⁶ Introduction Staff Report for Bill 22-25, pg. 2.

⁷ Ibid.

⁸ Ginny Bixby, "Workers union pauses boycott of North Bethesda Marriot conference center," Bethesda Today, June 20, 2025.

⁹ "Councilmembers to Introduce Bill to Require Labor Peace Agreements on Hotel Development Projects with County Economic Participation," Press Releases, Montgomery County Council, June 12, 2025.

¹⁰ Banerjee, A., et. al., "Unions are not only good for workers, they're good for communities and democracy", Economic Policy Institute, December 15, 2021.

¹¹ "How Unions and Unionized Workplaces Advance the Mission of the Department of Labor", Department of Labor, Accessed 6/30/2025.

¹² Banerjee, A., et. al., "Unions are not only good for workers, they're good for communities and democracy", Economic Policy Institute, December 15, 2021.

¹³ Smith, E. T., Kirsch, K., and Rockwell, LLP., "Preemption of Worker-Retention and Labor-Peace Agreements at Airports", 2017.

¹⁴"Labor Peace Agreements: Local Government as Union Advocate", U.S. Chamber of Commerce, 2016.

¹⁵lbid..

¹⁶lbid..

¹⁷ Introduction Staff Report for Bill 22-25, Montgomery County Council, Introduced June 17, 2025.

¹⁸ Longstaff, P. H., et. al., "Building Resilient Communities: A Preliminary Framework for Assessment", Homeland Security Affairs Volume VI, No. 3, May 6, 2022.

¹⁹ Cafer, A., "A Framework to Build Resilience", Community Psychology - Society for Community Research and Action, Accessed 6/30/2025.

²⁰ "Montgomery County Hotel Market Study", Montgomery Planning, October 10, 2024.

²¹ "Montgomery County - Maryland's Quarterly Census of Employment and Wages", Maryland Department of Labor, Accessed 7/1/2025.

²² Bill 3-22, Legislative Branch – Climate Assessments – Required, Montgomery County Council, Effective date October 24, 2022



Bill 22-25

Labor Peace Agreements - Hotel Development Projects

Bill Summary

Bill 22-25 amends existing County procurement laws to expand the requirement for labor peace agreements (LPAs) beyond waste and recycling to include hotel development projects where the County has a proprietary interest. The bill: requires employers (including subcontractors) to enter into LPAs with labor organizations; defines "proprietary interest" broadly, including revenue from leases, loans, guarantees, and use of tax increment financing (TIF); and gives discretion to the Chief Administrative Officer (CAO) to determine whether an LPA is required based on County interest.

Fiscal Impact Summary

This bill is expected to have a modest fiscal impact related to administrative responsibilities and contract enforcement. While the bill may increase the workload in the Office of the County Executive, the Office of County Attorney, and the Office of Procurement - it is designed to protect the County's revenue by reducing disruptions. The affected departments anticipate being able to absorb any additional responsibilities within existing resources. However, if the frequency of instances increases, the impact may become measurable.

Fiscal Year	0	0	0	0	0	0	Total
Personnel Costs	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Operating Expenses	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Expenditures	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Revenues	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Impact	\$0	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00	0.00	0.00	

Fiscal Impact Analysis

- Developers may be less likely to seek County participation if LPAs are viewed as restrictive or burdensome, which could result in lost economic development opportunities or reduced public-private partnerships.
- Reluctance from developers could also become negotiation points and
 potentially increase costs to the County. For instance, if a workforce unionizes as
 a result of the bill's provisions or subsequent agreements, the County may be
 responsible for covering related costs.
- The bill creates a fiscal safeguard, by requiring LPAs, which allows the County
 to mitigate risk of financial loss due to strikes, boycotts, or other labor actions on
 hotel projects in which it has a financial stake.

Staff Impact

The Office of the County Executive, particularly the Chief Administrative Officer, must determine if a County interest qualifies as proprietary, whether existing labor agreements are equivalent to LPAs, and whether requested terms by a union are arbitrary and capricious. This could require additional staff support, legal analysis, or other potential labor expertise.



2025 | Montgomery County, MD page 1 of 2

Actuarial Analysis	The bill is not expected to impact retiree pension or group insurance costs.
Information Technology Impact	The bill is not expected to impact the County Information Technology (IT) or Enterprise Resource Planning (ERP) systems.
Other Information	
Later actions that may impact revenue or expenditures if future spending is projected	The bill does not authorize future spending.
Contributors	Ken Hartman, Assistant Chief Administrative Officer, Office of the County Executive Mahnoor Anjum, Fiscal and Policy Analyst, Office of Management and Budget Julie Knight, Office of Management and Budget



2025 | Montgomery County, MD page 2 of 2

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

BILL 22-25: LABOR PEACE AGREEMENTS — HOTEL DEVELOPMENT PROJECTS

SUMMARY

The Office of Legislative Oversight (OLO) anticipates Bill 22-25 will have a positive impact on racial equity and social justice (RESJ) in the County. Latinx community members could disproportionately benefit from decreasing barriers to organize unions in County-supported hotel development projects. The economic benefits of union formation could help reduce economic disparities experienced by Latinx community members in the County.

PURPOSE OF RESJ IMPACT STATEMENTS

RESJ impact statements (RESJIS) evaluate the anticipated impact of legislation on racial equity and social justice in the County. RESJ is a **process** that focuses on centering the needs, leadership, and power of Black, Indigenous, and other People of Color (BIPOC) and communities with low incomes. RESJ is also a **goal** of eliminating racial and social inequities. Applying a RESJ lens is important to achieve RESJ.¹ This involves seeing, thinking, and working differently to address the racial and social inequities that cause racial and social disparities.²

PURPOSE OF BILL 22-25

A labor peace agreement (LPA) is a contract between an employer and a labor union. In an LPA, an employer agrees to not interfere with a campaign to organize a union in the workplace. In exchange, a union agrees to not engage in picketing, strikes, or other activities that would disrupt the employer's operations. LPAs do not automatically lead to the formation of a union. Even with an LPA, a majority of workers must still choose to be represented by a union. After a union is formed and its leaders are elected, it can negotiate a collective bargaining agreement with the employer.³

Occasionally, the County has a financial stake, or a proprietary interest, in hotel development projects. This happens when the County participates in a project as a property owner, lessor, proprietor, lender, or guarantor. For example, the County is the leasehold owner of the land where the Montgomery County Conference Center and Bethesda North Marriott Hotel are located. The County shares costs and revenues with Marriott International for the operation of both businesses.

The purpose of Bill 22-25 is to require employers of hotel development projects to enter into LPAs with unions when the County has a proprietary interest in the project. The Bill would set guidelines for determining if the County has a proprietary interest that requires an LPA.⁶ If required, the LPA would need to contain a provision that prohibits the union from "any picketing, work stoppage, boycott, or other economic interference with the employer's operations." An employer could satisfy the LPA requirement by providing copies of existing LPAs, documenting that no labor union requested an LPA, or documenting that the union "insisted on terms of an agreement that are arbitrary and capricious." If enacted, the LPA requirement for County-supported hotel development projects would apply after the Bill's effective date.⁹

Bill 22-25 was introduced following recent calls from a local union for a consumer boycott of the Montgomery County Conference Center.¹⁰ The sponsors note the Bill is intended to minimize the County's financial risk by preventing similar labor disputes in County-supported hotel development projects in the future.¹¹

RESJ Impact Statement

Bill 22-25

The Council introduced Bill 22-25 on June 17, 2025.

ANTICIPATED RESJ IMPACTS

To consider the anticipated impact of Bill 22-25 on RESJ in the County, OLO recommends the consideration of two related questions:

- Who would primarily benefit or be burdened by this bill?
- What racial and social inequities could passage of this bill weaken or strengthen?

OLO identified the following groups who would be impacted by Bill 22-25:

- Employees of County-supported hotel development projects would benefit from having fewer barriers to organize labor unions that could economically benefit them. Research suggests union membership is associated with increases in wages, access to benefits, and wealth for union members.¹²
 - As shown in Table A (Appendix), Latinx community members are more likely to work in the arts, entertainment, and recreation, and accommodation and food services industry that employs hotel workers. Black community members are equally as likely to be employed in this industry, while White and Asian community members are slightly less likely. Of note, because of economic inequities like occupational segregation and the racial wealth gap,¹³ Black and Latinx families in the County have the lowest median incomes and experience poverty at high rates (Table B, Appendix).
- Employers of County-supported hotel development projects would benefit from decreased disruptions to business operations from labor disputes over union formation. However, these benefits could be offset by potential increases to labor costs (e.g., from increases to wages, insurance benefits, paid time off, etc.) to fulfill collective bargaining agreements after a union is formed. Nonetheless, assuming that corporate employers like Marriott International are most likely to be subject to this Bill, these costs would likely be negligible compared to the overall scale of their financial operations.¹⁴
 - Corporate entities like Marriott International are typically owned by shareholders via publicly traded stocks. Therefore, their ownership is not identifiable by race and ethnicity. However, national data suggests that White families are up to two times more likely to own stocks than Black and Latinx families. ¹⁵ Therefore, to the extent that this Bill impacts a corporate employer's financial standing, White community members would likely be more affected than Black and Latinx community members.
- Community members at large would benefit from improving the stability of revenue from County-supported hotel development projects by minimizing disruptions from labor disputes over union formation. However, after a union is formed, increased labor costs from collective bargaining could decrease the County's revenue from this source.
 - Most revenue from hotel development projects like the Montgomery County Conference Center are deposited in the County's general fund. ¹⁶ The general fund supports all County programs and services. Thus, OLO anticipates that all community members would proportionately be affected by changes to revenue from hotel development projects by race and ethnicity.

Overall, OLO anticipates Bill 22-25 will have a positive impact on RESJ in the County. Latinx community members could disproportionately benefit from decreasing barriers to organize unions in County-supported hotel development projects.

RESJ Impact Statement

Bill 22-25

Further, the economic benefits of union formation could help reduce economic disparities experienced by Latinx community members in the County.

RECOMMENDED AMENDMENTS

The Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements.¹⁷ OLO anticipates Bill 22-25 will have a positive impact on RESJ in the County. As such, OLO does not offer recommended amendments.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

APPENDIX

Table A. Share of Community Members Employed in Arts, Entertainment, and Recreation, and Accommodation and Food Services Industry by Race and Ethnicity, Montgomery County

Race or ethnicity ¹⁸	Share of Community Members Employed in Industry
Asian	7.7
Black	8.1
White	6.2
Latinx	11.8
County	8.0

Source: Table S0201, 2023 American Community Survey 1-Year Estimates, Census Bureau.

Table B. Median Household Income and Poverty Rates by Race and Ethnicity, Montgomery County

Race or ethnicity	Median Income	Percent Below Poverty Level
Asian	\$144,493	6.0
Black	\$89,362	11.4
Native American	\$105,952	9.1
Pacific Islander	\$142,589	10.9
White	\$159,895	4.0
Latinx	\$94,619	10.7
County	\$128,733	7.1

Source: Table S1903 and Table S1701, 2023 American Community Survey 5-Year Estimates, Census Bureau.

RESJ Impact Statement

Bill 22-25

¹ Definition of racial equity and social justice adopted from <u>Marlysa Gamblin et al.</u>, "Applying Racial Equity to U.S. Federal Nutrition <u>Programs</u>," <u>Bread for the World</u> and <u>Racial Equity Tools</u>.

² Ibid.

³ "Labor Peace Agreements (LPA)," Labor and Employment Law Program, Cornell University School of Industrial and Labor Relations.

⁴ Introduction Staff Report for Bill 22-25, Montgomery County Council, Introduced June 17, 2025, pg. 1.

⁵ "Marriott Conference Center Management Agreement Cost and Revenue Sharing Audit," Office of Internal Audit, Office of the County Executive, August 28, 2023.

⁶ Introduction Staff Report for Bill 22-25, pgs. 1-2.

⁷ Bill 22-25, Introduction Staff Report for Bill 22-25, pg. (3).

⁸ Introduction Staff Report for Bill 22-25, pg. 2.

⁹ Ibid.

¹⁰ Ginny Bixby, "Workers union pauses boycott of North Bethesda Marriot conference center," Bethesda Today, June 20, 2025.

[&]quot;Councilmembers to Introduce Bill to Require Labor Peace Agreements on Hotel Development Projects with County Economic Participation," Press Releases, Montgomery County Council, June 12, 2025.

¹² Aurelia Glass and David Madland, "How Unions Are Crucial for Building Working-Class Economic Power," Center for American Progress, June 21, 2023.

¹³ Danyelle Solomon, et al., "Systematic Inequality and Economic Opportunity," Center for American Progress, August 7, 2019.

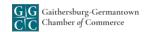
¹⁴ For example, in the fourth quarter of 2024, Marriott International reported an operating income of \$752 million. Refer to <u>"Marriott International, Inc. (Nasdaq: MAR) today reported fourth quarter full year 2024 results," Marriot International, February 11, 2025.</u>

¹⁵ <u>Drew Desilver, "A booming U.S. stock market doesn't benefit all racial and ethnic groups equally," Pew Research Center, March 6, 2024.</u>

¹⁶ Memo from Council IT Adviser to Economic Development Committee, "FY24 Operating Budget: Conference Center Non-Departmental Account (NDA)," Montgomery County Council, April 26, 2023, pg. 3.

¹⁷ <u>Bill 27-19</u>, <u>Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established, Montgomery County Council.</u>

¹⁸ For Tables A and B, race is inclusive of Latinx origin. Estimates for Native American and Pacific Islander community members are not available for all data points.











Bill 22-25, Labor Peace Agreements - Hotel Development Projects Montgomery County Council July 8, 2025 Oppose

As a united coalition of business organizations, we appreciate the opportunity to provide input on Bill 22-25, Labor Peace Agreements - Hotel Development Projects. We respectfully urge the Council to vote unfavorably on this legislation as currently drafted, which would require labor peace agreements (LPAs) as a condition of Montgomery County's economic participation in a hotel development project. Overall, our primary concern lies with the overly broad language in the bill and its implications for the economic landscape of Montgomery County.

While we advocate for the defeat of this bill as drafted, we support fair labor practices and are open to engaging in constructive dialogue with Councilmembers regarding alternative measures such as delayed implementation, a sunset provision, and a more narrowly tailored scope. A balanced approach is essential that upholds workers' rights while fostering economic growth.

Although we recognize the intent to promote labor stability and protect public investments, the bill in its current form raises significant concerns. Its overly broad scope could negatively impact local businesses and limit employee choice in the workplace. Notably, the bill seeks to alter agreements that both sides negotiated in good faith, which undermines trust and predictability in the County's business environment.

The bill's expansive definition of "economic participation" would apply even in cases where the County's involvement is minimal, indirect, or passive, such as through ground leases, tax increment financing, or limited loan guarantees. This overreach introduces regulatory uncertainty into standard development practices and risks deterring future investment. If enacted, Montgomery County would become an outlier among regional jurisdictions, weakening its competitiveness in attracting public-private partnerships that drive sustainable economic development.

While the bill does not explicitly mandate unionization, it effectively requires private employers to engage with third-party labor organizations as a condition of receiving County support. In practice, LPAs often include provisions that bypass the confidential, government-supervised election process established under federal law, instead relying on card check procedures. This undermines employee privacy and limits their ability to make informed, independent decisions about union representation.

Moreover, this initiative does not appear to be driven by local employees and seeks to solve a problem that does not exist. The bill pressures employers to enter into LPAs even in the absence of union activity, potentially violating federal labor law and inviting costly legal challenges under the National Labor Relations Act (NLRA).

Montgomery County's hospitality sector is a vital engine of tourism, tax revenue, job creation, and economic vitality. With two international hotel chains headquartered here and the Bethesda North Marriott serving as the County's only conference center, the hospitality industry is a strategic economic pillar. The Montgomery

County Economic Development Corporation (MCEDC) in its FY2024 Strategic Plan recognized the hospitality sector as an area of focus and targeted industry along with life sciences, technology, nonprofits, real estate, and entrepreneurship.

Thank you for your time and consideration. We look forward to working collaboratively on thoughtful, balanced policies that reflect the County's values while maintaining a stable, business-friendly environment that encourages investment and growth.

Angela Franco
President & CEO
Montgomery County Chamber of Commerce

Stephanie Hesling President & CEO Greater Silver Spring Chamber of Commerce

Allie Williams
President & CEO
Greater Bethesda Chamber of Commerce

Marji Graf
President & CEO
Greater Rockville Chamber of Commerce

Paula Ross
President & CEO
Gaithersburg-Germantown Chamber of Commerce

TESTIMONY ON BELHALF OF COUNTY EXECTUVIE ELRICH

regarding

Bill 22-25, Labor Peace Agreements – Hotel Development Projects

Dear President Stewart and members of the Council:

For the record, my name is Ken Hartman-Espada, Assistant Chief Administrative Officer. Thank you for this opportunity to testify on behalf of the County Executive on the matter before you.

Without question, the County Executive and County Council are committed to fostering a fair and equitable workplace for all employees, and as leaders firmly support the right of workers to organize and advocate for better wages, benefits, and working conditions. The County Executive supports Bill 22-25 to establish that future contractual relationships with the County for hotels and conference centers must include a Labor Peace agreement.

I led the County team that negotiated the updated management agreement with Marriott for the continued operation of the Montgomery County Conference Center. The negotiated agreement was the best contract for all parties. We entered the negotiations with a list of priorities, including unionization language, and we achieved most of our original goals.

Through the negotiations, the annual revenue the County receives from the Conference Center doubled to \$1 million/year and will increase to \$1.25 million after five years. County Days increased from six to eight days a year with a 20% discount for food and beverage. We strengthened our position on the management committee; clarified property interests; and improved partnerships with VisitMontgomery.

Furthermore, the County Executive directed us to ensure that employees' rights under the National Labor Relations Act (NLRA) were recognized and respected in the event of unionization. The management agreement could not include a Labor Peace Agreement. The only contracts covered in County law are contracts to provide residential solid waste, recycling, and yard waste collection.

But we made progress. Unlike the previous agreement, the new agreement includes language requiring the operator to adhere to Federal labor laws should employees wish to pursue collective bargaining. And we reached accommodation that in the event of unionization, there would be open dialogue with the County, and that the County would share the economic costs.

It's important to note here that the management agreement only applies to the Conference Center, the hotel building is owned by a third party which has a long-term ground lease. The owner in turn has an agreement with Marriott to manage the hotel.

We understand that a thriving workplace is key to the success of the Conference Center and to the economic well-being of Montgomery County. The County Executive has engaged with UNITE HERE Local 25 and Marriott to ensure that our commitment to workers' rights is upheld.

The County Executive will continue to sustain dialogue to work towards a resolution of this situation and stand with workers should they seek to organize.



7750 Woodmont Avenue Bethesda, MD 20814

Montgomery County Council Council Office Building 100 Maryland Avenue Rockville, MD 20850

Dear President Stewart and members of the Montgomery County Council,

Marriot International was founded locally in 1927 and has called Montgomery County our home for 70 years. For the past two decades, we've had the privilege of managing the Conference Center in North Bethesda—a venue that has welcomed countless guests, employed hundreds of associates, and served as the site of many important community, civic, and business events. We value our partnership with the County in operating this facility and are especially proud of the dedicated associates who work there, many of whom have had careers with Marriott that span more than a decade.

As a company that has chosen to locate and grow our business in Montgomery County, we've seen firsthand how hospitality investments create local jobs, generate essential tax revenue, and help sustain a vibrant and inclusive economy. In addition to our corporate headquarters, Marriott's hotel portfolio in the County now includes nearly 4,000 guest rooms, reflecting our deep and ongoing commitment to this community. From this perspective, we advocate for policies that support continued investment and development in the hospitality sector, which in turn creates opportunities for associates and ancillary businesses.

As one of the largest private sector employers in the state, we strive every day to act in a way that reflects positively on our home county. Marriott employs thousands of associates across Maryland, and over 725,000 associates wear the Marriott name badge at nearly 9,500 hotels globally. Our efforts as a top employer have been widely recognized both locally and nationally, with the company ranking on the "100 Best Companies to Work For List" presented by Great Place to Work and Fortune for the 28th consecutive year, achieving #8 in 2025. We have great appreciation for our associates, and we are fully committed to promoting workplace environments that are grounded in mutual respect, fairness, and opportunity.

We recognize that today's hearing marks the beginning of the Council's deliberations on this legislation. We respectfully urge the Council to engage in dialogue with all stakeholders to ensure that any final policy is balanced and aligned with the County's broader economic and workforce goals.

Thank you for the opportunity to provide this testimony. We look forward to continuing this important conversation.

Sincerely,

Travis Cutler Vice President, US Public Policy Marriott International



Via Electronic Mail

July 8, 2025

The Honorable Kate Stewart President, Montgomery County Council 100 Maryland Avenue Rockville, MD 20850 The Honorable Natali Fani-González Member, Montgomery County Council 100 Maryland Avenue Rockville, MD 20850

Dear President Stewart and Councilwoman Fani- González:

Founded in 1968, the Maryland Chamber of Commerce ("Chamber") is the leading voice for business in Maryland. We are a statewide coalition of more than 7,000 members working to develop and promote strong public policy that ensures sustained economic growth and opportunity for Maryland businesses, employees, and families.

The Chamber opposes Council Bill 22-25 ("CB 22-25"), which onerously requires employers involved in hotel development projects to enter into labor peace agreements ("LPAs") with each labor organization that represents, or seeks to represent, the employer's employees at the project. CB 22-25, Pg. 6, Lines 133-134. If enacted, CB 22-25's overly broad scope and rigid requirements would discourage development, limit job growth, and further reduce Maryland's competitiveness with neighboring jurisdictions.

