

Date of Hearing: April 29, 2021

ASSEMBLY COMMITTEE ON AGRICULTURE
Robert Rivas, Chair
AB 778 Eduardo Garcia – As Amended April 22, 2021

SUBJECT: Institutional purchasers: purchase of California-grown agricultural food products

SUMMARY: This bill requires for all state-owned or state-run institutions that purchase agricultural products to only purchase California grown agricultural products with certain exceptions. Specifically, *this bill*:

- 1) Makes the following legislative findings and declarations.
 - a) State that California is a major producer of fruits nuts and vegetable, including be the sole provider (99 percent of more) of 14 agriculture commodities.
 - b) Farmers in California produce fruits, vegetables, nuts, and meat from animal livestock in accordance with the state’s pesticide, labor, environmental and minimum wage laws and complying with these state laws increases costs but provides real benefits to the health of consumers, to the environment, and to the workers who produce these goods.
 - c) On January 25, 2021, President Joe Biden issued an Executive Order on “Ensuring the Future Is Made in All of America by All of America’s Workers” which state that The United States (US) Government should, whenever possible, procure goods, products, materials, and services from sources that will help American businesses compete in strategic industries and help America’s workers thrive.
 - d) The Buy American Provision requiring the purchase of domestic commodities by participants in the National School Lunch Program has been in place for 30 years. However, the law allows waivers where the domestic product is priced significantly higher than a nondomestic product.
 - e) 81% of the apple juice served in the school lunch program is imported, and 50% to 60% of the fish served in schools is caught and processed outside the US. This competition from nondomestic producers hurts California agriculture and threatens to eliminate the jobs.
 - f) Those who rely on publicly purchased nutrition programs, including school nutrition programs, are often among the most vulnerable children and families and should have access to high-quality, healthy meals, such as those grown, packed, and produced in California.
 - g) Purchasing domestic products reduces the carbon footprint and results in lower greenhouse gas emissions. California companies are subject to more rigorous environmental standards, resulting in enhanced food safety and public safety.
- 2) Requires for all California state-owned or state-run institutions, all segments of public postsecondary education and all local educational agencies (institutions) that solicit bids for

the purchase agricultural food products to only purchase fresh fruit and vegetable agricultural products that are grown in the state.

- 3) Requires for all California state-owned or state-run institutions (institutions), including public universities and colleges and school districts, may purchase agricultural food products to only purchase fresh fruit and vegetable products that are grown in the state or is sold as canned, dried, or frozen products.
- 4) Requires institutions purchases an agricultural food product grown outside of the state to give a preference to agricultural products grown in the country over agricultural products grown outside of the country.
 - a) Establishes two exceptions to the above requirement:
 - i) The commodity is not domestically available.
 - ii) The bid or price of the nondomestic agricultural food product is more than 25 percent lower than the bid or price of the domestic agricultural food product.
- 5) Provides that this section neither limits nor expands California's obligation under the Agreements on Government Procurement of the World Trade Organization.
- 6) Clarifies that this section does not apply to agricultural products provided to an institution by the United States Department of Agriculture through the Foods in Schools program.
- 7) Directs the California State Auditor to investigate for violations of this section.
- 8) Defines, for this section, "agricultural food product" means a fresh or processed product, including fruits, nuts, vegetables, herbs, mushrooms, dairy, shell eggs, honey, grains, livestock meats, poultry meats, and fish, including shellfish.

EXISTING LAW:

- 1) Requires all California state-owned or state-run institutions, except public universities and colleges and school districts, to purchase an agricultural product grown in California when the bid or price of the California-grown agricultural product does not exceed by more than 5% the lowest bid or price for an agricultural product produced outside the state and the quality of the California-grown agricultural product is comparable.
- 2) Requires all California state-owned or state-run institutions, except public universities and colleges and school districts, that intend to purchase agricultural products from outside of the state to purchase products that were packed or processed in California instead of those packed or processed out-of-state as long as the price for the in-state product does not exceed the out-of-state product by more than 5% and the quality is comparable.
- 3) Requires school districts that solicit bids for agricultural products to purchase California-grown products over out-of-state products if the cost of the California products does not exceed the price of the out-of-state product, and if the quality is comparable.

- 4) Establishes that the section only applies to a contract to purchase agricultural products for a value that is less than the value of the threshold for supplies and services for which California has obligated itself under the Agreement on Government Procurement of the World Trade Organization.

FISCAL EFFECT: Unknown

COMMENTS: This bill expands a California grown bid preference established in 2017 by AB 822 (Caballero). AB 822 requires all California institutions, except public universities and colleges and school districts, to purchase agricultural products grown in California with a 5% price differential. California institutions are allowed to buy out of state product if the California products cost more than 5% of the lowest bid.

This bill would require for all California state-owned or state-run institutions, including public universities and colleges and school districts that purchase agricultural products to only purchase agricultural products that are grown in the state. Unless the agricultural product is out of season, not grown in California, or if the domestically grown agricultural produce does not exceed 25 percent the lowest bid or price for an agricultural produce grown outside the country.

According to the Author, “California laws require growers to follow some of the strictest environmental regulations in the country. Therefore, we should be giving our farmers the benefit of the doubt that our state’s agricultural products are the best in the nation by committing to a Buy California program.”