I. Unbalanced Regulatory Framework

CB 22-25 creates an unbalanced regulatory framework and interferes with standard labor negotiation practices by solely burdening employers with producing an LPA as a prerequisite to participating in County involved hotel development projects. Moreover, CB 22-25 would establish an arbitrary 60-day LPA deadline that, if not met, would unduly prohibit employers from participating in the project and subject employers to vague enforcement provisions. To be clear, CB 22-25's unbalanced regulatory framework and arbitrary LPA deadline will create project delays, general additional costs, and ultimately reduce investment, development, and job creation in Maryland.

Maryland's economy benefits from sound regulatory frameworks that clearly define expectations, foster compliance, and promote economic growth. CB 22-25 will subject employers to rounds of LPA negotiations from each labor organization that seeks to represent their employees, subject those LPA negotiations to arbitrary and overly expeditious timeframes, and leave employers open to broad enforcement mechanisms. For example, CB 22-25 authorizes the County to include any "...appropriate sanctions and remedies against an employer for a violation of the requirements of [CB 22-25] in any contract, lease, loan,



guarantee, or other written instrument related to the hotel development." CB 22-25, Pg. 8, Lines 168-171.

As a result of the unbalanced regulatory framework created by CB 22-25, any employer who works in partnership with the County on a covered project will be left in a precarious situation – subject to rounds of overly expedited LPA negotiations from any and all labor organizations that need only seek to represent their employees and subject to any sanctions deemed appropriate by the County if the employer does not enter the LPAs.

II. Overly Broad and Vague Application

CB 22-25 includes exceptionally vague criteria that will further complicate and delay development efforts in the County. For example, CB 22-25 would force the County's Chief Administrative Officer to require LPAs for hotel development projects when, "the County has a significant ongoing economic and nonregulatory interest that is at risk in the project's financial success and is likely to be adversely affected by labor-management conflict..." CB 22-25, Pg. 6, Lines 111-118. As a result, employers will be left to guess whether the County's Chief Administrative Officer will determine the County's involvement in a project is "significant" enough to warrant an LPA requirement, which would subsequently trigger a requirement for employers to enter LPAs with any and all labor organizations that seek to represent their employees. CB 22-25, Pg. 6, Lines 133-134.

In addition to vague criteria, CB 22-25 includes overly broad definitions of terms, like "economic participation," that will result in application to development projects where the County has no operational control or involvement in employment decisions. Therefore, CB 22-25 extends beyond just County development projects and injects LPA requirements into projects that include exceptionally limited County involvement. As a result, CB 22-25's overreach will make the County an outlier among regional jurisdictions, disincentivize investment, and reduce economic opportunity in the State of Maryland.

III. Potential Federal Infringement

The Chamber is aware that jurisdictions like Baltimore City and Prince George's County have enacted statutes that are similar in title to CB 22-25. However, CB 22-25 more broadly defines county involvement and would include a wider scope of projects, partnerships, and arrangements than laws in other jurisdictions. Additionally, unlike other jurisdictions, CB 22-25 would apply to wider array of existing projects due to language that incorporates express application to amended, renewed, and extended projects. CB 22-25, Pg. 7, Lines 136-142. Finally, CB 22-25 more aggressively regulates LPAs through rigid timelines and limited exceptions, which would materially infringe upon an employer's ability to negotiate.



To be clear, federal labor law ensures both employees and employers can engage freely, lawfully, and transparently in the organizing process. However, LPAs generally limit an employer's ability to communicate, including restricting an employer from providing information to employees regarding union representation at the request of employees. As a result, CB 22-25 may restrict the federally protected rights of employers to communicate with employees and infringe upon additional federal protections enjoyed by both employers and employees.

IV. Conclusion

Maryland needs more investment, business creation, and job growth. Mandating LPAs as a precondition to participate in County projects further burdens employers who are already complying with complex financing, zoning, and labor requirements established under federal, state, and county law. As such, CB 22-25's burdensome requirements will drive investment and development away from Maryland and result in less economic opportunity for residents. For these reasons, the Chamber respectfully opposes CB 22-25.

Sincerely,

Mary Kane

President & CEO

Maryland Chamber of Commerce



July 7, 2025

The Montgomery County Council Council Office Building 100 Maryland Ave. Rockville, MD 20850

Re: Testimony - Bill 22-25 - Labor Peace Agreements - Hotel Development Projects

Dear President Stewart, Vice President Jawando and Honorable Members of the Council:

On behalf of the Maryland Hotel and Lodging Association, which represents hotel owners, operators, and hospitality professionals across the state, I write to express opposition to Bill 22-25, which would mandate labor peace agreements (LPAs) for hotel development projects involving economic participation by Montgomery County.

Our members support constructive labor relations and share the County's interest in ensuring the long-term success of publicly supported development. However, we believe this bill — as drafted — is overly broad, one-sided, and unfairly singles out the hospitality industry in a way that risks economic harm to hotels, workers, and the region's competitiveness.

Bill 22-25 applies exclusively to hotel and conference center development projects, even though the County partners with private entities across a wide range of industries. This selective approach sends a troubling signal that hotel businesses are being treated differently from all other private sector partners, despite being one of the hardest-hit industries during the pandemic and one of the most active in rehiring and rebuilding local employment.

The expansive scope of the bill will impose new obligations on projects with minimal County involvement, creating added complexity for developers, lenders, and operators. The result will have a chilling effect on future investment in hospitality and tourism-related projects where hotels often serve as anchors in larger mixed-use developments.

In the hospitality industry, LPAs restrict employer communication, limiting their ability to provide factual information - even in response to direct questions from employees. Such constraints not only interfere with employers' federally protected rights under the National Labor Relations Act, but also deny employees access to balanced information. When one side of an issue is silenced by law or policy, it creates an uneven environment that can lead to decisions made without full context or understanding.

Page

Bill 22-25 provides no protection for employers who engage in good faith and cannot finalize an agreement due to unreasonable demands. The lack of employer safe harbor is



problematic and could unfairly penalize hotel operators navigating complex contracts or multi-party development agreements.

Neighboring jurisdictions have not adopted comparable mandates. If Montgomery County adopts this measure as written, it will become an outlier in hospitality development policy, making it harder to attract new hotel brands, destination infrastructure, and long-term economic development opportunities.

We urge the Council to carefully consider the long-term consequences of this policy. We appreciate your consideration of these issues and welcome further dialogue.

Respectfully submitted,

Amy W. Rohrer President & CEO

Bill 22-25 Labor Peace Testimony, July 8, 2025

Gordie Brenne, Treasurer Montgomery County Taxpayers League

I'm a former Marriott Controller, but speak only for the Taxpayers League. We want more commercial economic development to shift the burden of supporting our increasingly expensive county government off resident's shoulders, and create more jobs. Labor Peace is an expensive, non-competitive distraction.

There are many hotels in the county that offer competitive conference services without the encumbrance of a labor peace agreement. Why then does the county own a conference center? Given the county's tight capital budget, is this the most cost-effective use of taxpayer money? Does the County know more about how to use a labor peace agreement to implement best practices and cost controls than Marriott? Are taxpayers unwittingly paying conference center capital costs which subsidizes non-county customers who only pay enough to offset Marriott operating costs?

Instead of this bill, sell the conference center to the highest bidder, and use the proceeds to pay down county debt. The new owner will **pay property taxes**, and increase utilization of the asset and the commercial tax base.

Governments and businesses outsource services to implement best practices, and improve cost controls so that they can focus on their core mission. Undermining a business partner's management role in labor negotiations reduces the partner's ability to deliver cost-effective services by adding work rules that will constrain best practices. Service employee union work rule standards can even reduce the number of employees a contractor can profitably hire. Labor peace contract terms produce the same outcomes as requiring businesses to hire only union labor: higher costs, and work rule constraints on performance.

It has been said that the Labor Peace bill is "clearly" needed to avoid disruption from labor strikes, picketing, and boycotts. But this is avoidable if management is free to offer competitive agreements that satisfy owners, suppliers and employees. Being "neutral" eliminates this management opportunity for balanced solutions.

Without productivity increases, a labor peace agreement will result in higher labor costs. Why should taxpayers subsidize conference center employees when there's a competitive market for this service? Similar disregard for productivity is why policy makers have failed to update the 2011 competitive salary survey to justify above market pay raises for county employees. Labor peace with the teacher's union is why we've had years of mediocre school proficiency results while now paying teachers an average of \$107,147 for 10 months of work. Labor peace is why County taxpayers are now paying 10% annual property tax increases, while our closest

competitors in Fairfax and Howard counties experience better economic development results, and offset soaring property assessment increases by decreasing property tax rates, or reducing costs to hold the line on taxes.

Labor peace is not a taxpayer priority, but economic development is.

City of Baltimore Law Library / Baltimore City Code / Article 11 Labor and Employment / Division II Miscellaneous Regulations / Subtitle 13 Labor Peace Agreements for Hotel Projects

Subtitle 13 Labor Peace Agreements for Hotel Projects

§ 13-1. Definitions.

(a) In general.

In this subtitle, the following terms have the meanings indicated.

(b) Contract.

"Contract" includes, but is not limited to, a lease, management agreement, service agreement, loan, bond, guarantee, or other similar agreement to which the City is a party.

- (c) Employer.
- (1) "Employer" means any person who employs individuals at the site of a hotel development project.
 - (2) "Employer" does not include any person:
- (i) who employs fewer than the equivalent of 15 full-time or part-time employees at a hotel development project;
- (ii) who has entered into 1 or more agreements with 1 or more labor organizations regarding the employees at the hotel development project who are, or are likely to be, the subject of union organizing, if the City determines that the agreement provides protection from the risks of labor-management conflict that is at least equal to the protection provided by the minimum terms of a labor peace agreement; or
- (iii) whose ongoing economic performance and potential for labor-management conflict at the site will not, in the City's determination, substantially affect the City's proprietary interest in the hotel development project.

(d) Labor organization.

"Labor organization" means an organization, agency, or employee- representation committee or plan:

- (1) in which employees participate; and
- (2) 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.
 - (e) {Repealed}

(Ord. 22-125; Ord. 07-578.)

Editor's Notes

For the standard definition of "person", see City General Provisions Article, § 1-107.

§ 13-2. Findings and declarations.

(a) City's risks and liabilities.

In the course of managing real property that it owns or otherwise in carrying out its functions in the public interest, the City participates in developments, as a property owner, lessor, proprietor, lender, or guarantor, facing similar risks and liabilities as those faced by other business entities that participate in these ventures.

(b) Proprietary interest requires prudent management.

In these situations, the City:

(i) has an ongoing proprietary interest in the developments and a direct interest in their financial performance; and

- (ii) must make prudent management decisions, similar to any private business entity, to ensure efficient management of its business concerns and to maximize benefits and minimize risks.
 - (c) Risk of labor-management conflict.
 - (1) One risk is the possibility of labor-management conflict.
- (2) A major potential outcome of labor-management conflict is economic action by labor organizations against employers. Experience of municipal and other investors demonstrates, for example, that organizing drives under formal and adversarial union certification processes often deteriorate into protracted and acrimonious labor-management conflict.

(3) Labor-management conflict can:

- (i) result in construction delays, work stoppages, picketing, strikes, consumer boycotts, and other forms of adverse economic pressure; and
- (ii) adversely affect the City's financial or other proprietary business interest by causing delay in the completion of a project, by reducing the revenues or increasing the costs of the project, and by generating negative publicity.
 - (d) Risks heightened in hotel industry.
- (1) These risks are heightened in the hotel industry, because this industry is so closely related to tourism, which is a linchpin of the City's economy.
- (2) Labor-management conflict in hotel development projects in which the City is an economic participant can jeopardize the operation of related tourist and commercial facilities, as well as the City's national reputation as a tourist and convention destination.
 - (e) Reducing risk through labor peace agreement.

One way of reducing the risk to the City's proprietary interests is to require, as a condition of the City's investment or other economic participation in a hotel development project, that employers participating in the project seek agreements with labor organizations in which the

labor organizations agree to forbear from adverse economic action against the employers' operations.

(Ord. 07-578.)

§ 13-3. Scope of subtitle.

This subtitle does not apply to:

- (1) a hotel development project for which the City determines that the risk to the City's financial or other nonregulatory interest resulting from labor-management conflict is so minimal or speculative as not to warrant concern for the City's investment or other nonregulatory interest; or
- (2) a hotel development project for which the City determines that its proprietary interest is less than \$100,000.

(Ord. 07-578.)

§ 13-4. Construction of subtitle.

(a) Union recognition.

Nothing in this subtitle requires an employer to recognize a particular labor organization.

(b) Collective bargaining agreement.

Nothing in this subtitle requires an employer to enter into a collective bargaining agreement establishing the substantive terms and conditions of employment.

(c) Labor policy.

This subtitle is not intended, and may not be interpreted, to express any generally applicable policy regarding labor-management relations or to regulate those relations in any way.

(d) Employee preference.

This subtitle is not intended to favor any particular outcome in determining employee preference regarding union representation.

(Ord. 07-578.)

13-5. {Reserved}

§ 13-6. Determining need for agreement.

(a) In general.

For each hotel development project in which the City participates or has a financial interest, the City shall determine whether the City has a proprietary interest in the project.

(b) Governing criteria.

The City is deemed to have a proprietary interest in a hotel development project if the City determines that:

- (1) through a lease of real property that is owned by the City and used for the project, the City receives ongoing revenue, excluding government fees, tax revenue, assessment revenue, or similar fees and revenues, except for tax revenue under the circumstances specified in items (2) and (3) of this subsection;
- (2) ongoing revenues from the project, including incremental tax revenues generated by the project, are used to repay loans provided by the City to assist the development of the project;

- (3) ongoing revenues from the project, including incremental tax revenues generated by the project, are used to pay debt service on bonds provided by the City to assist the development of the project;
- (4) the City has significant assets at risk because it has agreed to underwrite or guarantee the development of the project or loans related to the project; or
- (5) the City has a significant ongoing economic and nonregulatory interest that is at risk in the project's financial success and is likely to be adversely affected by labor-management conflict, except that no interest is considered "economic and nonregulatory" if it arises from the exercise of regulatory or police powers, such as taxation (except as set forth in items (2) and (3) of this subsection), zoning, or the issuance of permits or licenses.

(Ord. 07-578.)

Cross References

Article 11, § 13-7(a)

Editor's Notes

This subtitle was enacted by Ordinance 07-578, effective December 26, 2007. Section 4 of Ord. 07-578 provides that the subtitle "does not apply to any economic participation granted by the City before the effective date of this Ordinance".

§ 13-7. Agreement required.

(a) "Economic participation" defined.

In this section, "economic participation" means a lease, loan, financing, underwriting, guarantee, or other financial benefit described in $\S 13-6(b)$ of this subtitle.

(b) When City to require.

If the City determines that it has a proprietary interest in a hotel development project, then it shall require, as a condition of the City's economic participation, that each employer on the project enter into 1 or more labor peace agreements with 1 or more labor organizations that represent, or seek to represent, workers on the project.

(c) Default, etc., provisions.

Any contract between the City and the beneficiary of the City's economic participation in a project may include provisions governing default, damages, or recision that the City considers appropriate to assure that the requirements of this section are fully satisfied.

(Ord. 07-578.)

- § 13-8. Tenor and contents of agreement.
 - (a) To be enforceable under LMRA.

The labor peace agreement shall be a written agreement enforceable between the employer and the labor organization under § 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. § 185(a).

(b) Minimum contents.

The labor peace agreement shall contain, 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 any of the employer's operations in which the City has a proprietary interest, for the duration of that interest.

(Ord. 07-578.)

§ 13-9. Violation of agreement by union.

An employer that performs its obligations under a labor peace agreement is relieved of further obligation under the agreement if the labor organization engages in adverse economic action such as striking, picketing, or boycotting the employer.

(Ord. 07-578.)

13-10 to 13-15. {Reserved}

§ 13-16. Notice of subtitle.

(a) Notice required.

A request for proposals, invitation to bid, or similar document issued by the City regarding a hotel development project must include a reference to and summary of this subtitle.

(b) No exemption for omission.

Failure to include a reference or summary in a document does not exempt an employer otherwise subject to the requirements of this subtitle.

(Ord. 07-578.)

Council Bill 22-25, Labor Peace Agreements – Hotel Development Projects Amendment by Councilmember Friedson

Amend lines 85-99 to read as follows.

- (2) The Chief Administrative Officer must determine that the County has a proprietary interest in a hotel development project if:
 - (A) through a lease of real property that is owned by the County and used for the project, the County receives [[ongoing revenue]] operating profit based on the financial performance of the project, excluding government fees, tax revenue, assessment revenue, or similar fees and revenues, except for tax revenue under the circumstances specified in subparagraphs (C) and (D) of this paragraph;
 - (B) through a contract to manage or operate a hotel or conference center, situated on or in real property owned by the County, the County receives [[ongoing revenue]] operating profit based on the financial performance of the project, excluding government fees, tax revenue, assessment revenue, or similar fees and revenues, except for tax revenue under the circumstances specified in subparagraphs (C) and (D) of this paragraph;

* * *

Amend lines 119-127 as follows.

- (3) The Chief Administrative Officer must determine that the County does not have a proprietary interest in a hotel development project if the Chief Administrative Officer finds that:
 - (A) the present value of the County's proprietary interest is less than [[\$100,000]] \$1,000,000 annually; or
 - (B) the risk to the County's financial or other nonregulatory interest resulting from labor-management conflict is so minimal or

speculative that a labor peace agreement would not support the County's proprietary interest in the project.

Economic Impact Statement

Montgomery County, Maryland

Bill 22-25, Labor Peace Agreements – Hotel Development Projects

Summary

The Office of Legislative Oversight (OLO) anticipates that Bill 22-25 would have an indeterminate impact on economic conditions in the County, as measured by the Council's priority economic indicators. The Bill would require employers of hotel development projects, in which the County has a proprietary interest, to enter into labor peace agreements (LPAs) with unions. Based on a review of studies on the economic impacts of card check and neutrality agreements—provisions typically included in LPAs—and the broader impacts of unions, the requirement would likely have mixed economic outcomes for certain residents and private organizations.

The policy change would benefit some residents employed by affected hotel development projects. Requiring LPAs would increase the likelihood of hotel workers obtaining union representation. In turn, this would likely raise wages and household income for these workers, which would be especially significant given that hotel workers receive lower-than-average wages.

Certain unions would also benefit by increasing their membership and revenues, and some County-based businesses may experience revenue gains due to greater household spending.

Conversely, the Bill would likely negatively affect certain businesses involved in affected hotel development projects. A greater share of employees with union representation would likely increase operating expenses in the form of labor compensation. While higher union representation may improve labor productivity and reduce turnover and costs associated with labor disputes, it is probable that higher labor costs would outweigh these benefits and reduce business profits.

In addition, studies reviewed for this analysis do not indicate whether requiring LPAs would deter or encourage new hotel development or affect the industry's ability to compete with other markets. However, OLO notes that requiring LPAs for certain projects may increase business compliance costs related to labor regulations and, consequently, may negatively influence perceptions of the County's "business friendliness"—a priority emphasized in the Council's economic development platform.

Ultimately, OLO cannot anticipate the net effect of the policy change on overall local economic conditions due to several factors, such as uncertainty regarding the contents of future LPAs and the number of firms/employees affected as well as conflicting findings regarding the economic impacts of LPAs and unions.

Background and Purpose of Bill 22-25

An LPA is a contract between an employer and a labor union. In an LPA, an employer agrees to not interfere with a campaign to organize a union in the workplace. In exchange, a union agrees to not engage in picketing, strikes, or other activities that would disrupt the employer's operations. LPAs do not automatically lead to the

formation of a union. Even with an LPA, a majority of workers must still choose to be represented by a union. After a union is formed, it can negotiate a collective bargaining agreement with the employer.¹

Occasionally, the County has a financial stake, or a proprietary interest, in hotel development projects. This happens when the County participates in a project as a property owner, lessor, proprietor, lender, or guarantor.² For example, the County is the leasehold owner of the land where the Montgomery County Conference Center and Bethesda North Marriott Hotel are located. The County shares costs and revenues with Marriott International for the operation of both businesses.³

The purpose of Bill 22-25 is to require employers of hotel development projects to enter into LPAs with unions when the County has a proprietary interest in the project. The Bill would set guidelines for determining if the County has a proprietary interest that requires an LPA.⁴ If required, the LPA would need to contain a provision that prohibits the union from "any picketing, work stoppage, boycott, or other economic interference with the employer's operations."⁵ The Bill would allow an employer to satisfy the LPA requirement by providing copies of existing LPAs, documenting that no labor union requested an LPA, or documenting that the union "insisted on terms of an agreement that are arbitrary and capricious."⁶ If enacted, the LPA requirement would apply after the Bill's effective date.⁷

Bill 22-25 was introduced following recent calls from a local union for a consumer boycott of the Montgomery County Conference Center.⁸ The sponsors note the Bill is intended to minimize the County's financial risk by preventing similar labor disputes in County-supported hotel development projects in the future.⁹

The Council introduced Bill 22-25 on June 17, 2025.

Information Sources, Methodologies, and Assumptions

As required by 2-81B of the Montgomery County Code, this Economic Impact Statement evaluates the impacts of Bill 22-25 on residents and private organizations, using the Council's priority economic indicators as the measure. In doing so, it examines whether the Bill would have a net positive or negative impact on overall economic conditions in the County.¹⁰

In this analysis, OLO conducted a review of empirical studies assessing the economic impacts of card check and neutrality agreements—two provisions typically included in LPAs. **Table 1** summarizes the studies, highlighting their methodologies, key findings, and limitations.

¹ "Labor Peace Agreements (LPA)," Labor and Employment Law Program, Cornell University School of Industrial and Labor Relations.

² Introduction Staff Report for Bill 22-25, Montgomery County Council, Introduced June 17, 2025, pg. 1.

³ "Marriott Conference Center Management Agreement Cost and Revenue Sharing Audit," Office of Internal Audit, Office of the County Executive, August 28, 2023.

⁴ Introduction Staff Report for Bill 22-25, pgs. 1-2.

⁵ Bill 22-25, Introduction Staff Report for Bill 22-25, pg. (3).

⁶ Introduction Staff Report for Bill 22-25, pg. 2.

⁷ Ibid.

⁸ Ginny Bixby, "Workers union pauses boycott of North Bethesda Marriot conference center," Bethesda Today, June 20, 2025.

⁹ "Councilmembers to Introduce Bill to Require Labor Peace Agreements on Hotel Development Projects with County Economic Participation," Press Releases, Montgomery County Council, June 12, 2025.

¹⁰ Montgomery County Code, "Sec. 2-81B, Economic Impact Statements."

Although OLO prefers to cite impact evaluations using randomized control trials or quasi-experimental designs for their ability to provide strong causal inferences, no such studies were identified.¹¹ Instead, the available research primarily relies on survey data, interviews, cross-sectional comparisons, and event studies. As a result, these studies can demonstrate associations and trends but do not offer the methodological rigor necessary for drawing firm causal conclusions about the effects of LPAs on outcomes.

Additionally, this analysis references empirical studies on the broader economic impacts of unions. However, given the volume of literature on this topic, a comprehensive review is beyond the scope of this Economic Impact Statement.

Furthermore, to inform projections of local employment on the project, the analysis uses data from the U.S. Census Bureau's American Community Survey (ACS) for 2019–2023 to estimate the share of workers employed in the County who also reside locally.

It is important to note that OLO is unable to estimate the magnitude of the Bill's potential economic effects because the number of hotel development projects or employees that would be subject to its provisions is unknown.

Variables

The primary factors that would influence the economic impacts of Bill 22-25 include:

- Number of hotel development projects that meet the proprietary interest threshold;
- Specific provisions included in LPAs (e.g., neutrality and card-check agreements);
- Costs and benefits of LPAs for employers and workers; and
- Level of workforce unionization.

Impacts

WORKFORCE = TAXATION POLICY = PROPERTY VALUES = INCOMES = OPERATING COSTS = PRIVATE SECTOR CAPITAL INVESTMENT = ECONOMIC DEVELOPMENT = COMPETITIVENESS

Research on LPAs and Unions

Federal labor law gives workers the right to form a union through an election conducted by the National Labor Relations Board (NLRB). If a majority of employees who cast ballots vote in favor, the NLRB certifies the union as their exclusive representative for collective bargaining. However, because employers often have greater resources and engage in anti-union campaigns—and because NLRB enforcement can be limited—many unions instead pursue LPAs with employers. 13

LPAs create a private process for unionization outside the NLRB election system that seeks voluntary recognition from employers. While specific terms vary, most agreements involve a tradeoff: workers agree to

¹¹ Paul J. Gertler et al., <u>Impact Evaluation in Practice, Second Edition</u> (Washington, DC: Inter-American Development Bank and World Bank, 2016).

¹² National Labor Relations Board, "Your Right to Form a Union," accessed August 28, 2025.

¹³ Laura J Cooper, "<u>Privatizing Labor Law: Neutrality/Card Check Agreements and the Role of the Arbitrator</u>," *Indiana Law Journal* 84, no. 4 (2008): 1589–617; Juan Ramon Riojas, "<u>Labor-Peace Agreements in Emerging Industries</u>," *Columbia Law Review* 125, no. 2 (2025): 413–52.

refrain from strikes, work stoppages, and other disruptive tactics, while employers commit to remain neutral and accept alternative methods of union recognition. Two common provisions are:

- **Neutrality agreements** Employers pledge not to oppose or interfere with employees' decision on union representation.
- **Card check agreements** Employers agree to recognize the union once a majority of employees have signed union authorization cards, rather than requiring a formal NLRB election.¹⁴

This section reviews empirical research on LPAs that examines their effects on unionization rates, management motivations, and business outcomes.

Unionization: Despite their methodological limitations, empirical studies consistently show that LPAs substantially increase the likelihood of unionization by reducing management opposition, facilitating smoother organizing campaigns, and producing higher union recognition rates.

As shown in **Table A1** in the appendix, Eaton & Kriesky (2001, 2006, 2009) show that card-check agreements sharply lower anti-union campaigning and manager interference—workers experience less pressure, and union success rates are higher compared to typical NLRB elections. However, they found that neutrality agreements alone were less effective. ¹⁵ Chandler & Gely (2011) extend this evidence to the public sector, showing that mandatory card-check laws result in significant union membership growth compared to non-adopting states. ¹⁶

Business Motivations: In their study on management motivations for accepting card check and neutrality agreements, Eaton & Kriesky (2006: 147) write, "employers do have choices to make about organizing agreements, and that the decision to agree to organizing language is often, at root, a business decision, with employer concerns about workers' rights playing at best, a secondary role." They conducted interviews with management from a non-representative sample of companies. The interviews revealed key costs and benefits that factored in companies' decisions whether to accept an LPA. See **Table 1** below.¹⁷

The study found the following:

- The primary motivation for negotiating organizing agreements was to avoid costs, particularly the risk of work stoppages.
- A notable minority of respondents prioritized the benefits of agreement, such as unions facilitating access to skilled labor and management being able to influence the structure of organizing campaigns.
- Most respondents anticipated increased labor costs as a result of signing an LPA.

¹⁴ Riojas, "Labor-Peace Agreements in Emerging Industries."

¹⁵ Adrienne E. Eaton and Jill Kriesky, "<u>Union Organizing under Neutrality and Card Check Agreements</u>," *ILR Review* 55, no. 1 (2001): 42–59; Adrienne Eaton and Jill Kriesky, "<u>Dancing with the Smoke Monster: Employer Motivations for Negotiating Neutrality and Card Check Agreements</u>," *Upjohn Press Book Chapters*, January 1, 2006; Adrienne E. Eaton and Jill Kriesky, "<u>NIrb Elections versus Card Check Campaigns: Results of a Worker Survey</u>," *ILR Review* 62, no. 2 (2009): 157–72.

¹⁶ Timothy D. Chandler and Rafael Gely, "<u>Card-Check Laws and Public-Sector Union Membership in the States</u>," *Labor Studies Journal* 36, no. 4 (2011): 445–59.

¹⁷ Eaton and Kriesky, "Dancing with the Smoke Monster."

Table 1. Business Considerations in Deciding Whether to Accept an LPA

Costs of Agreeing	 Increased wages and benefits Decreased attractiveness as takeover/merger target Loss of flexibility Loss of employee rights Loss of cooperative, nontraditional work culture
Costs of Not Agreeing	 Work stoppage Loss of specific, needed concessions Organizational picketing Loss of a client or project
Benefits of Agreeing	 Union willing to add value to the business Labor-management partnership Assistance in increased funding for nonprofits Assistance in obtaining qualified, skilled labor Assistance in attracting business/customers Maintenance of good relations with workforce Ability to shape organizing campaigns

Impact of LPAs on Profits: Abraham, Eaton & Voos (2010) found that voluntary union recognition through card check agreements at publicly traded U.S. firms was associated with positive abnormal stock returns. In contrast, studies have found that union victories via NLRB elections produced negative market responses. Their study suggests that the market views card check recognition more favorably, potentially due to reduced labor-management conflict, quicker and less adversarial contract negotiations, lower industrial relations costs, greater bargaining flexibility, and/or unions' ability to use political or social capital to advance employer interests. However, the evidence is not definitive regarding which factors drive the positive market reaction. ¹⁸

Effects of Unions: Given the volume of literature on this topic, a comprehensive review empirical studies on the broader economic impacts of unions is beyond the scope of this Economic Impact Statement. Although this is not a comprehensive review, selected studies show the following about union effects¹⁹:

- Unions raise wages for their members and provide positive spillover effects on the wages of nonunion workers, which especially benefits disadvantaged groups.
- Unions increase labor productivity and reduce employee turnover. However, though these gains often occur alongside reduced firm profitability and less managerial flexibility.
- Union density reduces inequality and poverty, while increasing labor's share of income. The decline of
 unions is linked to stagnant wages and wider inequality.
- In certain contexts, unionization can reduce employment or establishment survival, especially under strong employer opposition.

¹⁸ Steven E. Abraham et al., "<u>Card Check Recognition: Resulting Labor Relations and Investor Reaction</u>," in *Advances in Industrial and Labor Relations*, ed. David Lewin et al., vol. 17 (Emerald Group Publishing Limited, 2010).

¹⁹ Simon Jäger et al., "<u>Collective Bargaining, Unions, and the Wage Structure: An International Perspective,</u>" *National Bureau of Economic Research* Working Paper 33267 (December 2024); Steven Eric Abraham, "<u>Two Benefits Firms Derive from Unionized Workforces,</u>" *Strategic HR Review* 16, no. 5 (2017): 234–38; Patrick Denice and Jake Rosenfeld, "<u>Unions and Nonunion Pay in the United States, 1977-2015,</u>" *Sociological Science* 5 (August 2018): 541–61; Tom Van Heuvelen and David Brady, "<u>Labor Unions and American Poverty</u>," *ILR Review* 75, no. 4 (2022): 891–917.

Hotel and Motel Industry

Data from the Bureau of Labor Statistics (BLS) provides a detailed snapshot of the hotel and motel industry compared with the overall economy in this county. In the fourth quarter of 2024, the hotel and motel sector consisted of 81 establishments, which accounted for only 0.2% of all businesses. The industry employed 2,508 people—a small fraction of the county's total monthly employment. Over the quarter, the industry paid \$36.5 million in wages, which represented only 0.4% of all wages paid countywide. These statistics highlight that the hotel and motel industry plays a relatively minor role in the local economy.

A key finding from the data is the industry's wage gap. Hotel and motel workers earn an average weekly wage of \$1,118, which is \$637 (or 36.3%) less than the county-wide average of \$1,755. While employment and establishments in hotels and motels appear stable, wage growth in this sector has stagnated at 0%, compared to a 3% increase county-wide.

Table 2. Montgomery County Employment and Wage Comparison: All Industries vs. Hotels and Motels (2024 Q4)

Indicator	All Industries	Hotels and Motels
Number of establishments (quarter)	35,213	81
Avg monthly employment	364,825	2,508
Total wages (quarter)	8,323,466,396	36,463,731
Avg weekly wage	1,755	1,118
Year-over-year est. change	245	2
Year-over-year wage percent change	3%	0%
Wage gap (absolute)	-	\$637 less
Wage gap (percent)	-	36.3% lower

Data Source: U.S. Bureau of Labor Statistics, "Quarterly Census of Employment and Wages, County High-Level Tables: Montgomery County, MD, Q4 2024," accessed September 3, 2025.

Residents

OLO anticipates that Bill 22-25 would have a positive impact on certain residents in the County.

The Bill would most directly affect residents employed at hotel development projects in which the County holds a proprietary interest. While the residence of these workers is unknown, Census data suggests that many may reside locally. Across the County, the share of workers who also reside locally ranges from 58 to 80 percent. Data from the U.S. Census Bureau's American Community Survey (ACS) for 2019–2023 indicate that between 58% and 80% of workers across the County also reside locally. (See **Figure A.1** in the Appendix.)

Research indicates that card check agreements substantially increase the likelihood of unionization by reducing management opposition and facilitating smoother organizing campaigns.

OLO does not know the provisions that would be included in future LPAs, other than the no-strike provision. If they also include card check agreements, the Bill would likely lead to a greater share of workers on these projects obtaining union representation. This outcome would likely raise wages for affected workers and, all else being equal, increase their household incomes.

Workers and their households would especially benefit from higher incomes given the relatively low average wages in the hotel industry (see **Table 3** above).

However, because OLO does not know how many workers would receive wage gains, the extent of any broader wage spillovers for nonunion workers is uncertain.

Beyond the Bill's anticipated impact on household income, it is uncertain whether residents would experience changes in other Council priority indicators.

Businesses, Non-Profits, Other Private Organizations

OLO anticipates that Bill 22-25 would have a negative impact on certain private organizations in the County.

The Bill would most directly affect private actors involved in hotel development projects in which the County holds a proprietary interest, mainly hotel owners, operators, and construction companies that undertake these projects. Other affected actors may include third-party developers, hotel management companies, subcontractors, and service providers associated with the operation and construction of these hotels.

The Bill would likely increase operating costs in the form of higher wage compensation for hotel owners, operators, and construction companies that undertake these projects. This may positively impact their workforces, as affected businesses are likely to experience higher labor productivity and reduced employee turnover. In addition, requiring LPAs may mitigate costs from anti-union campaigning, work stoppages, and other costs associated with labor disputes.

However, it is doubtful that these workforce benefits would fully offset the increased labor costs for firms. While one study found that *voluntary* union recognition via card check agreements at publicly traded U.S. firms was associated with positive abnormal stock returns, it is unclear whether these effects hold under *mandatory* government requirements. Furthermore, broader empirical studies suggest that unionization tends to reduce firm profitability. Thus, the overall net effect on business profitability may be negative.

It is unclear whether the Bill would have a meaningful impact on the competitiveness or the level of private investment in the local hotel industry. Available evidence does not conclusively show whether requiring LPAs would deter or encourage new hotel development or affect the industry's ability to compete with other markets. Moreover, because hotels are fixed assets, the industry does not face the same pressures for outsourcing or relocation as sectors like manufacturing.²⁰

²⁰ David Sherwyn and Paul E. Wagner, "You Can't Move All Your Hotels to Mexico: Unions and the Hospitality Industry," in *The Cornell School of Hotel Administration on Hospitality* (John Wiley & Sons, Ltd, 2012).

However, requiring LPAs for certain projects may increase business compliance costs related to labor regulations²¹ and, consequently, may negatively influence perceptions of the County's "business friendliness"—a priority emphasized in the Council's economic development platform.²²

In addition to businesses involved in hotel development projects, the Bill would likely impact certain unions and County-based businesses. Unions would likely benefit by increasing their membership and revenues, and some County-based businesses may experience revenue gains due to greater household spending.

Beyond the Bill's anticipated impacts on operating costs, workforce productivity, and business income, it is uncertain whether businesses would experience changes in other Council priority indicators.

Net Impact

OLO anticipates that Bill 22-25 would have an indeterminate impact on economic conditions in the County, as measured by the Council's priority economic indicators. By requiring employers of hotel development projects, in which the County has a proprietary interest, to enter into labor peace agreements (LPAs) with unions, the Bill would benefit some residents employed by affected hotel development projects by increasing the likelihood that they obtain union representation. In turn, this would likely raise wages and household income for these workers, which would be especially significant given that hotel workers receive lower-than-average wages. Certain unions would also likely benefit by increasing their membership and revenues, and some County-based businesses may experience revenue gains due to greater household spending.

Conversely, the Bill would likely negatively affect certain businesses involved in affected hotel development projects. A greater share of employees with union representation would likely increase operating expenses in the form of labor compensation. While higher union representation may improve labor productivity and reduce turnover, higher labor costs would likely outweigh these benefits and reduce business profits.

OLO cannot anticipate the net effect of the policy change on overall economic conditions in the County due to several factors. First, there is uncertainty regarding both the contents of future LPAs and the number of firms and employees affected. Second, the research on the economic impacts of LPAs and unions has conflicting findings. Third, the literature on the economic impacts of unions is too vast for OLO to have performed a comprehensive analysis.

Discussion Items

Given uncertainties, conflicting findings in the relevant research, and the voluminous literature on the economics of unions, Councilmembers may want to request OLO to conduct a more in-depth review of the research on the topic.

Caveats

Two caveats to the economic impact analysis conducted here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is

²¹ Aron Trombka, <u>Establishing and Maintaining a Business-Friendly Environment: A Literature Review</u> (Office of Legislative Oversight, Montgomery County Council, 2022).

²² "Economic Development Platform," Montgomery County Council, accessed April 16, 2024.

intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does <u>not</u> represent OLO's endorsement of, or objection to, the Bill under consideration.

Contributions

Stephen Roblin, PhD (OLO) prepared this report.

Appendix

Table A1. Summary of Empirical Studies on the Effects of LPAs

Study	Methodology	Finding	Limitations
Eaton & Kriesky (2001): Union Organizing under Neutrality and Card Check Agreements	 Identified 132 neutrality and card check agreements (private-sector focused, some public) Collected written agreements and interviewed union representatives (data on 118 agreements) Compared employer tactics and union success under agreements vs. NLRB elections 	 Card check agreements sharply reduced management anti-union campaigning (legal & illegal) Card check agreements increase union recognition success rate, compared to NLRB elections Neutrality agreements alone were less effective in reducing anti-union campaigning and union recognition 	 Sample skewed toward unions that negotiated agreements—not representative of all sectors Cannot fully account for selection bias (firms agreeing may have been predisposed) Reliance on union reports could overstate effects
Eaton & Kriesky (2006): Employer Motivations for Negotiating Neutrality and Card Check Agreements	 Interviews with 34 management representatives at firms with card check/neutrality agreements (drawn from 132 earlier cases in their 2001 study) Examined employer motivations, bargaining costs/benefits, and reactions from management community 	 Employers agreed to card check mainly for business reasons (avoid strikes, ensure stability, win concessions, secure skilled labor, political leverage) Agreements altered manager behavior: less campaigning, less use of consultants, captive meetings, etc. 	 Sample skewed toward larger firms and industries Voluntary sample and possible self-reporting bias Employers who agreed are not necessarily representative of hostile or anti-union firms.
Eaton & Kriesky (2009): NLRB Elections versus Card Check Campaigns (Worker Survey)	 Survey of 430 workers from 51 campaigns in 2003 Interviews post-campaign Measured perceived pressure, adequacy of info, and fairness 	 Management pressure to oppose unions much higher under elections than under card check Workers reported little coercion by unions Workers in card checks perceived slightly less info on unions/recognition than election participants, but those with insufficient info tended not to sign Workers judged union-supplied info more accurate than management's 	 Survey sample skewed toward pro-union respondents Possible recall bias 2 years later Limited campaign sample; overrepresentation of unions with negotiated agreements Cannot fully rule out firm-level selection bias

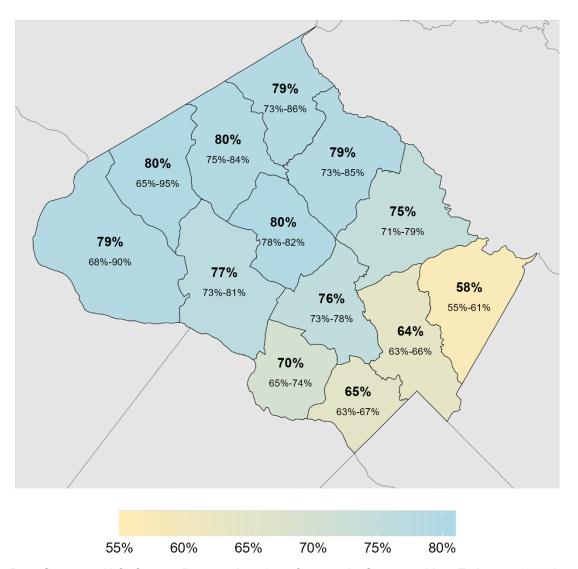
Table A1 continued

Abraham, Eaton & Voos (2010): Card Check Recognition: Resulting Labor Relations & Investor Reaction	Conducted event study on 56 card check recognitions in 2003 at publicly traded firm Compared stock price reactions to NLRB elections (union wins/losses at same unions/firms) Used interviews with managers/union reps and worker survey data from prior studies to interpret findings	Unlike NLRB election wins (which lowered shareholder wealth), card check recognition in U.S. produced positive abnormal returns Explanations: reduced labor-management conflict, quicker contracts, improved productivity, lower IR costs, unions offering flexibility or political value Qualitative evidence: card checks smoother, less stressful, more likely to yield contract	 Event study limited to 1 year (2003) and only cases supplied by cooperating unions. Matching with NLRB elections imperfect Possible selection bias: employers agreeing to card check may already have favorable labor/market conditions.
Chandler & Gely (2011): Card-Check Laws and Public- Sector Union Membership in the States	 Pooled cross-sectional time series (2000-2009) for 50 states Compared union membership trends in 8 states adopting card-check laws for public employees vs. 42 that did not Controlled for ideology, partisanship, unemployment, income, population, duty-to-bargain laws. 	 After passage, public-sector union membership in card-check states rose significantly more than in others Average increases in both total numbers and percent unionized; growth ~19% vs. 7% in non-card-check states. Strong evidence that mandatory card-check statutes facilitate unionization in public sector. 	 Focused only on public sector; cannot generalize to private sector Observational, not causal: other policy/environmental factors may confound results Legislation varied by coverage scope (teachers vs. all employees)

Economic Impact Statement

Montgomery County, Maryland

Figure A1. Percentage of Workers Aged 16 and Older Employed Within the County of Residence by Census County Subdivision



Data Sources: U.S. Census Bureau, *American Community Survey, 5-Year Estimates (2023)*, Table B08007, "Sex of Workers by Place of Work--State and County Level," accessed January 3, 2025. For details on how the Census measures an individual's place-of-work, see "Journey to Work" section in "American Community Survey and Puerto Rico Community. Survey 2022 Subject Definitions" (U.S. Census Bureau, 2022); and questions 30 and 31 in the "2024 American Community Survey Questionnaire" (U.S. Census Bureau).

Cartel Bargaining, Ballot Initiatives, and "Industrial Democracy"

How Unions are Using Government to Circumvent the NLRA and End Labor Market Competition

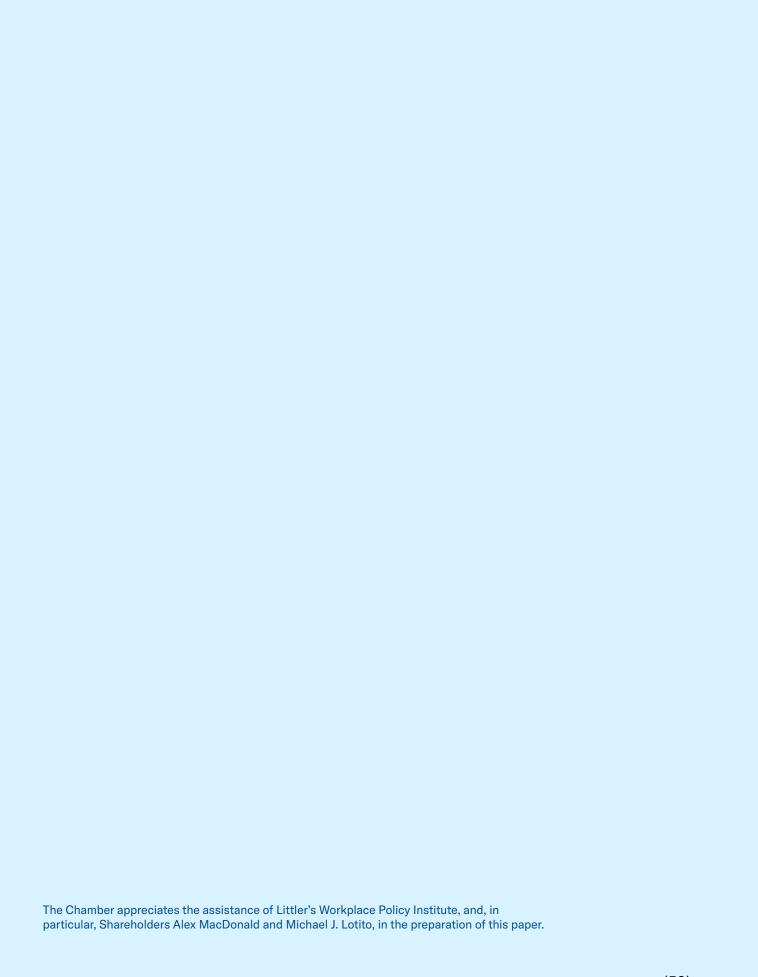


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What is a labor union if it no longer acts as a union? A generation ago, labor unions were private, voluntary organizations, whose main job was to organize workers and bargain collectively.1 But today, they play a different role. They no longer pursue their goals at the bargaining table, but instead, lobby for their agendas at city hall. They write, sponsor, and implement laws to set standards for whole industries. [Unions] wield their political influence to suppress competition in the market. In short, they act less like trade unions and more like governmental cartels.²

That transformation can be seen in the tools they use. Rather than bargaining with private employers, they increasingly use public and quasipublic processes. They sponsor and staff "labor standards" boards, which develop rules for whole sectors.3 They lobby for and pass sector-specific wage legislation, which raises labor costs for an entire industry.4 They run wage-related ballot initiatives, which raise everyone's costs and thus insulate unions from competition.⁵ They extract "labor peace agreements," which circumvent federally supervised union elections.6 And they even file complaints with foreign governments, seeking to have those governments impose draconian penalties and intimidate employers on American soil.7

- See John Commons, American Labor History, in Theories of the Labor Movement 132 (Simeon Larson & Bruce Nissen, eds., 1987) (explaining that under Samuel Gompers, the AFL rejected political involvement and widespread government intervention in labor market); Arthur S. Leonard, The AFL-CIO's First National Campaign, 8 Indus. & Lab. Rel. F. 25, 25 (1972) (noting that the AFL studiously avoided political endorsements before the New Deal).
- 2 See Samuel Estreicher, Trade Unionism under Globalization: The Demise of Voluntarism?, 54 St. Louis Univ. L. Rev. 415, 418 (2010) ("We are now, however, beginning to see a qualitative change in labor's relationship to the state: trade unionism as a supplement to politics.").
- 3 See, e.g., Seattle Mun. Code ch. 14.23 (domestic workers standards board); N.Y. Lab. L. § 674-a (farm labor standards board); Cal. Labor Code § 1475 (fast food council).
- 4 See, e.g., West Hollywood Ord. No. 24-13 (2024) (minimum wages for hotel workers); Cal. Labor Code § 1475(d)(2)(1) (minimum wages for fast-food workers).

- 5 See, e.g., Washington, DC, One Fair Wage, https://www.onefairwage.org/states (listing state campaigns to wage minimum wages and abolish tipped wages).
- 6 See, e.g., N.Y. City Admin. Code § 6-145 (requiring laborpeace agreements in certain "human services" contracts); Los Angeles Bd. of Airport Commissioners Res. 23437 (Oct. 15, 2007) (requiring labor-peace agreements for certain concessions contractors in city airport); D.C. Code § 32-852 (requiring labor-peace agreements for certain realestate development projects in which the city asserts a "proprietary interest").
- 7 Press Release: UAW Files Charges in Germany Against Mercedes-Benz: Company's Anti-Union Campaign Against U.S. Autoworkers Violates New German Law on Global Supply Chain Practices, United Auto Workers (April 3, 3024), https://uaw.org/uaw-files-charges-in-germany-againstmercedes-benz-companys-anti-union-campaign-against-us-autoworkers-violates-new-german-law-on-global-supplychain-practices/#:~:text=The%20UAW%20is%20the%20 first,rights%20to%20form%20trade%20unions [hereinafter UAW Statement].

This shift has not happened overnight. Rather, it has crept in over decades. Unions have been losing members for almost eighty years.8 Though the causes of this decline are complex, unions mostly blame the National Labor Relations Act.⁹ Passed in the 1930s, the NLRA created a system under which unions had to win recognition workplace by workplace.¹⁰ That system no longer works for unions, either because they don't put funding towards new organizing campaigns or because workers don't want to be organized.11 But either way, unions have decided that if they want to maintain their influence, they must do so outside of the NLRA.¹² And their search for new methods has increasingly led them to quasi-public, regulatory techniques.

This new approach affects more than just unions. It also affects workers, business, and free markets. When unions become regulators, they no longer need to win approval from workers. They can raise prices, reduce flexibility, and insulate themselves from competition. The result is less choice, less transparency, and less diversity in the market. It is a new kind of labor union—one that is less a voluntary association and more a government-backed cartel.

- See Gerald Mayer, Union Membership Tends in the United States, Cong. Research Serv. No. RL32553, at 22-23 (Aug. 31, 2004), https://sgp.fas.org/crs/misc/RL32553.pdf.
- Pub. L. 74-198, 49 Stat. 449 (1935) (codified as amended at 29 U.S.C. §§ 151-69).
- 10 See 29 U.S.C. § 159.
- 11 See Testimony of Roger King, HR Policy Ass'n Senior Lab. & Employment Counsel, to House Health, Education, Labor, and Pensions Committee (Dec. 15, 2023), https://www.hrpolicy.org/insight-and-research/resources/2023/hr-workforce/public/12/hr-policy-association%E2%80%99s-roger-king-testifies-befor/.
- 12 See Sharon Block & Benjamin Sachs, Clean Slate for Worker Power: Building a Just Economy and Democracy (2020), https://assets.website-files.com/5ddc262b91f 2a95f326520bd/5e28fba29270594b053fe537_ CleanSlate_Report_FORWEB.pdf (proposing series of reforms to overcome the enterprise-bargaining hurdle, including government-mediated "sectoral" bargaining).

Labor's Long Decline

Organized labor has been shedding members for decades. In the mid-twentieth century, unions represented more than one in three wage-earning Americans.13 They dominated the country's most vibrant industries, including transportation, construction, and manufacturing.¹⁴ They also enjoyed enormous economic power, setting standards across whole sectors using "pattern" bargaining.15 That scope allowed them to shut down entire industries through nationwide work stoppages. These work stoppages sometimes involved millions of workers; at one point in 1946, for example, nearly two million workers were on strike at one time.16

But those days are long gone. Today, unions represent only one in ten workers, less than a third of their peak.¹⁷ And even that number is misleadingly high: if only private-sector workers were counted, unions would represent only 6% of wage-earning adults.18 That percentage has declined steadily since the 1970s, and it shows no sign of turning around.19

This decline has been driven mostly by economic change.20 In the 1950s, the economy centered on manufacturing, which supported nearly a third of all American jobs.²¹ Manufacturing was also heavily unionized. Unions like the UAW and

- 13 See, e.g., Union Membership Rate Fell by 0.2 Percentage Point to 10.1 Percent in 2022, U.S. Bureau of Lab. Stats. (Jan. 24, 2023), https://www.bls.gov/opub/ted/2023/union-membership-ratefell-by-0-2-percentage-point-to-10-1-percent-in-2022.htm (charting historic rates); Dan Burns, US Union Membership Rate Hits Fresh Record Low in 2023— Labor Dept, Reuters (Jan. 23, 2024), https://www.reuters.com/markets/us/us-union-membershiprate-hits-fresh-record-low-2023-labor-dept-2024-01-23/.
- 14 See Dian Katz, The Decline of the American Labor Union, GIS Reports (April 28, 2023), https://www.gisreportsonline.com/r/decline-american-union/.
- 15 ld.
- 16 Rich Yeselson, Fortress Unionism, Democracy (summer 2013), https://democracyjournal.org.magazine/29/fortress-unionism/.

- 17 See Union Membership Annual News Release, U.S. Bureau of Lab. Stats. (Jan. 23, 2024), https://www.bls.gov/news.release/archives/ union2_01232024.htm.
- 18 See id.
- 19 See Burns, supra note []. See also Estreicher, supra note [] at 415–16 (observing that decline in union densities is not a strictly American phenomenon, but in fact, is seen in "nearly all developed countries").
- 20 See Ronald G. Ehrenberg & Robert S. Smith, Modern Labor Economics: Theory and Public Policy 518–19 (13th ed. 2018) (attributing decline in union density to mix of trade liberalization, changing industrial mix, demographic changes, and (to some extent) increased opposition from employers facing new economic headwinds).
- 21 Katz, supra note [].

United Steel Workers represented workers in huge manufacturing plants, which could employ four or five thousand employees each.²² But international competition, technology, and trade forced manufacturers to become more efficient and meant that some were no longer competitive. At the same time, automation and communication technologies transformed the service sector, making it easier to expand and export services.²³ The economy increasingly shifted from manufacturing to service, and in the process, shed millions of union jobs.24

Unions struggled to offset those losses by organizing workers in the service sector. Organizing was easier, or at least more efficient, when unions could target large plants. They could spread their organizing costs across thousands of workers and take advantage of economies of scale.²⁵

But that scale shrank in service-sector workplaces. Service-sector workplaces could be as small as a single restaurant with a dozen employees.²⁶ And even in large services-sector workplaces, like big-box retailers, there might be only a few hundred employees.²⁷ That meant unions had to spend more money to organize each new member. By some estimates, each member now costs a union about \$3,000 in organizing expenses alone.28

Those hurdles have proven insuperable even in the best of climates. Since 2022, national unemployment has hovered around 4%. And today, about seven in ten Americans say they approve of labor unions.²⁹ In a vacuum, those factors should spur more organizing.30 Yet despite the favorable headwinds, union density has continued to tick down.31

- 22 Yeelson, supra note [].
- 23 See What Drives the U.S. Services Trade Surplus? Growth in Digitally-Enabled Services Exports, White House (June 10, 2024), https://www.whitehouse.gov/cea/writtenmaterials/2024/06/10/what-drives-the-u-s-services-tradesurplus-growth-in-digitally-enabled-services-exports/. See also Harris, supra note [] (noting that economy has "shifted to service-producing industries").
- 24 See Katz, supra note []. See also Estreicher, supra note [], at 415 (attributing decline in union density in part to decline in manufacturing employment).
- 25 See Yeelson, supra note []; Suresh Naidu, Is There Any Future for a US Labor Movement?, 36 J. Econ. Perspectives 3, 16-18 (2022).
- 26 See Ehrenberg & Smith, supra note [], at 519 (observing that smaller size of service establishments created new barriers to organizing).

- 27 Id.
- 28 Yeelson, supra note [].
- 29 See Justin McCarthy, U.S. Approval of Labor Unions at Highest Point Since 1965, Gallup (Aug. 30, 2022), https://news.gallup.com/poll/398303/approvallabor-unions-highest-point-1965.aspx.
- 30 See Chantal Pezold, et al., Labor Market Tightness and Union Activity, Nat'l Bureau of Econ. Research No. 31988 (Dec. 2023), (concluding that "[t]ight labor markets might spur unionization"). See also Abraham L. Gitlow, Labor Economics & Industrial Relations 71 (Literary Licensing, LLC 2012) (1957) (describing historical surges of union organizing during times of high demand for labor).
- 31 See Burns, supra note [] (noting that union densities have hit historic lows even as people report that they support labor unions in record numbers). See also Naidu, supra note [], at 4 (noting the gap between public support for unions and union densities and suggesting that the disparity reveals "institutional friction").

Lacking any other culprit, unions have blamed the law. Union organizing in the United States is governed by the National Labor Relations Act (NLRA).32 The Act divides employees into "appropriate" election units, which then become bargaining units if the employees vote for a union.33 The Act assumes that an appropriate unit is a single workplace.34 So in most cases, to organize new members, a union must campaign employer by employer, workplace by workplace.35

According to unions, this workplace-byworkplace process is the main barrier to unionization.³⁶ They argue that the process is too slow, too expensive, and too ripe for employer abuse.³⁷ They say that election delays allow employers to

defeat unionization drives through hardball tactics—tactics they say sometimes drift into illegal territory.38 They also argue that the NLRA's remedies are too weak.39 They complain that the law forces violators to offer backpay and reinstatement, but imposes no civil fines or penalties. True, invalid elections can be re-run.⁴⁰ But a new election is cold comfort to a union that has already spent too much money to organize a unit that is already too small.41

The law, unions say, is broken. It is now impossible for them to organize workers in the traditional method.⁴² So, the argument goes, if they are to survive, much less thrive, they have to find a different path.

- 32 Pub. L. 74-198, 49 Stat. 449 (1935) (codified as amended at 29 U.S.C. §§ 151-69).
- 33 29 U.S.C. § 159(a).
- 34 See NLRB v. Phoenix Programs of New York, Inc., 2 F. App'x 166, 168 (2d Cir. 2001) (observing that when selecting an appropriate bargaining unit, the NLRB applies a "single-facility" presumption").
- 35 See id.
- 36 See, e.g., Naidu, supra note [], at 18 (identifying NLRA's enterprise-level election system as main hurdle to organizing).
- 37 See, e.g., Pair of Pro-Union NLRB Rulings Favor Organizing, Int'l Brotherhood of Elec. Workers (Oct. 18, 2023), https://ibewgov.org/pair-of-new-pro-union-nlrb-rulingsfavor-organizing/ ("Many observers blame the tilted playing field [in NLRB elections] that overwhelmingly gives the advantage to employers for the long-term decline in union membership in the United States."); The Facts on the New NLRB Union Election Rule, Jobs with Justice (Dec. 12, 2014), https://www.jwj.org/the-facts-on-the-new-nlrb-unionelection-rule
 - (arguing that election process should be shortened to reduce employers' opportunity to defeat union drives).
- 38 See Letter from Nicole G. Berner, SEIU Gen. Counsel, to Roxanne Rothschild, Deputy Executive Secretary of the NLRB, at 3 (April 18, 2018), https://downloads.regulations.gov/NLRB-2020-0004-0104/content.pdf (asserting that NLRB should reduce time to process elections because "expedition elections reduce opportunities for unlawful [employer] conduct").

- 39 See Letter from William Samuel, Director, Government Affairs, AFL-CIO, in Support of the PRO Act (June 21, 2023), https://aflcio.org/about/advocacy/legislative-alerts/lettersupporting-pro-act-2.
- 40 See Gen. Shoe Corp., 77 N.L.R.B. 124, 127 (1948) (allowing re-run election when misconduct interferes with "laboratory conditions" required for "free choice").
- 41 See NLRB v. Gissel Packing Co., 395 U.S. 575, 613 n.32 (1969) (observing that a re-run election may be an inadequate remedy for certain serious election misconduct). See also Samuel, supra note [] ("For too long, employers have been allowed to violate workers' rights with impunity because the law includes no penalties for doing so."). See also Union Deterrence and Recent NLRB Action, White House (Oct. 23, 2023), https://www.whitehous.gov/cea/writtenmaterials/ 2023/10/23/union-deterrence-and-recent-nlrb-action/ (describing the requirement to re-run an election as a "weak" penalty). But see Cemex Constr. Materials Pac., LLC, 372 NLRB No. 130, slip op. at 2 (Aug. 25, 2023) (expanding use of bargaining orders as remedy for election-related misconduct).
- 42 See Aneurin Canham-Clyne, How the Biggest Private Sector Union Wants to Transform the Restaurant Workforce, Restaurant Dive (May 1, 2023), https://www.restaurantdive.com/news/how-labor-unionseiu-wants-to-transform-the-restaurant-workforce/648986/ (quoting SEIU President Kay Henry as saying that fast-food workers have "never believed" they could organize franchise to franchise).



A Government First Strategy

Increasingly, that path has led unions to politics and government. Despite their shrinking ranks, unions still wield significant influence with elected officials.⁴³ They consistently rank among the top campaign donors in each election cycle.44 And this largesse has helped them shape public policy, especially in progressive states already inclined to share their views.⁴⁵ For example, in California alone, unions have flexed their political muscle to push through laws on sick

leave, retirement, whistleblowing, consumer protection, infrastructure, housing, education, immigration, and criminal sentencing.46 These efforts have helped them stay in the public eye, if not in the private workplace.47

But state support can get them only so far. When Congress enacted the NLRA, it intentionally nationalized labor policy.⁴⁸ It created a uniform system of labor relations stretching over and beyond state borders.⁴⁹

- 43 Alex MacDonald, Political Unions, Free Speech, and the Death of Voluntarism: Why Exclusive Representation Violates the First Amendment, 22 Geo. J.L. & Pub. Pol'y 229, 261 (2024) (describing rising political contributions and corresponding political influence of private-sector labor unions),
- 44 See Estriecher, supra note [], at 423 n.23 (reporting that eight of the top twenty political action committees in the 2009-10 election cycle were unions).
- 45 See, e.g., Isabela Salas-Betsch & Karla Walter, Workers Want Unions: How States Have Strengthened Worker Power in 2023, Ctr. for Am. Progress (Nov. 1, 2023), https://www.americanprogress.org/article/workerswant-unions-how-states-have-strengthened-workerpower-in-2023/;

Jennifer MacGilivar & Ken Jacobs, The Union Effect in California #3: A Voice for Workers in Public Policy, UC Berkley Lab. Ctr. (June 20, 2018), https://laborcenter.berkeley.edu/union-effect-incalifornia-3/;

Geoffrey Lawrence et al., How Government Unions Affect State and Local Finances: An Empirical 50-State Review, Heritage Foundation (April 11, 2016), https://www.heritage.org/jobs-and-labor/report/howgovernment-unions-affect-state-and-local-financesempirical-50-state.

- 46 MacGilivar & Jacobs, supra note [] (surveying success of union-backed initiatives in California since 2011).
- 47 See Steven Greenhouse, "The Success Is Inspirational": the Fight for \$15 Movement 10 Years On, Guardian (Nov. 23, 2022), https://www.theguardian.com/us-news/2022/nov/23/ fight-for-15-movement-10-years-old (observing that despite its success in raising minimum wages, the SEIU's "Fight for \$15" campaign produced
- 48 See, e.g., 29 U.S.C. § 151; San Diego Bldg. Trades Council, Millmen's Union, Loc. 2020 v. Garmon, 359 U.S. 236, 242 (1959); NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 41 (1937).

no discernable gains in union membership).

49 See Jones & Laughlin, 301 U.S. at 41.

That system not only created a uniform set of rules, but also displaced inconsistent state or local regulations.⁵⁰ State and local governments cannot simply set up alternative labor-relations schemes.⁵¹ If they tried, they would be preempted.⁵²

So rather than design bespoke organizing schemes, unions and their state allies have searched for gaps in the federal system.⁵³ And that search has led them away from private bargaining and toward regulation.⁵⁴ Rather than organize workers and represent them at the bargaining table, they have decided to capture policymakers and advance their agendas at city hall.⁵⁵

- 50 See Garmon, 359 U.S. at 242; Lodge 76, Int'l Ass'n of Machinists & Aerospace Workers, AFL-CIO v. Wis. Emp. Rels. Comm'n, 427 U.S. 132, 144 (1976).
- 51 See Cynthia Estlund, Sectoral Solutions that Work:
 The Case for Sectoral Co-Regulation, 98 ChicagoKent L. Rev. __, 541, 555–56 (forthcoming), available at
 https://ssrn.com/abstract=4498546
 (recognizing preemption as a barrier to state- and
 local-level pro-union legal reforms).
- 52 See Chamber of Commerce of the U.S. v. Brown, 554 U.S. 60, 65, 76 (2008) (holding that state law conditioning state funds on business's waiver of its speech rights under the NLRA was preempted). See also Ben Sachs, Anti-Union Governors and Employee Free Choice, OnLabor (June 10, 2024), https://onlabor.org/anti-union-governors-and-employee-free-choice/ (asserting that state-level legislation aimed at regulating parties' conduct in the election process would be preempted).
- 53 See Estlund, supra note [], at 555–57 (proposing "co-regulation" schemes as a way to overcome the preemption "problem").
- 54 See id.
- 55 See MacGilivar & Jacobs, supra note [] (arguing that unions' biggest effects come "not from negotiations between employers and workers, but instead through the labor movement's influence on public policy").



Ideological Roots

This strategy didn't come from nowhere. For more than 100 years, labor advocates have argued that unions can survive only by forming closer bonds with the state. In the Assumptions of Trade Unionism,⁵⁶ Sidney and Beatrice Webb predicted that unions would inevitably evolve into quasi-public agents. As post-industrial economies became more complex, the government would intervene more and more directly in labor markets.⁵⁷ It would seek to control the markets through centralized regulations and expert administration.⁵⁸

And as it did, it would displace the traditional role of unions. ⁵⁹ Unions would no longer need to bargain over wages and working conditions. ⁶⁰ Instead, they would serve the government as advisors. ⁶¹ They would help government regulators by investigating and informing them about conditions in the workplace. ⁶² In effect, they would be the government's eyes and ears. ⁶³ Their constituents would no longer be the workers themselves; at least, not directly. Their first loyalties would lie with the state. ⁶⁴

- 56 See Sidney & Beatrice Webb, The Assumptions of Trade Unionism, in Theories of the Labor Movement 193206 (Simeon Larson & Bruce Nissen, eds., 1987) [hereinafter Assumptions of Trade Unionism]. See also Sidney & Beatrice Webb, Industrial Democracy 557–603 (1897), http://digamoo.free.fr/webb1897.pdf.
- 57 Id. at 199.
- 58 Id.
- 59 Id. at 202.

- 60 Id.
- 61 Id. at 204.
- 62 Id. at 203-04.
- 63 See id.
- 64 See id. (arguing that government intervention would inevitably drive unions toward more centralized, government-driven policy solutions). See also Gitlow, supra note [], at 55–56 (describing the Webbs' government-led theory as an alternative to private monopolization of labor markets by unions).



The Webbs were British economists: they were thinking about nineteenthcentury England.65 But they could just as easily have been describing twentyfirst-century America. Today, the American administrative state touches nearly every part of the economy, including the workplace.⁶⁶ It sets rules for topics ranging from wages to workplace safety and everything in between.⁶⁷ And much of its growth came in the second half of the twentieth centurythe period of labor's steepest decline.68

This correlation has not been lost on labor unions or their allies. Unions know that the administrative state is here to stay. So if they want to stay relevant, they must attach themselves to the government.69 That is, they must find a way to capture and control the regulatory process.⁷⁰

- 65 See Sidney and Beatrice Webb, Britannica (April 15, 2024), https://www.britannica.com/biography/Sidney-and-Beatrice-Webb.
- 66 See Gary Lawson, The Rise and Rise of the Administrative State, 107 Harv. L. Rev. 1231, 1236 (1994) ("There is now virtually no significant aspect of life that is not in some way regulated by the federal government.").
- 67 See, e.g., 29 U.S.C. § 201-62 (Fair Labor Standards Act, regulating minimum wages, overtime, and child labor, among other things); 29 U.S.C. § 651-78 (Occupational Health and Safety Act, regulating workplace safety); 29 U.S.C. § 2601 (Family Medical Leave Act, regulating unpaid family and medical leave); Rest Periods/Lactation Accommodations, Cal. Dep't of Indus. Rels. (April 2021), https://www.dir.ca.gov/dlse/faq_restperiods.htm (describing mandatory paid breaks under California law); Predictive Scheduling, Or. Dep't of Lab. & Indus., https://www.oregon.gov/boli/workers/pages/predictivescheduling.aspx (describing Oregon laws regulating notice and penalties related to changes in employee schedules). See also A.B. 2751, Reg. Sess. (Cal. 2024) (proposing to give employees
- 68 See Katz, supra note [] (noting that unions have undercut their own value by pushing for mandatory work standards). See also Alexander T. MacDonald, Permanent Replacements: Organized Labor's Fall, Employment Law's (Incomplete) Rise, and the Way Forward, 50 Idaho L. Rev. 19, 20, 26–27 (2013) ("[U]nions no longer occupied an exclusive position in regard to securing workplace rights; new employment laws had eroded their claim to an essential role in the American workplace.").

the "right to disconnect" during unscheduled hours).

- 69 See Estreicher, supra note [], at 418 ("We are now, however, beginning to see a qualitative change in labor's relationship to the state: trade unionism as a supplement to politics. Labor's economic objectives have not changed; the means are undergoing substantial transformation"). See also David J. Saposs, Voluntarism in the American Labor Movement, 77 Monthly Lab. Rev. 967, 967 (1954) (observing that unions have "become adherents of the concept of Government intervention in economic and social affairs and have found in profitable to engage extensively in political action").
- 70 See Schuler Q&A, supra note [] ("We need to elect people, especially union members, who share our values and who put worker first. That will result in guaranteed change."). See also The Steward as Political Organizer, Serv. Emps. Int'l Union, https://www.seiu.org/cards/the-complete-stewards-manual/ the-steward-as-political-organizer/p19 ("To protect our members' interests, the union must be involved in electing candidates who will pass and enforce laws which will increase and protect our rights and benefits."); Q&A: AFL-CIO President Liz Schuler on Organizing, Infrastructure, Diversity, and How Proud She Is of Her Home Union, IBEW.org (Aug. 8, 2022), http://www.ibew.org/media-center/Articles/22Daily/ 2208/220808_AFL-CIOPresident [hereinafter Schuler Q&A] ("We can't just get out the vote every four years[;] we have to be active participants in every voting cycle. And that is where our focus lies.").

Regulatory Tactics

That insight has birthed a variety of regulatory tactics. While the tactics themselves differ in their details, they all rely on public processes to maintain union power. And because, they argue, none of them involves bargaining in the traditional sense, they can all—at least on the surface—avoid federal preemption.

Labor standards boards

First among these tactics are "labor standards" boards. Labor-standards boards are quasiprivate, quasi-public regulatory bodies. They include representatives from unions, employees, employers, and the government. These representatives "negotiate" over wages and working conditions for a specified sector. The resulting agreement then goes to some public entity for final approval. If that entity approves, the agreement becomes binding law—just like any other regulation.71

This model is not new. Standards boards were popular during the Progressive movement and the early New Deal. 72 They made appearances in early state wage laws, as well as the ill-fated National Industrial Recovery Act (NIRA).73 They even showed up in the original Fair Labor Standards Act (FLSA).⁷⁴ But largely, they were seen as policy failures. The NIRA's boards were dominated by entrenched businesses, which used the regulatory process to disadvantage their rivals.75 And the FLSA's boards were often stacked with union officials, even in industries with few unionized workers.76 They were quickly disbanded and forgotten for much of the twentieth century.77

- 71 See generally Estlund, supra note [] (describing tripartite standards-board model); Kate Andrias, An American Approach to Social Democracy: The Forgotten Promise of the Fair Labor Standards Act, 128 Yale L.J. 616 (2019) (describing model as it functioned under the original FLSA).
- 72 See Frank T. de Vyver, Regulation of Wages and Hours Prior to 1938, 6 L. & Contemporary Problems 323, 327 (1939) (describing tripartite boards convened to set minimum wages in Massachusetts, Wisconsin, Minnesota, Oregon, California, Utah, Colorado, Nebraska, and District of Columbia). See also Michael Lotito et al., California Could Revive the Industrial Welfare Commission, Littler Insight (June 26, 2023), https://www.littler.com/publication-press/publication/ california-could-revive-industrial-welfare-commission (describing California's history of wage regulation though tripartite board procedures).
- 73 See National Industrial Recovery Act, Pub. L. 73-67, §§ 3, 7(a), 48 Stat. 195 (1933) (authorizing creation of private codes of fair competition to govern, among other things, minimum wages within an industry, as approved by the president).

- 74 See Fair Labor Standards Act of 1938, ch. 676, § 8(a)-(e), 52 Stat. 1060, 1064 (establishing tripartite industry boards to set sectoral wage levels).
- 75 See Andrias, supra note [], at 657. See also James Gross, The Making of the National Labor Relations Board: A Study in Economics, Politics, and the Law 1933-37, at 66 (1974) (observing that tripartite "partisan" structure used under original National Labor Board was also widely seen as a failure).
- 76 See Andrias, supra note [], at 671 (noting that every single "employee" representative was chosen from a union, even in largely nonunion industries). Cf. Gross, supra note [], at 87 (observing that contemporary employers mistrusted the tripartite National Labor Board because they suspected that only employer representatives with union sympathies were chosen).
- 77 See César F. Rosado Marzán, Can Wage Boards Work in America?, LPE Project (April 3, 2023) (commenting on repeal of FLSA boards in the 1940s).

But now, unions are reviving them with alacrity.⁷⁸ In 2016, the SEIU pushed New York lawmakers to reconvene a long-dormant wage board to set minimum pay for the fast-food industry.⁷⁹ And other states quickly followed suit. Since 2018, no fewer than six states and three local governments have adopted their own quasi-public standards boards:

Seattle

Seattle has been the most active player. Even before New York convened its wage board, Seattle created a wage-setting scheme for rideshare drivers.80 Though styled as a collective-bargaining system, the scheme functioned less like bargaining and more like a standards board. It required "driver coordinators" to bargain with a union about compensation and terms of work. Those terms were then reviewed by a city official. And if the terms met certain criteria, the official promulgated them as regulations.81

This scheme was struck down in 2018 for violating federal antitrust law.82 But the city was undeterred. The same year, it created the Domestic Workers Standards Board.83 This new board had thirteen members representing a mix of government, domestic workers, and service recipients. It also included members from organizations "representing" workers.

Collectively, the board was instructed to develop and propose new laws for the city council. And in its first set of proposals, it recommended more funding for "community groups" to organize workers.84 It also recommended that the city explore new ways to promote collective bargaining.85

- 78 See David Madland, Sectoral Bargaining Can Support High Union Membership, Ctr. for Am. Progress (May 30, 2024), https://www.americanprogress.org/article/sectoralbargaining-can-support-high-union-membership/ (describing recent burst of standard-board laws at state and local levels).
- 79 See Minimum Wage for Fast Food Workers, N.Y. State Dep't of Labor, https://dol.ny.gov/minimum-wage-fast-food-workersfrequently-asked-questions. See also Rosado Marzán, supra note [] (describing effort).
- 80 See Seattle Ord. No. 124968 (2015).
- 81 Id. See also For-Hire Driver Representation and Collective Bargaining, Seattle Fin. & Admin. Servs. (June 2017), https://www.seattle.gov/documents/Departments/ FAS/RegulatoryServices/collective-bargaining/generalinformation.pdf (describing bargaining and regulatory scheme).

- 82 Chamber of Com. of the U.S. v. City of Seattle, 890 F.3d 769, 788 (9th Cir. 2018).
- 83 See Seattle Mun. Code ch. 14.23.
- 84 also Seattle Domestic Workers Standards Board: 2020-22 Workplan, https://www.seattle.gov/documents/Departments/ LaborStandards/DWSB%202020-2022%20Workplan %20Final.pdf.
- 85 Seattle Domestic Workers Standards Board: Report and Recommendations to City Council and Mayor (April 2021), https://www.seattle.gov/documents/Departments/ LaborStandards/DWSB%20Recs_FINAL_040621.pdf.

New York

Not to be outdone, New York state created its own new board—the Farm Laborers Wage Board.86 This board was charged with investigating conditions in the agricultural industry and recommending regulations to the state labor commissioner. It was supposed to base those recommendations on evidence gathered from the workers themselves. But in practice, few workers participated in the board's hearings.87 Most testimony came from worker "advocates" and left-of-center policy groups.88

Lack of evidence aside, the board recommended that the state increase minimum compensation by reducing the legal overtime thresholds.89 The commissioner then accepted those recommendations without change and adopted them as regulations.90

Philadelphia

The same year, Philadelphia enacted the Domestic Workers Standards and Implementation Task Force.91 Like other standards boards, the Task Force included representatives from local government, workers, and employers. It was directed to investigate working conditions and recommend new laws to the city council. But unlike other boards, it made no effort to hide its pro-union structure. It explicitly assigned seats on the board to a specific labor organization—the Domestic Workers Alliance.92

- 86 N.Y. Lab. L. § 674-a.
- 87 See Farm Laborers Wage Board: Final Report 17 (2022), https://dol.ny.gov/system/files/documents/2022/09/farmworkers-wage-report-and-reccommendations-final.pdf
- 88 See id. at 12-13 (identifying, among others, the National Employment Law Project and the Economic Policy Institute).
- 89 Id. at 19.
- 90 Order of Commissioner of Labor Roberta Reardon on the Report and Recommendations of the 2022 Farm Laborers Wage Board (Sept. 22, 2022), https://dol.ny.gov/system/files/documents/2022/09/ fwwb_signed_order_093022.pdf.
- 91 See City of Philadelphia, Resolution Calling for the Creation of a Domestic Workers Standards and Implementation Task Force (2019), https://phlcouncil.com/wp-content/uploads/ 2019/10/Domestic-Workers-Standards-and-Implementation-Task-Force-1.pdf.
- 92 Id.

Colorado

Two years later, Colorado set up the Agricultural Advisory Board.93 The board had nine members, including three employer representatives, two worker representatives, and two "advocates of worker rights." The remaining members came from the Colorado Legal Services Division of Migrant Rights—effectively ensuring that employers would be outvoted.94

Colorado also created a board for "direct care" workers.95 This board included employer, worker, and public representatives. It was empowered to investigate industry conditions and recommend new legislation. And uniquely, it was instructed to consider any standards set by collective-bargaining agreements.96

Nevada

The same year, Nevada created a board for home-care workers.97 This board included representatives from employers, employees, care recipients, and the government. It was empowered to subpoena records, hold hearings, take testimony, and recommend policies to a state commissioner.98 Among its first recommendations was to raise the minimum wage to \$15 an hour—money that would come largely from the taxpayers.99

Detroit

In 2021, Detroit authorized "industry standards boards."100 These boards could be convened for "any industry." 101 And once convened, a board could investigate the industry, hold hearings, take testimony, and recommend new regulations to the mayor and city council.102 These recommendations might include wages, working conditions, benefits, and to ways to improve "compliance" with city and state laws.103

- Colo. Rev. Stat. § 8-13.5-205.
- 94 Id. § 8-13.5-205(1)(a).
- 95 Colo. Rev. Stat. § 8-7.5-104.
- 96 Id. § § 8-7.5-104(1)(b)(IV).
- Nev. Rev. Stat. 608.640. 97
- 98 Id.
- Letter from Cody Phinney Chair of the Home Care **Employment Standards Board Deputy Administrator,** to Director Richard Whitley, MS, Department of Health and Human Services (June 29, 2022), https://dhhs.nv.gov/uploadedFiles/dhhsnvgov/content/ Programs/HCESB/Recommendation%20to%20Director %20Rates%20and%20Wages.pdf.
- 100 Detroit Ord. No. 2021-42 (Nov. 3, 2021), https://detroitmi.gov/sites/detroitmi.localhost/files/ 2022-04/Industry%20Standards%20Ordinance.pdf.
- 101 Detroit City Code § 12-11-4(a).
- 102 Id. § 12-11-61.
- 103 Id. § 12-11-63(4).

California

Finally, in 2023, California created the Fast Food Council.¹⁰⁴ The Council was a statewide, tripartite body with the power to develop standards for the fast-food industry. It included members ostensibly representing employees, employee advocates, franchisors, and franchisees, as well as the government.¹⁰⁵

In many ways, the Council's powers were broader than those of other boards. The Council could promulgate standards on wages, hours, and working conditions for every covered restaurant in the state.¹⁰⁶

Those standards were to be sent to the state labor commissioner, who could review them only to ensure they met statutory criteria. ¹⁰⁷ If they met the criteria, the commissioner would promulgate them as regulations through the state's administrative process. ¹⁰⁸

But broad as those powers were, they were modest compared to the Council's original design. Adopted in 2021, the original Council would have had the power to "establish sectorwide minimum standards on wages, working hours, and other working conditions." Those standards would have preempted any conflicting regulations issued by state agencies. 110

104 AB 1228 Reg. Sess. (Cal. 2023).

105 Id. See also AB 1228 – Fast Food Council,
Cal. Dep't of Indus. Rels.,
https://www.dir.ca.gov/AB1228/AB1228.html
(last visited June 11, 2024)
(describing composition and function of council).

106 Cal. Lab. Code § 1475.

107 Id. § 1475(d)(1)(C)(iii).

108 ld.

109 AB 275, Reg. Sess. (Cal. 2022-23).

110 ld.



But the restaurant industry recoiled at the prospect of a union-led regulator, and it launched a referendum to repeal the law.111 Lawmakers negotiated with the industry and agreed to scale back the Council's authority.¹¹² They also agreed to remove a provision that would have made franchisors jointly liable with franchisees—but only once the industry withdrew its referendum.113

These boards are unlikely to be the last of their kind. Others have already been proposed, some with even broader authority. For example, California is considering a new board for janitorial services with powers much like the Fast Food Council.¹¹⁴ New York is considering a nail-salon board with authority not only over wages and working

conditions, but also minimum prices.115 And Minneapolis is considering a board that will reportedly have power over a broad range of industries, including childcare, construction, and food service.¹¹⁶

At first, it may seem odd that these boards would attract so much energy from labor. They offer few immediate financial rewards. While they often allocate seats to union representatives, the seats pay only a modest per diem at best. Nor do the boards give unions any immediate new members.¹¹⁷ New members are a union's lifeblood: they pay the dues that keep unions afloat.¹¹⁸ But the boards force no one to join a union, much less to pay dues.119 This is what some in labor call the "business model" problem.120

- 111 See Aneurin Canham-Clyne, Restaurant Groups Push to Repeal California's Fast Food Council Law, Restaurant Dive (Sept. 8, 2022), https://www.restaurantdive.com/news/californiafast-food-organizes-referendum-ab-257/631395/.
- 112 See California Increases Minimum Wage Protections for Fast-Food Workers, Governor Gavin Newsom (Sept. 28, 2023). https://www.gov.ca.gov/2023/09/28/california-increasesminimum-wage-protections-for-fast-food-workers/ (describing the deal).
- 113 See Michael Lotito et al., New California Worker Law Would Raise the Minimum Wage, Establish a "Fast Food Council," and No Longer Fund the Industrial Welfare Commission, Littler Insight (Sept. 12, 2023), https://www.littler.com/publication-press/publication/ new-california-fast-food-worker-law-would-raiseminimum-wage-establish#:~:text=The%20law%20 created%20a%20%E2%80%9CFast,of%20fast%20 food%20restaurant%20workers.
- 114 See AB 2364, Reg. Sess. (Cal. 2024). See also Oppose AB 2364 and AB 2374, Cal. Bus. Properties Ass'n, https://cbpa.com/Janitorial-Bills (describing bill and proposed council).
- 115 SB S1800 Reg. Sess. (N.Y. 2023-24). See also News Release: Ramos, Bronson Introduce New Legislation to Establish Minimum Standards Council for Nail Salon Industry (Jan. 26, 2022), https://www.nysenate.gov/newsroom/press-releases/ 2022/jessica-ramos/immediate-release-ramos-bronsonintroduce-new (describing prior version of the same legislation).

- 116 See Report to the City Council from the Pub. Health & Safety Committee (Feb. 14, 2024), https://lims.minneapolismn.gov/Download/Committee Report/3596/PHS-02142024-CommitteeReport.pdf (stating that ordinance would create "a new Article VIII creating a process to establish a Labor Standards Board study and report on working conditions in specific industries"). See also Susan Du & Katelyn Vue, Minneapolis Mayor, City Council Members Propose New Labor Board to Address Worker Dissatisfaction, Minneapolis Star Tribune (June 15, 2022), https://www.startribune.com/minneapolis-mayor-citycouncil-members-to-create-a-new-labor-board-to-addressworker-dissatisfaction/600182460/
- 117 See Madland, supra note [] (describing worries among labor advocates that the boards do not lead directly to new members, and may even discourage people from joining unions).
- 118 See Gitlow, supra note [], at 108 (observing that unions receive the vast bulk of their funding from membership dues). See also James Sherk, Unions Charge Higher Dues and Pay their Officers Larger Salaries in Non-Rightto-Work States, Heritage Foundation (Jan. 26, 2015), https://www.heritage.org/jobs-and-labor/report/ unions-charge-higher-dues-and-pay-their-officerslarger-salaries-non-right (describing unions as a business like any other and relying on the revenues they collect from membership dues).
- 119 See Madland, supra note [].

(describing proposal).

120 Estlund, supra note [], at 586.



But many in labor think standards boards do have a business model—albeit an indirect one. While the boards may not force anyone to join a union, they do give unions access to potential members.¹²¹ Unions can use the boards' investigative powers to learn more about unorganized firms and contact those firms' employees.¹²² They can also leverage the prestige they get from their official board sets. Once they're on the board, they're no longer just private organizations: they're quasi-public officials with governmental authority. That authority lends them a sheen of legitimacy, which they can use to attract new members. 123

Unions can also use the standard-setting process as a focus for organizing. For example, in Nevada, the SEIU rallied thousands of homecare workers to advocate for new work standards.¹²⁴ That effort helped it organize new members and win a series of elections.¹²⁵ And learning from that experience, the union is using a similar strategy in California. Even before the Fast Food Council had its first meeting, the SEIU sought to benefit from the Council's influence by launching a new affiliate—the "California Fast Food Workers Union." 126

- 121 See Madland, supra note [] (describing boards and other sectoral systems as tools for organizing).
- 122 See, e.g., Nev. Rev. Stat. § 608.640 (giving board broad investigatory powers, including power to subpoena records); S.B. S1800, Reg. Sess. (N.Y. 2023-24) (same).
- 123 Id. (arguing that sectoral systems like wage boards incentivize workers to join unions so they can influence the union's activities at the sectoral level). See also California Fast Food Workers Union Launched!, SEIU (Feb. 22, 2024), https://www.seiu.org/blog/2024/2/california-fast-foodworkers-union-launched (announcing launch of new affiliate union to coincide with first meetings of Fast Food Council).
- 124 See McKenna Ross, Nevada Workers in Growing Health Care Industry and Unionizing, Las Vegas Rev.-J. (Aug. 31, 2023), https://www.reviewjournal.com/business/nevada-workersin-growing-health-care-industry-are-unionizing-2896793/.
- 125 Id. See also Madland, supra note [] (describing the organizing effort).
- 126 See The Fast Food Council, Fast Food Workers Union, https://californiafastfoodworkersunion.org/about/ the-fast-food-council/ (last visited June 11, 2024) (landing page for the Fast Food Workers Union using the Fast Food Council as a rallying point). Ironically, this "California" union has a mailing address in Washington, D.C. Id.



Beyond organizing, standards boards also help unions in another way: they suppress competition. Unionized firms often have higher labor costs than their nonunion competitors.¹²⁷ They sometimes pay abovemarket wages and benefits, which means they have higher costs for each unit of labor.¹²⁸ But standards boards set minimum costs for all firms, union and nonunion alike.¹²⁹ In other words, they help erase cost disadvantages and protect union jobs. 130

At bottom, then, standards boards are an anticompetition strategy. They homogenize labor standards across an industry and therefore eliminate competition over labor.¹³¹ This loss of competition may raise prices and harm consumers.132 But to unions, it is a feature, not a bug. The unions' goal is not to improve competition, or even control it. Their goal is to eliminate it.133

- 127 See Laura Feiveson, Labor Unions and the U.S. Economy, U.S. Dep't of Treasury (Aug. 28, 2023), https://home.treasury.gov/news/featured-stories/ labor-unions-and-the-us-economy (describing this difference as a "union wage premium").
- 128 See James Sherk, What Unions Do: How Labor Unions Affect Jobs and the Economy, Heritage Foundation (May 2009), https://www.heritage.org/jobs-and-labor/report/whatunions-do-how-labor-unions-affect-jobs-and-the-economy [hereinafter What Unions Do]. See also Haufeng Chen et al., Labor Unions, Operating Flexibility, and the Costs of Equity, 46 J. of Fin. & Quantitative Analysis 25, 26 - 26 (2011) (concluding that unionized firms have higher on average equity costs because of reduced operating flexibility).
- 129 See Bruce Western & Jake Rosenfeld, Unions, Norms, and the Rise in U.S. Wage Inequality, 76 Am. Sociological Rev. 513, 518-19 (2011) (arguing that standards boards and "prevailing wage" laws promote "distributional equality" and "reduce[] the difference between union and nonunion wages").

- 130 See Madlund, supra note [] (explaining that sector-wide standards promote unionism by reducing or eliminating competition over labor costs); Estlund, supra note [], at 559 (same).
- 131 See Estlund, supra note [], at 559 ("Sectoral standards can partially avoid the Achilles' heel of enterprise-based collective bargaining by constraining labor-cost-based competition from non-union firms, including new entrants, and by forcing firms to compete instead through higher productivity, quality, and innovation.").
- 132 See What Unions Do, supra note [] (explaining that unions "function as labor cartels" and "retard economic growth and delay recovery from recession").
- 133 See Apex Hosiery Co. v. Leader, 310 U.S. 469, 503 (1940) (explaining that "an elimination of price competition based on differences in labor standards is the objective of any national labor organization"); Gitlow, supra note [], at 146 ("Their aim is to reduce or eliminate competition, from the supply side, in the labor market.").

Sectoral wages

Beyond standards boards, unions have also suppressed competition with more traditional legislation. A familiar example is the minimum wage. Unions have long supported higher minimum wages.¹³⁴ Minimum wages tend to raise pay throughout the jurisdiction (even for people who already make more than the minimum wage).¹³⁵ And by the same token, they also tend to reduce wage competition.¹³⁶

But recently, unions have refined that strategy by pushing for wage increases in specific industries. These industries are often those where unions have tried and failed to organize workers before.¹³⁷ Unions think that by raising wages throughout an industry, they can reduce employers' resistance to organizing. 138

After all, if everyone has to pay high wages, union-scale wages are less of a competitive albatross.¹³⁹ And that means employers have less incentive to fight union campaigns.

Again, California offers the clearest examples. The state's unions have lobbied for—and passed—legislation to raise the minimum wage in the healthcare, hospitality, and fast-food industries. In West Hollywood, some hotels must now pay almost \$20 an hour.¹⁴⁰ In the fast-food industry, employers must also pay \$20 an hour.141 And across the state, healthcare facilities must soon pay \$25 an hour.¹⁴² These wages range from 22% to 48% higher than the statewide minimum (now \$16).143 And all of them are set to rise in lockstep with inflation.144

- 134 See, e.g., Workers in the Fight of \$15 and a Union Help Announce the 2021 Raise the Wage Act with Members of Congress, SEIU (Jan. 28, 2021), https://www.seiu.org/blog/2021/1/workers-in-the-fightfor-15-and-a-union-help-announce-the-2021-raise-thewage-act-with-members-of-congress; Letter Supporting Legislation that Would Raise Wages, AFL-CIO (July 18, 2019), https://aflcio.org/about/advocacy/legislative-alerts/ letter-supporting-legislation-would-raise-wages.
- 135 See How Increasing the Federal Minimum Wage Could Affect Employment and Family Income, Cong. Budget Office (Jan. 30, 2024), https://www.cbo.gov/publication/55681#:~:text=In %20general%2C%20increasing%20the%20federal, their%20family%20income%20would%20fall (describing effect of higher minimum wages through multiple levels of income distribution).
- 136 See Estlund, supra note [], at 559 (explaining that sectorwide and sector-specific minimum wages tend to suppress competition over wages, albeit to different degrees).
- 137 See Madland, supra note [] (arguing that sectoral standards help unions most in "jobs that are inherently hard to organize, such as those with many small employers or heavily contracted, fissured industries" (internal quotation marks omitted)).

- 138 See id. (arguing that raising minimum standards across a sector reduces employers' incentive to fight union drives, "which can make organizing workers easier").
- 139 See Estlund, supra note [], at 561, 562-63 (describing sector-specific wages as "opportunistic" ways to reduce employer opposition to unions in certain industries).
- 140 West Hollywood Ord. No. 24-13 (2024).
- 141 AB 1228 Reg. Sess. (Cal 2022) (codifying new wage rate at Cal. Labor Code § 1475(d)(2)(1)).
- 142 SB 525 Reg. Sess. (Cal. 2023-24) (codifying new wage rates at Cal. Labor Code §§ 1182.14-1182.15).
- 143 See News Release: California's Minimum Wage to Increase to \$16 per hour in January 2024 (Sept. 26, 2023), https://www.dir.ca.gov/DIRNews/2023/2023-66.html.
- 144 See Cal. Labor Code § 1475; Cal. Labor Code §§ 1182.14-1182.15; West Hollywood Ord. No. 24-13. See Estlund, supra note [], at 562 - 63 (explaining that higher standards "muffle" employer resistance and lead to more organizing. See also Ehrenberh & Smith, supra note [], at 523 - 24 (making a similar point about standard-setting through regulation).

Unions have not, however, limited their efforts to the Golden State. They have used the same tactic against unorganized industries in other places. For example, in New York City and Seattle, they pushed through minimum wages for app-based rideshare and delivery workers.145 Though these workers tend to be independent contractors, both cities now require network companies to pay them an hourly minimum wage.146 Those wages were also designed to mirror the minimum wage for employees.¹⁴⁷ That is, they were written to ensure that independent contractors could not offer a cost advantage over unionized (or union eligible) employees.148

Again, unions support these sector-specific wages in part to blunt competition.¹⁴⁹ But they also think high minimum wages will help them organize new members. They think that when workers know they can earn high wages in similar jobs, they're more likely to take risks with their current jobs—risks that might include protesting, picketing, or going on strike.150 And that means hard-to-organize workers might be more willing to join unions.151

- 145 See Seattle Mun. Code §§ 14.33.050 (minimum compensation for "transportation network company" (TNC) drivers), 8.37.050 (minimum compensation for other app-based workers); N.Y. City Admin. Code §§ 19-549 (minimum compensation for for-hire drivers), 20-1522 (minimum compensation for app-based delivery workers).
- 146 See, e.g., Seattle Mun. Code § 14.33.050; N.Y. City Admin. Code § 20-1522.
- 147 See PayUp Legislation, Seattle City Council, https://www.seattle.gov/council/issues/past-issues/payup (stating that legislation was designed to pay app-based workers a "minimum wage"); N.Y. City Dep't of Consumer & Worker Protection, Final Rule: Minimum Pay for Food Delivery Workers (July 12, 2023), https://rules.cityofnewyork.us/rule/minimum-pay-for-fooddelivery-workers-updated/ (explaining Department's methods for calculating minimum-pay rates for app-based delivery workers).
- 148 See Caitlin Vega, What's the Real Story on Dynamex?, Cal. Labor Fed'n (Aug. 13, 2018), https://calaborfed.org/whats-the-real-story-on-dynamex/ (arguing that businesses who partner with independent contractors "unfairly" undercut firms that hire employees because they are able to take advantage of lower labor costs).
- 149 See, e.g., Cynthia Estlund, Part II: Why Sectoral Co-Regulation? OnLabor (May 22, 2024), https://onlabor.org/part-ii-why-sectoral-co-regulation/ ("Sectoral labor standards . . . can also address the Achilles' heel of enterprise-based bargaining by constraining labor-cost-based competition within the sector, and by forcing firms to compete instead through higher productivity, quality, and innovation."). See also Alexander T. MacDonald, Fast Food, Minimum Wages, and the Pervasive Myth of Benevolent Unions: Why the Labor Movement Pushes for Stricter Labor Laws, FedSoc Blog (April 9, 2024), https://fedsoc.org/commentary/fedsoc-blog/fast-foodminimum-wages-and-the-pervasive-myth-of-benevolentunions-why-the-labor-movement-pushes-for-stricter-(explaining that unions support higher minimum wages to prevent competition from lower-cost substitutions).
- 150 See Cynthia Estlund, Part III: Some Questions About Sectoral Co-Regulation and Its Future, OnLabor (May 23, 2024), https://onlabor.org/iii-some-questions-about-sectoralco-regulation-and-its-future/ (arguing that sector-wide standards give workers more "leverage" and so may promote traditional organizing).
- 151 See Madland, supra note [] (arguing that higher minimum sectoral standards can boost labor organizing).

Ballot initiatives

Unions have also pursued these same goals through ballot initiatives. In some states, a private group can put an initiative on an election ballot by collecting a certain number of signatures.¹⁵² If voters approve the initiative, it becomes a law. 153 Unions have used that tool perhaps as much as any other single group.¹⁵⁴ And in fact, they have often used it to enact some of their most aggressive policies—policies that made even their usual legislative allies balk.155

A good example is the so-called tipped wage. The tipped wage is an alternative minimum wage paid to employees who also receive tips.¹⁵⁶ These employees can be paid less than the standard minimum wage as long as tips make up the difference.¹⁵⁷ In practice, tipped employees often earn much more than the minimum wage, in part because customers tip well to reward good service.¹⁵⁸ But unions dislike tipped wages for the same reason they dislike low minimum wages in general: they expose unionized firms to wage competition.¹⁵⁹ So unions have sponsored and funded tip-credit ballot initiatives in half-a-dozen states, as well as DC, to eliminate them. 160

- 152 See Initiative and Referendum Processes, Nat'l Conference of State Legislatures (Jan. 4, 2022) (surveying state voter-initiative processes).
- 153 See, e.g., Cal. Const. art. II, § 10; Mass. Const. art. XLVIII.
- 154 See Majority Rules: The Battle for Ballot Initiatives, Ctr. for Work & Democracy, https://cwd.asu.edu/projects/majority-rules-battleballot-initiatives (last visited June 11, 2024) (collecting research).
- 155 See id. (reporting that in recent years, unions "have used citizen initiatives to pass policies that redistribute wealth, rights, and decisionmaking power"—polices often "treated as unrealistic or impractical in partisan politics").
- 156 See, e.g., 29 U.S.C. § 203(m) (establishing alternative tipped wage under FLSA); Md. Lab. & Empl. Code § 3-419 (establishing alternative tipped wage under Maryland law).
- 157 See Md. Lab. & Empl. Code § 3-419.
- 158 See Keep the Tip Credit, Restaurant Ass'n of Md., https://www.marylandrestaurants.com/save-the-tip-credit (last visited June 11, 2024) (reporting that tip-earning servers in Maryland restaurants earn an average of \$27 an hour).

- 159 Cf. Naidu, supra note [], at 18 ("The simplest policy tool for mitigating the incentives for firms to fight unionization is to take labor standards out of competition by legislative action. Thus, higher minimum wages and employment regulations that bind even nonunion employers are effectively a pro-union policy."); Estlund, supra note [], at 562 (explaining that unions support higher sectoral wages to "to capture a fair share of firm revenues, in firms and sectors where higher productivity and the structure of product-market competition allowed" and "to narrow the gap left by the decline of collective bargaining").
- 160 See also Peter Romero, Keeping the Tip Credit Emerges as a Top Restaurant Concern for 2024, Restaurant Bus. (Feb. 7, 2024), https://www.restaurantbusinessonline.com/workforce/ keeping-tip-credit-quickly-emerges-top-restaurantconcern-2024 (noting that even some progressive jurisdictions have responded to business concerns about ending tip credit). But see Fact Sheet: Biden-Harris Administration Issues an Executive Order to Raise the Minimum Wage to \$15 for Federal Contractors, White House (April 27, 2021), https://www.whitehouse.gov/briefing-room/ statements-releases/2021/04/27/fact-sheet-bidenharris-administration-issues-an-executive-orderto-raise-the-minimum-wage-to-15-for-federalcontractors/#:~:text=Eliminate%20the%20tipped %20minimum%20wage,level%20of%20the%20 minimum%20wage (ordering end to tipped minimum wage for

These initiative campaigns have often been misleading. Unions have attacked tipped wages as "subminimum" wages without explaining that tipped workers often earn far more than the statutory minimum. 161 They have also failed to note that without a tipped wage, employers often eliminate tips altogether, causing a net drop in workers' earnings.¹⁶² And in fact, even the initiatives themselves have sometimes been inaccurate. In Michigan, unions collected signatures on a petition that misdescribed which employers a new minimum wage would apply to. State election officials blocked the initiative for that reason, and the state supreme court affirmed.¹⁶³

These initiatives have also devastated restaurants. In 2018, unions pushed through a ballot initiative banning the tipped wage in Washington, D.C.¹⁶⁴ The city council, however, saw the danger to restaurants and reinstated tipped wages.¹⁶⁵ Unions then returned to the ballot in 2021 and pushed through another ban. 166 The city council, in turn, scrambled to find other ways to help restaurants, such as by cutting the price of liquor licenses.¹⁶⁷ But the damage was already done: many restaurants fled the new policy and relocated out of the city.¹⁶⁸

- 161 See Press Release: Poor People's Campaign, One Fair Wage & SEIU Join Forces for Raise the Wage Moral Monday (Feb. 7, 2021), https://www.poorpeoplescampaign.org/about/press/ social-justice-leaders-police-policy-deaths/poor-peoplescampaign-one-fair-wage-seiu-join-forces-for-raise-thewage-moral-monday/ (calling for "an end to the subminimum wage for tipped workers" alongside "expansion of union rights for all"); New Data: On Average, Tipped Workers Report Earning More than \$15-Per-Hour, Minimum Wage Facts & Analysis (April 15, 2021), https://minimumwage.com/2021/04/15-per-hourearnings-are-already-here-for-tipped-workers/.
- 162 See Renee Hickman, How Tipped Minimum Wage Bans Have Shaken Out Across the U.S., Eater (Sept. 15, 2023), (noting that restaurants have responded to laws ending tip credits by raising prices, ending tipping policies, and adding service fees). Cf. also William E. Evan & David A. Macpherson, The Effect of the Tipped Minimum Wage on Employees in the U.S. Restaurant Industry, 80 So. Econ. J. 633, 634 (2014) (concluding that eliminating the tip credit reduces overall employment for tipped workers in restaurant industry).
- 163 See Raise the Wage MI v. Board of Canvassers, No. 166312, slip op. at 3-4 (Mich. May 31, 2024) (summarizing the controversy and resulting litigation and affirming the board's decision to exclude the initiative).

- 164 See D.C. Initiative 77 (2018). See also Washington, DC, One Fair Wage, https://www.onefairwage.org/washingtondc (landing page for union-backed campaign).
- 165 See D.C. Law 22-196 (repealing Initiative 77). See also Fenit Nirappil, It's Official: D.C. Council Has Repealed Initiative 77, Which Would Have Raised Pay for Tipped Workers, Wash. Post (Oct. 16, 2018), https://www.washingtonpost.com/local/dc-politics/itsofficial-dc-council-has-repealed-initiative-77/2018/10/16/ $\underline{05323}\underline{41a} - \underline{d0b5} - \underline{11e8} - \underline{b2d2} - \underline{f397227b43f0}\underline{story.html}.$
- 166 D.C. Initiative 82 (2022).
- 167 Romeo, supra note []. See also D.C. Act 25-427, § 201 (March 25, 2024) (directing the mayor to launch a publicity campaign to inform voters about the effects of the new ban on tipped wages, including "what consumers and businesses can expect in terms of implementation and any changes to existing practices and behaviors").
- 168 See DC Restaurants Lost Hundreds of Jobs Since Initiative 82 Began, Emp. Policies Inst. (Nov. 2023), https://epionline.org/release/dc-restaurants-lost-hundredsof-jobs-since-initiative-82-began/.

In other cases, voters have seen the risks ahead of time. In California, the SEIU-United Health Workers tried (and failed) for years to organize workers in dialysis clinics.¹⁶⁹ Finding no success, the union decided to pressure the industry with three successive ballot initiatives.¹⁷⁰ These initiatives would have damaged the industry in multiple ways, such as by capping a company's profits and imposing minimum-staffing levels.¹⁷¹ But the public saw the risk to dialysis services overall and voted each initiative down.¹⁷² The last vote was especially resounding, with nearly seven in ten voters rejecting the union's proposal.¹⁷³

But those setbacks haven't soured unions on the tactic. To the contrary, this election cycle, unions will launch a flurry of new initiatives.¹⁷⁴ In Ohio, they will ask voters

to end tipped wages.¹⁷⁵ In Oregon, they will ask voters to require "labor peace agreements" in the cannabis industry. 176 And in Massachusetts, they will ask voters to create a sectoral-bargaining scheme for app-based rideshare drivers177—the first since Seattle's failed attempt in 2015.¹⁷⁸

None of these initiatives will gain unions members immediately. Rather, they will follow labor's anti-competition strategy. They will raise labor costs, depress competition, and (in labor's view) seed the ground for future organizing.¹⁷⁹ They will be yet another way that unions are using public processes to expand their influence outside the NLRA.

- 169 Cathie Anderson, SEIU-UHW Swings a Dialysis Industry Giants: 500+ Workers Strike 21 Clinics Over 2 Days, Sacramento Bee (Sept. 25, 2023), https://www.sacbee.com/news/local/health-andmedicine/article279798509.html.
- 170 See Proposition 29: Dialysis Clinic Requirements Initiative (2022), https://ballotpedia.org/California Proposition 29, _Dialysis_Clinic_Requirements_Initiative_(2022). See also Samantha Young, Déjà Vu for California Voters on Dialysis, KFF Health News (Oct. 26, 2020), https://kffhealthnews.org/news/california-votersproposition-23-dialysis/.
- 171 See Cal. Legislative Analyst's Office, Analysis of Prop 29 (Nov. 2022), https://lao.ca.gov/BallotAnalysis/Proposition? number=29&year=2022 (describing proposition's requirements, including minimum staffing levels).
- 172 Election Results 2022 California AP Projects: Californians Reject Prop 29, Law Requiring Medical Staff at Dialysis Centers, CBS News (Nov. 8, 2022), https://www.cbsnews.com/losangeles/news/ californians-projected-to-reject-prop-29-lawrequiring-medical-staff-at-dialysis-centers/.

- 173 See id.
- 174 See State Campaigns, One Fair Wage, https://www.onefairwage.org/about (listing half a dozen active campaigns).
- 175 See Initiative Petition: Raise the Wage Ohio (2024), https://www.ohioattorneygeneral.gov/getattachment/ 3d285cd7-aeea-4c65-948c-b1cea8a2da3a/Raise-the-Wage-Ohio-(Re-Submission).aspx.
- 176 See Initiative Petition: United for Cannabis Workers (Or. 2024), https://sos.oregon.gov/admin/Documents/irr/2024/ 035text.pdf.
- 177 See Initiative Petition 23-35: An Act Giving Transportation Network Drivers the Option to Form a Union (Mass. 2023), https://www.mass.gov/doc/initiative-petition-for-an-actgiving-transportation-network-drivers-the-option-to-forma-union-and-bargain-collectively/download.
- 178 See City of Seattle, 890 F.3d at 788 (concluding that Seattle's bargaining scheme for for-hire drivers violated federal antitrust law).
- 179 Naidu, supra note [], at 18 (arguing that "legislative action" to reduce competition is a "pro-union policy" because it blunts employer opposition).

Labor peace agreements

Another common tactic to avoid the NLRA is so-called labor peace agreements.¹⁸⁰ These "agreements" are agreements in name only; they are often extracted as a condition of a government license or permit. But they are no less binding on employers or dangerous to employees. Once in place, they can give unions free access to employees and allow them to skip the federal election process entirely.¹⁸¹

In a nutshell, a labor-peace agreement is a contract under which a union and an employer agree to waive some of their rights under federal law. 182 For example, the union may

waive its right to picket or otherwise protest the employer's business.¹⁸³ And the employer, for its part, may agree to stay neutral during an organizing campaign.¹⁸⁴ It may also let the union onto its property, give the union time to speak with employees, or even recognize the union based on signed authorization cards without a secret-ballot election.¹⁸⁵

Unions like these agreements for obvious reasons. The agreements neutralize employer opposition, streamline organizing campaigns, and sidestep NLRA elections. 186 In effect, they make organizing easier and unionization more likely.187

- 180 See generally U.S. Chamber of Commerce, Labor Peace Agreements: Local Government as Union Advocate (2016), https://www.uschamber.com/assets/archived/images/ documents/files/laborpeaceagreements.pdf [hereinafter Local Government as Union Advocate].
- 181 Id. at 1 (surveying common features and explaining that some jurisdictions have required them as a condition of participating in a city project).
- 182 Id. See also What Is a Labor Employment Agreement?, Cornell Inst. Lab. Rels., https://www.ilr.cornell.edu/labor-and-employmentlaw-program/cannabis-and-workplace/what-laborpeace-agreement-under-mrta (last visited June 11, 2024).
- 183 See Cal. Bus. & Prof. Code § 2000 (defining "labor peace agreement" as an agreement requiring, among other things, an agreement requiring a union to refrain from disrupting employer's business).
- 184 Id. ("This agreement means that the applicant has agreed not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the applicant's employees.").

- 185 Id. See also Mulhall v. Unite Here Loc. 355, 667 F.3d 1211, 1213 (11th Cir. 2012) (describing private labor-peace agreement requiring, among other things, access to property and neutrality in organizing campaign).
- 186 Mulhall, 667 F.3d at 1214 15 (concluding that neutrality agreement was sufficiently valuable to union to potentially constitute a "thing of value" under section 302 of the Labor Management Relations Act).
- 187 See Richard Epstein, The Case Against the Employee Free Choice Act 30-39 (2009) (explaining how card-check agreements advantage unions during organizing, in part by avoiding a secret-ballot election where employees can express their preferences without social pressure from organizers).



For the same reasons, most employers won't sign them. So to get them, unions have to apply political pressure.¹⁸⁸ But that kind of pressure requires a delicate legal balance. States and cities can't just demand that all employers sign labor-peace agreements; that kind of requirement would be preempted by the NLRA.¹⁸⁹ So instead, local governments have crafted laborpeace requirements under a little-known exception for "market participants." 190

The market-participant exception stems from the logic behind preemption. The NLRA preempts inconsistent local regulations.¹⁹¹ But it does not preempt the choices local governments make in the market.¹⁹² When a government buys goods or services, it can generally choose to require that the seller meet certain labor-related standards. 193 Those standards are not regulations, per se; they are conditions the government puts on its own contracts. And because the standards relate to the government's own market activity, the argument is that they are not preempted by federal law.

- 188 See Press Release: UFCW Statement on Cannabis Resolution, UFCW (Aug. 4, 2023), https://www.ufcw.org/press-releases/ufcw-statementon-naacp-cannabis-resolution/ (endorsing emergency proposal to require labor-peace agreements in cannabis industry).
- 189 See Golden State Transit Corp. v. City of Los Angeles, 475 U.S. 608, 619 (1986) (holding that city could not condition renewal of license to operate can business on business's waiver of right to use economic pressure under NLRA). But see AB 2183 Reg. Sess. (Cal. 2022) (requiring "labor peace contracts" as a condition for secret-ballot elections in certain agricultural workplaces not covered by the NLRA).
- 190 See Bldg. & Const. Trades Council of Metro. Dist. v. Associated Builders & Contractors of Massachusetts/ Rhode Island, Inc., 507 U.S. 218, 226-27 (1993).
- 191 Brown, 554 U.S. at 65.
- 192 Bldg. & Const. Trades Council, 507 U.S. at 226-27.
- 193 See id. (holding state's decision to condition participation in Boston Harbor cleanup project on project-labor agreement was not preempted because state was acting not as a regulator, but a market participant).



The first city to see the potential of that potential loophole was San Francisco. In 1980, the city required a major hotel chain to agree to "labor peace" as a condition of a development contract.¹⁹⁴ The city then extended this laborpeace requirement to other projects, including restaurant and hospitality developments. 195 The city squeezed those developments into the "market participant" exception by claiming that it had a "proprietary interest" in the projects' success.¹⁹⁶ That interest typically came from a city property right or investment—leases, loans, and other financial incentives. 197 But regardless of the form, they were all used as excuses to sidestep preemption.¹⁹⁸

That trick then spread to other states and cities. Pittsburgh amended its charter to require city contractors to sign laborpeace agreements.¹⁹⁹ New York state did the same for certain hotels and convention centers.200 And Maryland extended the agreements to "video lottery terminals" (e.g., casino slot machines).²⁰¹

- 194 See San Francisco Admin. Code § 23.51(10). See also Local Government as Union Advocate, supra note [], at 5.
- 195 See Local Government as Union Advocate, supra note [], at 5 (discussing additional requirements). See also City & Cnty. of San Francisco Airport Commission Rules and Regulations 12.1 (2023) [hereinafter SF Airport Regulations] (requiring certain city contractors at airport to sign laborpeace agreements).
- 196 See, e.g., SF Airport Regulations 12.1(A) (citing city's interest in avoiding disruption to airport's "smooth operations" and the "protection of [its] proprietary and financial interests"); San Francisco Admin. Code § 23.50(1) (citing city's "proprietary interest" in certain real-estate developments).

- 197 See Local Government as Union Advocate, supra note [], at 5.
- 199 Home Rule Charter of the City of Pittsburgh § 161.30.1.
- 200 N.Y. Pub. Authorities L. § 2879-b(1)(c).
- 201 Md. State Govt. Code § 9-1A-07.

For years, these requirements were haphazard and sporadic.²⁰² But recently, they have exploded in the cannabis sector. Cannabis remains a controlled substance under federal law.²⁰³ But in the states, it is increasingly legal: since 2012, twenty-four states and the District of Columbia have legalized or decriminalized its recreational use.204 These states typically regulate cannabis businesses heavily and require firms up and down the supply chain to get licenses.²⁰⁵ And many states have used those licenses to promote "labor peace."206

Of the twenty-five that have legalized recreational use, eight now either require or incentivize a labor-peace agreement.²⁰⁷ So almost overnight, the agreements have become a fixture of the cannabis industry. 208

- 202 See, e.g., N.Y. City Admin. Code § 6-145 (requiring laborpeace agreements in certain "human services" contracts); Los Angeles Bd. of Airport Commissioners Res. 23437 (Oct. 15, 2007) (requiring labor-peace agreements for certain concessions contractors in city airport); D.C. Code § 32-852 (requiring labor-peace agreements for certain real-estate development projects in which the city asserts a "proprietary interest").
- 203 See Kate Bryan, Cannabis Overview, Nat'l Conf. of State Legislatures (April 9, 2024) (noting that although many states have legalized recreational use, it remains a schedule I illegal substance under federal law).
- 204 ld.
- 205 See, e.g., How to Get Licensed, State of Rhode Island Dep't of Health,

https://health.ri.gov/licenses/detail.php?id=280 (last visited June 11, 2023) (detailing cannabis licensing requirements); How to Apply for a License, Cal. Dep't of Cannabis Control,

https://cannabis.ca.gov/applicants/how-to-apply/ (last visited June 11, 2023) (same). See also What are the Business License Requirements for a Cannabis Business, Wolters Kluwer (Jan. 25, 2023), https://www.wolterskluwer.com/en/expert-insights/ what-are-business-license-requirements-forcannabis-businesses (surveying requirements).

- 206 See, e.g., Frequently Asked Questions (FAQs) of the Medical Marijuana Final-Form Regulations, Pa. Dep't of Health (March 8, 2023), https://www.health.pa.gov/topics/Documents/Programs/ Medical%20Marijuana/OMM%20Perm%20Reg%20FAQs%20 by%20Chapter.pdf ("Q: Can a medical marijuana organization be sanctioned for failure to comply with an executed labor peace
 - agreement submitted with the permit application? A. Yes. . . . Failure to comply with an executed labor peace agreement submitted with the permit application is one non-exclusive example of a falsification that may result in a suspension or revocation of the permit."); Labor Peace FAQs, Cal. Dep't of Cannabis Control, https://cannabis.ca.gov/labor-peace-agreementsfor-cannabis-businesses/#:~:text=Who%20is% 20required%20to%20enter,enter%20into%20labor %20peace%20agreements (last visited June 11, 2024) ("Compliance with the terms of a labor peace agreement is a condition of state cannabis licensure.").
- 207 Parker Purifoy, Cannabis Industry Mandates to Stay Union Neutral Come Up Short, Bloomberg Law (March 14, 2024), https://news.bloomberglaw.com/daily-labor-report/ cannabis-industry-mandates-to-stay-union-neutral-

come-up-short.

208 See, e.g., Cal. Bus. & Professions Code § 26051.1(a) (B) ("Compliance with the terms of an applicable labor peace agreement is a condition of licensure."); 28 Pa. Code § 1141a.47(a)(1)(v) (authorizing suspension of license if applicant fails to maintain labor-peace agreement); 410 III. Comp. Stat. § 705/15-30 (c)(6) (giving five points to applicant that describes plan to enter labor-peace agreement); Del. Code tit. 4, § 1334 (requiring labor-peace agreement in cultivation facilities); Del. Code tit. 4, § 1337 (same in compassion centers); Del. Code tit. 16, § 4915A (same in compliance facilities); R.I. Gen. Laws § 21-28.11-12.2 (requiring labor-peace agreements for licensed facilities); N.Y. Cannabis Law §§ 64 (same for applicants), 66(5) (same for license renewals).

Not everyone agrees that states can do this. At least two cannabis companies have sued to invalidate the labor-peace requirements.²⁰⁹ The companies have argued that the requirements are preempted by federal law, in part because the states are not truly acting as market participants. Rather, the states are using cannabis licenses to regulate labor relations.²¹⁰

As of this writing, the lawsuits are still pending. But they have not slowed labor-peace agreements down. At least three more states are considering labor-peace requirements for cannabis companies. ²¹¹ These requirements are being pushed by unions, who see them as a gateway into an emerging industry. ²¹² The requirements represent yet another example of how unions are leveraging state power to sidestep federal law.

- 209 Compl., Ctrl Alt Destroy, Inc. v. Elliot, No. 3:24-cv-00753-LL-JLB (S.D. Cal. April 26, 2024); Compl., Greenleaf Compassionate Care Center, Inc. v. Santacroce, No. 1:23-cv-00282 (D. RI July 10, 2023).
- 210 See Compl., Ctrl Alt Destroy, No. 3:24-cv-00753-LL-JLB, ECF No. 1 ¶ 23 ("The LPA Sections constitute an attempt by [the state] to regulate [the company's] labor relations in violation of the NLRA, which preempts such efforts."); Compl., Greenleaf Compassionate Care, No. 1:23-cv-00282, ECF No. 1 ¶ 42 ("[T]he LPA Mandate clearly and necessarily infringes upon the balance struck by the NLRA and conflicts with its provisions, and therefore the Cannabis Act is preempted.").
- 211 See SB 2598 Reg. Sess. (Mass. 2024) ("An Act to facilitate labor peace among the cannabis workforce."); Md. Alco. Bev. Code § 36-402(e)(1) (directing state agency to develop regulations to "protect the State's interests" by prohibiting a union from disrupting cannabis businesses and requiring the businesses to "negotiate in good faith with employees and any legitimate labor organization recognized by the [agency]" by July 1, 2024); Initiative Petition: United for Cannabis Workers (Or. 2024), https://sos.oregon.gov/admin/Documents/irr/2024/035text.pdf.
- 212 See, e.g., Comments of Kayla Mock, Political & Legislative Director United Food and Commercial Workers Union, Local 400, to the Honorable Chair Wilson, Vice Chair Crosby, and Members of the House Economic Matters Committee (Feb. 15, 2023), https://mgaleg.maryland.gov/cmte_testimony/2023/ecm/1gBps8TGpHImtSbXtkTHZmlbIl9TwP6FW.pdf; Ademola Oyefeso, Commentary: Labor Union Calls for Worker Protections in Final Cannabis Bill, Maryland Matters (April 3, 2023),

https://marylandmatters.org/2023/04/03/commentary-labor-union-calls-for-worker-protections-in-final-cannabis-bill/.

See also Alexandra Sanderson, Will Cannabis Workers Be Able to Organize Using Labor Peace Agreements? A New Bill Would Say Yes, Power at Work (April 16, 2023), https://poweratwork.us/labor-peace-agreement-story (describing UFCW support for Massachusetts legislation).



Foreign law

Nor have unions limited their efforts to domestic law. Increasingly, they have sought to avoid federal safeguards by using international law.

A recent example comes from a charge by the United Auto Workers (UAW) under the new German Supply Chain Due Diligence Law. The Supply Chain Due Diligence Law came into effect in 2023.213 It requires large German companies to monitor their international operations and ensure that these operations comply with certain "human rights" principles. 214 The principles include some straightforward rules, such as rules against child and forced labor.²¹⁵ But they also include more nuanced concepts, such as the freedom of association and the right to form trade unions.216

In April 2024, the UAW became the first American union to file a complaint under the law.²¹⁷ The union was then campaigning to organize a Mercedes-Benz plant in Vance, Alabama. The union alleged that Mercedes-Benz violated the Supply Chain Law when it opposed the union's efforts.²¹⁸ It claimed that, among other things, the company opposed unionization in a letter to the company's employees.²¹⁹ It also alleged that the company held two mandatory meetings to address the union's campaign.²²⁰ That conduct was, of course, legal under federal labor law-not only legal, but protected.²²¹ Yet the union still claimed that it violated German law. 222

213 See Supply Chain Act, Federal Ministry of Labor and Social Affairs, https://www.csr-in-deutschland.de/EN/Business-Human-Rights/Supply-Chain-Act/supply-chain-act.html (last visited June 11, 2024).

214 Id.

215 Id.

216 Id. See also Glenn Spencer, UAW Files Complaint with German Authorities Prior to Alabama Election, U.S. Chamber of Commerce (April 26, 2024), https://www.uschamber.com/employment-law/unions/ uaw-files-complaint-with-german-authorities-prior-toalabama-election (describing difficulty of applying freedom to form trade unions when domestic law, such as United States law, allows an employer to express its position on unionism). 217 Press Release: UAW Files Charges in Germany Against Mercedes-Benz: Company's Anti-Union Campaign Against U.S. Autoworkers Violates New German Law on Global Supply Chain Practices, United Auto Workers (April 3, 3024), https://uaw.org/uaw-files-charges-in-germany-againstmercedes-benz-companys-anti-union-campaign-against-us-autoworkers-violates-new-german-law-on-global-supplychain-practices/#:~:text=The%20UAW%20is%20the%20 first,rights%20to%20form%20trade%20unions [hereinafter UAW Statement].

218 Id.

219 Id.

220 Id.

221 29 U.S.C. § 158(c); Babcock & Wilcox Co., 77 N.L.R.B. 577, 578 (1948) (confirming that employer may require attendance at meeting during work time to convey its position on unionism).

222 UAW Statement, supra note [].

That claim carried serious potential consequences. A company that violates the Supply Chain law faces heavy fines— €8 million or 2% of the company's global annual turnover, whichever is more.²²³ The company can also be barred from contracting with the German government.²²⁴ So even if a charge has little substantive merit, its mere existence can exert significant pressure. 225

But the UAW was not taking its chances with the mere possibility of pressure. It also exerted pressure directly through its allies in the Biden administration. According to media reports, UAW President Shawn Fain asked the administration to step in and press the German government to investigate the union's charge.²²⁶ And the administration duly obliged, sending U.S. National Security Advisor Jake Sullivan to lobby German authorities. 227

The episode was sordid enough to attract attention from the press.²²⁸ But that attention is unlikely to cool unions' enthusiasm for international law. Germany is far from the only country with a supply-chain law; similar laws exist in the Netherlands and France.²²⁹ And the European Union has approved a new directive on this issue to cover the entire bloc, which is intended to come into effect in 2026.230 These laws offer unions yet another way to circumvent federal labor law.²³¹ And with a friendly administration in power, they can leverage their political influence to maximize the effect.

- 223 Supply Chain Act, Fed. Ministry of Lab. & Soc. Affairs, https://www.csr-in-deutschland.de/EN/Business-Human-Rights/Supply-Chain-Act/supply-chain-act.html (last visited June 11, 2024) (describing penalties).
- 224 Id.
- 225 See id. See also Harold Meyerson, American Workers Get Some Help from an Enlightened German Law, Am. Prospect (April 8, 2024), https://prospect.org/labor/2024-04-08-americanworkers-german-law-uaw-unions/ (describing pressure complaint could put on American employers).
- 226 See Ian Kullgren & Courtney Rozen, National Security Adviser Pressed Germany at UAW Chief's Request, Bloomberg Law (June 7, 2024), https://news.bloomberglaw.com/daily-labor-report/ national-security-adviser-pressed-germany-at-uawchiefs-request.

- 227 Id.
- 228 See id.
- 229 German Companies Fret About a New Supply-Chain Law, Economist (Jan. 12, 2023), https://www.economist.com/business/2023/01/12/ german-companies-fret-about-a-new-supply-chain-law.
- 230 Id.
- 231 See Meyerson, supra note [] (arguing that Supply Chain Law allows unions to impose penalties on employers unavailable under the NLRA and thus exert greater pressure in organizing campaigns).

Abusing the Proxy Process

Each year, public companies hold annual shareholder meetings to evaluate a company's performance, elect board directors, and discuss the business's priorities for the year ahead. At these meetings, companies consider proposals from shareholders interested in guiding corporate decision-making, and the company, in turn, relies on its broader shareholder base to vote on the merits of a proposal. Enabled by the current leadership at the Securities and Exchange Commission (SEC), public companies are increasingly forced to consider proposals from a handful of special interest, politically-motivated activist shareholders who do not have the long-term success of a company in mind.

Unions have long advocated using the shareholder proxy process to put pressure on the companies they target. For example, in the late 1990s, as the United Food and Commercial Workers (UFCW) was attempting to organize Albertson's grocery stores, the union purchased shares in the company - of which they needed as little as \$2,000 - and used them to file hostile shareholder resolutions at the

company's annual meeting.232 As another example, the International Brotherhood of Teamsters used their shares to introduce a ban on "poison pill" defenses at Fleming Companies as early as 1996.²³³

Since that time, the AFL-CIO has introduced a series of proxy voting guidelines, describing their use of shareholder activism and listing proposed shareholder resolutions they support.²³⁴ Examples of favored resolutions in the 2012 guidelines (the most recent posted on their website) include requiring companies to adopt codes of conduct focused on international labor standards (as opposed to following the NLRA), to impose supplier codes of conduct, to follow the CERES principles on environmental standards, to publicly disclose political contributions, to allow say-on-pay votes, and Board diversity to name a few.²³⁵ The idea of the proxy voting guidelines is to encourage other unions and proxy voting services, such as Glass Lewis and ISS, to follow them, harnessing the power of numbers to amp up the pressure on targeted businesses.

232 "Realigning Corporate Governance: Shareholder Activism by Labor Unions," Stewart J. Schwab and Randall S. Thomas, Michigan Law Review, Volume 96 Issue 4, 1998.

233 Ibid.

234 AFL-CIO Proxy Voting Guidelines, 2012. 235 Ibid.

The AFL-CIO also provides a list of "key votes" each proxy season.²³⁶ In 2024, key votes covered issues like freedom of association, lobbying disclosure, tax transparency, climate change just transition, living wage, racial equity audits, and safety and staffing levels, among others.²³⁷ Going further, the AFL-CIO then ranks investment managers against their key votes in an effort to pressure those managers to toe the union line.238

Individual unions also utilize shareholder advocacy to advance their goals. In addition to the two examples mentioned above, the Service Employees International Union (SEIU) is heavily engaged in shareholder activism through its Capital Stewardship program. One of its specific goals is to "offer workers greater opportunities for a voice on the job and pay fair wages and benefits."239

Union shareholder resolutions tend to generate low levels of support. For example, a proposal to require Amazon to create a Board committee to oversee AI received just 9.6 percent of the vote, while a proposal by the IBT to require Tenet Health Care to integrate ESG considerations into executive compensation received just 5.35 percent.²⁴⁰ Other proposals can score higher, although they still fall well short of a majority.

For example, an AFL-CIO proposal to require Wells Fargo to perform a third party audit of "respect for freedom of association and collective bargaining" received just over 30 percent of the vote, and an SEIU proposal at Eli Lilly to require a report on lobbying netted 25.5 percent.241

Whether these resolutions have anything to do with increasing shareholder value is, in many ways, beside the point for unions. Rather, they are meant to apply pressure on targeted companies regardless of whether they are ever adopted. In some cases, proposals that ultimately are withdrawn can be just as, if not more, effective as those that come to a vote. A prime example of this was the SEIU's attempt to force a vote on their own board of director candidates at Starbucks in the 2024 proxy season. The SEIU and a partner, called the Strategic Organizing Center, nominated three director candidates. This occurred at a time when an SEIU offshoot, Starbucks Workers United, was unsuccessfully attempting to negotiate contracts with a number of Starbucks locations that had voted to unionize.²⁴² The nominations were withdrawn shortly before the announcement of a new negotiating framework between the company and Starbucks Workers United.²⁴³

²³⁶ AFL-CIO Key Votes 2024 Proxy Season available at https://aflcio.org/sites/default/files/2024-03/2024_ AFL-CIO_Key_Votes_as_of_3-11-2024.pdf

²³⁷ Ibid.

²³⁸ AFL-CIO Key Votes Survey: How Investment Managers Voted in the 2023 Proxy Season, available at https://aflcio.org/sites/default/files/2024-02/ AFL-CIO_Key_Votes_Survey_2023.pdf

^{239 &}quot;All About Retirement Security," SEIU website at https://www.seiu.org/cards/all-the-educationalresources-you-need-to-be-a-leader

²⁴⁰ Proxy Monitor, 2024 scorecard, at https://www.proxymonitor.org/ScoreCard2024.aspx

²⁴¹ Ibid.

^{242 &}quot;Union-Backed Group Pushes Its Own Board of Director Candidates," U.S. Chamber of Commerce at https://www.uschamber.com/employment-law/ unions/union-backed-group-pushes-its-own-boardof-directors-candidates

²⁴³ Restaurant Dive, March 5, 2024.

Unfortunately for shareholders, the federal government has made this pressure tactic more effective in two important ways. First, on November 17, 2021, the Securities and Exchange Commission (SEC) adopted amendments to the proxy rules to require publicly-traded companies to use a universal proxy statement.²⁴⁴ This became effective on January 31, 2022.245 The result of this policy change was that it is now far easier for unions and other activists to nominate board of director candidates. Critics warned that the SEC's policy would "encourag[e] specialinterest groups to conduct highly disruptive proxy fights."246 As the Starbucks example shows, the critics were right. In future years, unions will almost certainly increase their use of board of director campaigns to gain leverage over employers, at the expense of retail investors and other market participants.

Second, the SEC has raised the bar for issuing so-called "no-action" letters to exempt shareholder proposals from consideration. In 2021, the SEC rescinded three Staff Legal Bulletins (SLB), replacing them with SLB 14L.²⁴⁷ Prior to this action, shareholder proposals were required to have some business nexus to the company, in other words to have some potential for

increasing shareholder value. Companies receiving frivolous shareholder proposals could ask the SEC to issue a no-action letter, meaning the proposals did not have to be included on the company's proxy statement.

Under SLB 14L, the SEC changed the criteria for determining the relevance of shareholder proposals. The new standard asks: "whether the proposal raises issues with a broad societal impact, such as that they transcend the ordinary business of the company."248 In other words proposals could now cover almost anything, including proposals that would have a negative impact on the company's performance. The result was that consideration of environmental and social proposals, including those advocated by unions, shot up by more than 50% by the 2023 proxy season.²⁴⁹

Prior to SLB 14L, unions had to make at least some sort of argument that their proposals were related to promoting shareholder value at a targeted company. Now, however, that safeguard has been erased. This has given organized labor another tool to pressure companies into granting concessions, at the expense of other shareholders, and another way to promote organizing outside of the NLRA.

244 SEC at SEC.gov | Universal Proxy

245 Ibid.

246 U.S. Chamber of Commerce letter to the SEC, 10/27/21

247 See SEC, Staff Legal Bulleting 14L at https://www.sec.gov/corpfin/staff-legal-bulletin-14lshareholder-proposals? The three rescinded bulletins were SLB's 14I, 14J and 14K. 248 Ibid.

249 U.S. Chamber letter to the SEC, 4/3/24 at U.S.-Chamber-of-Commerce-Comments14a-8ProposalSupplemental-Final.pdf (uschamber.com).



The Future: Unions as Regulator

In 1897, Sidney and Beatrice Webb wrote that "political democracy will inevitably result in industrial democracy."250 By "industrial democracy," they meant that workplaces would be governed less by private contracts and more by public regulations. The government would increasingly set working conditions by regulatory fiat. And unions, as their agents, would increasingly rely on government force.251

That observation seems prescient today. Through various tools, unions have used public processes to advance their agendas.²⁵² They have lobbied for standards boards,

pushed through wage legislation, sponsored ballot initiatives, extracted labor-peace agreements, leveraged foreign-supply chain laws, and even pressed companies through shareholder-proxy laws. These efforts may at first seem diffuse, but they share a common theme: they sidestep traditional organizing and federal law by leveraging public power.²⁵³

This is the model predicted by Sidney and Beatrice Webb. It is a new labor movement built not on organizing but on regulating. And like labor's long membership decline, it shows no sign of reversing.

²⁵⁰ Assumptions of Trade Unionism, supra note [], at 206.

²⁵¹ Id. at 203 (predicting that unions would inevitably migrate away from setting standards through bargaining and toward setting them through legislation).

²⁵² Estreicher, supra note [], at 518.

²⁵³ Id. (concluding that modern unions function as "political organizations"). See also Naidu, supra note [], at 18 ("The simplest policy tool for mitigating the incentives for firms to fight unionization is to take labor standards out of competition by legislative action.").





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OFFICE OF THE COUNTY ATTORNEY

Marc Elrich
County Executive

John P. Markovs *County Attorney*

MEMORANDUM

August 25, 2025

TO: Kate Stewart, President

Montgomery County Council

FROM: John P. Markovs

County Attorney

SUBJECT: Request for Opinion – Labor Peace Agreements

This memorandum responds to the request for an opinion on the use of a Labor Peace Agreement on the First Amended and Restated Management Agreement ("Contract") between Montgomery County ("Owner") and Marriott Hotel Services, LLC ("Manager"). The Contract and the absence of a Labor Peace Agreement requirement therein were the subject of discussion during the July 24, 2025, joint Government Operations and Fiscal Policy (GO) Committee and Economic Development (ECON) Committee ("Joint Committee") work session regarding Council Bill 22-25, Labor Peace Agreements – Hotel Development Projects.

Specifically, regarding the Contract and similar negotiated agreements, the Joint Committee requested the County Attorney's opinion on the following questions:

- 1. Would it have been legal to include within the Contract a requirement that the Manager must enter into a labor peace agreement with each labor organization that represents, or seeks to represent, the Manager's employees at the "Conference Center" (as defined under the Contract)?
- 2. Does the Executive have the authority, under existing County law, to negotiate in favor of labor peace agreements or other contractual provisions that the Executive deems to be in the County's best interests, provided those provisions are not prohibited under applicable law (e.g., provisions that would violate the Charter or be unconstitutional)? If not, please identify potential amendments to County law that would be needed to grant the requisite authority to the Executive to negotiate in the County's best interests.

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The answer to each question is yes, with the caveat that such use is limited by applicable federal law and the County's existing procurement law.

As discussed in more detail below, when seeking to use a labor peace agreement, the County must consider factors related to the potential for preemption by the National Labor Relations Act ("NLRA"), 29 U.S.C. §§ 151-169, in addition to ensuring compliance with applicable County procurement laws.

National Labor Relations Act Preemption

The NLRA generally preempts local regulation of those labor activities protected by the Act. However, such NLRA preemption only comes into play when the Government is "regulating within a protected zone," and not when it is acting as a proprietor, "interact[ing] with private participants in the marketplace." *Bldg. & Constr. Trades Council v. Associated Builders & Contractors*, 507 U.S. 218, 227 (1993).

The County may not act as a regulator in the market, but it may act as a market participant, in a proprietary capacity, in undertaking the use of a labor peace agreement. In that context, the relevant question is whether, in placing a labor-related condition, such as a labor peace agreement or a project labor agreement as may be applicable, upon its award either of a contract or for the funding of another entity that will award the contract, the government "acts just [as] a private contractor would act, and conditions its purchasing upon the very sort of labor agreement that Congress explicitly authorized and expected frequently to find." *Id.* at 233. Conversely, the government's conduct will be considered regulatory in nature if, in awarding a contract, or in funding a project, it "addresse[s] employer conduct unrelated to the employer's performance of contractual obligations to the [government]." 507 U.S. at 228-29.

However, government purchasing activities, or conditions to funding, may extend beyond mere action as a market participant and veer into the territory of regulation. Courts will generally utilize a two-step test in determining whether the government's purported proprietary activity exceeds mere market participation. See Hotel Employees & Rest. Employees Union, Local 57 v. Sage Hosp. Res., LLC, 390 F.3d 206 (3rd Cir. 2004). The Sage court enumerated this two-step standard as follows: "[f]irst does the challenged funding condition serve to advance or preserve the [government's] proprietary interest in a project or transaction, as an investor, owner, or financier? Second, is the scope of the funding condition "specifically tailored" to the proprietary interest?" Sage, 390 F.3d at 216 (citing Bldg. & Constr. Trades Council, 507 U.S. at 232).²

The NLRA does not preempt the County's use of a labor peace agreement in conformance with *Bldg. & Constr. Trades Council* and *Sage*.

¹ A project labor agreement is a form of labor peace agreement tailored specifically to a construction project.

² This Office, in discussing Bill 6-18, previously addressed relevant preemption factors, determining that the bill was not preempted by the NLRA and is legal. A similar analysis of Bill 22-25, for the same reasons, arrives at the same conclusion. Having addressed the preemption question in detail previously, further discussion in this memorandum is not necessary.

County Use of Labor Peace Agreements

County law allows for labor peace agreements in contracts to "provide residential solid waste, recycling, or yard waste collection and disposal services directly to County residents with a value equal to or greater than \$250,000." Mont. Co. Code, §§ 11B-89—91 (2024) ("Labor Peace Agreement Law"). For purposes of the County's law, such contracts are referred to as "covered contracts." *See* Mont. Co. Code, 11B-90. County law defines a "labor peace agreement" as:

a written contract between an employer and a labor organization that represents or is seeking to organize that employer's employees that includes a provision:

- (a) prohibiting the labor organization and all employees performing services under a covered contract from engaging in any concerted economic action with the employer for the duration of the County contract;
- (b) prohibiting the employer from engaging in a lock-out of the employees performing services under a covered contract for the duration of the County contract; and
- (c) requiring that all labor disputes between the employer and the employees performing services under a covered contract be resolved through final and binding arbitration.

Mont. Co. Code, § 11B-90.

Additionally, in determining whether to utilize a labor peace agreement, the law requires that, before issuing a solicitation for a covered contract:

the [Procurement] Director must determine if a labor peace agreement would be in the best interest of the County after considering:

- (1) the duration of the contract;
- (2) the adverse financial or economic impact of any disruption in services;
- (3) the cost associated with finding replacement services;
- (4) the risk of disruption of services;
- (5) the history of strikes or lockouts disrupting County services provided by the contract;

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- (6) the potential adverse effect of a labor peace provision on competition for the contract; and
- (7) any other factors affecting the public interest.

Id., § 11B-91. Upon such a determination, the Procurement Director (the "Director") may then seek the approval of the Chief Administrative Officer ("CAO"), in writing, to include such a requirement in an applicable solicitation. If the CAO approves, then the Director must include a labor peace agreement requirement in the solicitation³ for the covered contract. Id. Once the County determines that it will utilize a labor peace agreement, as required by the contract documents, the contractor awarded the contract must execute a labor peace agreement with a labor organization no later than sixty (60) days after: "(A) receiving the notice of award from the County; or (B) receiving a request for a labor peace agreement from a labor organization that already represents or seeks to represent the employees performing services under the covered contract." Id.

A contractor may satisfy the labor peace agreement requirement by: (A) executing a preliminary labor peace agreement covering labor disputes over the representation of employees performing services under a covered contract by a labor organization (which may be supplanted by a collective bargaining agreement; (B) execute a comprehensive collective bargaining agreement; or (C) document that no labor organization requested a labor peace agreement, or that a labor organization refused to negotiate a labor peace agreement in good faith. *Id*.

The County's Labor Peace Agreement Law outlines a clear process for the Executive Branch to employ a labor peace agreement through the Procurement Director and CAO. First, the law restricts the use of these agreements to the "covered contracts," reducing the likelihood that the County will be seen as a regulator in this area. Additionally, any labor peace agreement used on a "covered contract" has limited requirements. See § 11B-90. Before requiring such an agreement, the Director must determine, based on the factors in the Law, that it serves the best interests of the County and must obtain the CAO's approval before issuing a solicitation for a covered contract, confirming there is a legitimate proprietary interest for the County. Moreover, even when a labor peace agreement is mandated, contractors have multiple ways to comply with the County's law, decreasing the requirement's potential "regulatory" impact. Before and after a contractor is chosen, these factors help ensure that the County's Labor Peace Agreement Law is not preempted.⁴

Therefore, any use of a labor peace agreement in accordance with such current law is compliant with applicable federal and County law.

³ Because the compensation value of a covered contract exceeds \$100,000, a formal competitive solicitation pursuant to either County Code Section 11B-9 (Invitation for Bids) or Section 11B-10 (Request for Proposals) is ordinarily required.

⁴ It is for similar reasons that Bill 22-25 is also unlikely to be preempted by federal law.

Labor Peace Agreement Use Outside of Express County Law

The lack of explicit authority to use a labor peace agreement on a County contract or project necessarily restricts the Executive's power to mandate one. In such situations, the Executive must ensure that the preemption is considered. Therefore, on a case-by-case basis, the Executive might call for using a labor peace agreement on a specific contract or project where the County has a proprietary interest. Conversely, the Executive probably cannot require the widespread use of a labor peace agreement across a group of County contracts or transactions. This is due to at least two reasons: first, preemption concerns grow with any expansion of labor peace agreement use, and second, the County's procurement law limits the Executive's ability to use such contractual mechanisms independently.

In non-competitive contracting, whether for procurement or other purposes, the Executive may use a labor peace agreement in that context—if preemption concerns are appropriately addressed. For example, regarding the Contract for managing the Conference Center, the County undeniably has a proprietary interest in that agreement. The County aims for the facility's continued, well-operated, and efficient management by compensated and qualified staff. Since the County receives revenue from the facility's operation, it also reasonably seeks to minimize or eliminate the risk of any work stoppage at the Conference Center. The County's situation regarding the Conference Center is similar to that discussed by the United States Court of Appeals for the Third Circuit in Sage. See Sage, 390 F.3d at 216. It is also a standalone agreement that does not intend to affect a broader range of activities outside Conference Center management, nor does it impact other businesses in the same industry. See Balfour Beatty Construction v. Maryland Department of General Services, 220 Md.App. 334, 357-58 (Md. App. 2014) (State agency use of a project labor agreement on a single construction project does not constitute regulation). Therefore, the likelihood of the County being viewed as a regulator in this context is minimal. As a result, preemption concerns are limited.

Nevertheless, having the legal ability to use a labor peace agreement on a specific contract or project differs from requiring its use. As with any contract not competitively bid, whether a contracting party agrees to certain terms depends on arms-length negotiations. The County cannot force a contractor to use a labor peace agreement outside the situations outlined in the Labor Peace Agreement Law.

In a competitive procurement situation, the Executive's ability to use a labor peace agreement is also limited by the nature of the competitive solicitation process. Like most public purchasing laws, County procurement law prioritizes full and open competition as a guiding principle. Specifically, the County Charter requires the Council to establish a purchasing system overseen by the Chief Administrative Officer, under the direction of the Executive. Mont. Co. Charter, Section 313. The Charter also states that the Council must "prescribe by law for competitive procurement for purchases by or contracts with the County in excess of an amount or amounts established by law." *Id.*, Section 314; *see also* COMCOR, Sections 11B.00.01.04.1.1.3(e) and 11B.00.01.04.1.2.3(d) (specifications for IFB and proposed scope of work for RFP should "permit full and free competition"). As a result, County procurement contracts are ideally awarded through adequate competition.

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County procurement law provides two types of formal competitive solicitations: the Invitation for Bids ("IFB") and the Request for Proposals ("RFP"). See Mont. Co. Code, §§ 11B-9 and 11B-10, respectively. An "invitation for bids must include specifications, evaluation criteria, including the procedure for resolving tie bids, and all contractual provisions applicable to the procurement." Id. § 11B-9. Therefore, no deviation from those specifications by a bidder is allowed. For example, if an IFB included a labor peace agreement as a contractual requirement, no vendor unwilling to agree to a labor peace agreement could be considered for the solicitation. This would necessarily limit the pool of vendors willing to utilize a labor peace agreement, and, as a result, the goal of "full and free competition" in the relevant marketplace could not be achieved. See also Balfour Beatty, 220 Md. App. 334.

Conversely, there is greater latitude for the Executive to employ the use of a labor peace agreement by way of an RFP. See Mont. Co. Code, § 11B-10. Because an RFP is not as prescriptive in its specifications' requirements, there is an opportunity to provide for the evaluation of a proposer's submission without exclusion of a proposer who does not agree to utilize a labor peace agreement. To that end, an RFP "must contain evaluation factors and an explanation of how the rank of an offeror will be determined,...." Id. Evaluation of the proposer(s) "must include factors related to the technical quality of the proposal or the ability of the offeror, or both." Id. Proposals are then scored by awarding points to a given proposer based upon the solicitation's evaluation criteria. In that way, a labor peace agreement provision may be considered as one of several technical criteria subject to scoring, i.e., a proposer that chooses to employ a labor peace agreement in a contract would obtain the points available for that criterion. In contrast, a proposer that does not so choose would not benefit from such points. In either event, however, a vendor is not categorically excluded from the solicitation process by their decision regarding the use, or non-use, of a labor peace agreement. Therefore, the ability to maintain full and free competition is preserved.

In *Balfour Beatty*, the Maryland Court of Special Appeals⁵ ruled that the state could seek the use of a project labor agreement via its RFP for the contract for construction of a new detention facility meant to replace the "rundown and unsafe" buildings that housed male juvenile offenders at the Cheltenham Youth Facility in Prince George's County. 220 Md.App. at 338. While Maryland procurement law did not otherwise provide for the use of a project labor agreement, the court decided that a specification for its inclusion in the Cheltenham RFP did not unduly restrict competition because a proposer that chose not to employ a project labor agreement might still prevail in obtaining the contract by providing a better overall proposal to the state. *Id.* at 368. Importantly, the court determined as such, partly because the use of the project labor agreement was not meant for general application, nor did it have future effect. *Id.* at 362. To that end, under existing County procurement law, the Executive's ability to use a labor peace agreement, outside of a "covered contract," in a competitive procurement context is limited to solicitation through an RFP.⁶

⁵ The State's intermediate appellate court is presently referred to as the "Appellate Court of Maryland."

⁶ Note that the County is presently negotiating using a project labor agreement on its Bus Rapid Transit project contract, RFP No. 1167299, as administered by the MCDOT.

Changes to County Law to Facilitate Labor Peace Agreements

While the Executive has limited authority to engage in labor peace agreements or project labor agreements, there are actions that the Council can take to expand this authority. Of course, through Bill 22-25, the Council is already taking such steps. If there are other contracts or transactions where the Council determines that a labor peace agreement might serve the County's best interest, laws like the Labor Peace Agreement Law and Bill 22-25 would be beneficial.

Other matters where the Council might consider requiring a labor peace agreement or project labor agreement include real estate development projects or construction projects, respectively. For example, Prince George's County mandates using labor peace agreements on real estate development projects in which the county maintains a proprietary interest. *See* Prince George's County Code, § 10-292. Specifically, on such projects, the county requires that "the developer(s) of the project, including the developer(s)' tenants, subtenants, contractors, or subcontractors, [must] demonstrate that they have entered into a labor peace agreement with the labor organization(s) which seek to represent, or might seek to represent, workers on the project." Prince George's County Code, § 10-292(b)(2)(A). Additionally, Prince George's County has two provisions in its Code that allow the use of project labor agreements, obtained through an IFB and RFP. *See* Prince George's County Code §§ 10A-157, 10A-158. In Prince George's County, project labor agreements are required on construction contracts exceeding \$100,000.

Like the County's Labor Peace Agreement Law, Prince George's County's laws on labor peace agreements and project labor agreements mention the proprietary nature of these agreements and their necessity. They also outline the conditions for their implementation and restrictions on their use. If the Council wishes to expand labor peace and project labor agreements in Montgomery County, such use is legally allowed.

Conclusion

For the reasons stated herein, when not contracting under the Labor Peace Agreement Law, the Executive may undertake limited, case-by-case efforts to implement a labor peace agreement or project labor agreement under existing law with other contracts. Importantly, absent additional legislative authority, the Executive must ensure that employing such an agreement adequately addresses preemption concerns and procurement requirements. Lastly, the Executive's ability to utilize project labor agreements may have a more general application with appropriate legislation.

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