In support of the bill, the Farm Bureau writes, “When incorporating the benefit of ancillary industries that depend on agriculture, like food processing and manufacturing, each dollar invested in California agriculture pays dividends. AB 778 would allow California’s return on investment to be maximized in directing its purchasing power towards California products. In return, growers reinvest this money back into the economy and their local communities. California’s state agencies purchase hundreds of millions of dollars of food per year—for employees, at state hospitals, prisons, veterans’ homes, and state parks. According to the Health in All Policies Taskforce Report, in 2016 the State spent approximately \$314 million a year on food items for use in State agencies or properties, not including food procurement in public schools and childcare facilities. Likewise, the Department of Education disburses billions in federal and state funds to provide meals at local schools and other eligible agencies. These two agencies alone create significant buying power that could be directed towards purchases of California grown food.”

Since 1999, there have been at least 10 bills attempting to give a buying preference for California products, with nine of the bills focused on California Agriculture food products. Only one, AB 822 became law. Most of these bills were held on various committees mostly due to cost to state institutions. Governors Davis, Schwarzenegger, and Brown vetoed four of the bills, all citing cost and potential retaliation by other states and nations. To date AB 822 has not faced a legal challenge. Furthermore, Governor Brown, who had vetoed a previous version of the bill, signed AB 822.

POLICY CONSIDERATIONS:

In order to ensure that all California agriculture food producers are included and that this bill is consistent with USDA Dietary Guidelines, the committee suggests the following technical and conforming amendments:

On page 4, lines 37-40 and Page 5, lines 1-18.

58595. (a) (1) Except as provided in paragraph (2), all California state-owned or state-run institutions, all segments of public postsecondary education, and all local educational agencies that purchase agricultural food products shall only purchase an agricultural food product that is grown or produced in the state.

(2) (A) A California state-owned or state-run institution segment of public postsecondary education, or a local educational agency may purchase an agricultural food product when it is grown or produced outside of the state if the agricultural food product is not currently in season in California and available from an in-state grower or producer, is not grown or produced in the state, or is sold as a canned, dried, frozen, or juice product.

(B) An institution that solicits bids for the purchase of an agricultural food product pursuant to this paragraph shall accept a bid or price for that agricultural food product when it is grown or produced in this country before accepting a bid or price for an agricultural food product that is grown or produced outside the country when the bid or price of the domestically grown agricultural food product does not exceed by more than 25 percent the lowest bid or price for an agricultural food product grown or produced outside the country.

RELATED AND PREVIOUS LEGISLATION:

AB 710 (E. Garcia) of 2021 would prohibit a retailer from selling a listed agricultural product (LAP), produced in the state or outside of the state unless the product was produced in compliance with specified California health and environmental protection laws. Furthermore, prohibits a retailer from selling a LAP produced in the state or outside of the country unless the product was produced in compliance with specified California labor laws. This bill is in Assembly Appropriations Committee.

AB 1025 (R. Rivas) AB 1025 of 2021 would require all California state-owned or state-run institutions, all segments of public postsecondary education, and all local educational agencies that solicit bids for the purchase of an agricultural food product to purchase agricultural food products grown, packed, or processed domestically, with a 25% price variance allowance. This bill is in Assembly Accountability & Administrative Review Committee.

AB 582 (E. Garcia) of 2020 would have prohibited a retailer from selling an agricultural product, to the public unless the agricultural product is grown in the state, with limited exceptions. This bill was held in the Senate Business, Professions and Economic Development Committee.

AB 1248 (E. Garcia) of 2019, would have required all state institutions to purchase California-grown agricultural products, with specified exemption. This bill was held in Senate Governmental Organization Committee.

AB 2106 (E. Garcia) of 2018 would have increased the existing bid preference from 5% to 10% for state purchases, as specified, for California-grown, or California-packed or processed agricultural products over those produced out of state. This bill was held on the Senate Appropriations suspense file.

AB 822 (Aguiar-Curry) Chapter 785, Statutes of 2017, allows for 5% price difference for state purchases, as specified, for California-grown, or California-packed or processed agricultural products over those produced out of state.

SB 730 (Pan) Chapter 571, Statutes of 2017, requires the California Department of Education to take specified actions in order to monitor compliance with the federal Buy American provisions for the National School Lunch program.

AB 199 (Holden) in 2013 provided a 5% preference for state purchases of California-grown agricultural products in the early versions of that bill. However, the final version of the bill removed the 5% preference. It required that state-owned and state-run institutions purchase California-grown products instead of those grown out of state if the price was equal to or less than the out-of-state product, and if the availability and delivery schedule of the agricultural product was acceptable. This bill was vetoed by Governor Brown.

AB 1960 (Ma) of 2010, encouraged the State of California and its agencies to purchase California grown, or grown and processed, fruit, nuts and vegetables if the price is equal to or less than, imported fruits, nuts and vegetables. This bill was held in the Senate Rules Committee.

AB 2994 (Frommer) of 2004, proposed requiring state agencies to give preference to the purchase of lumber and certain solid wood products harvested from forests in California when price, fitness, and quality are equal. This bill was vetoed by Governor Schwarzenegger.

AB 801 (Salinas) of 2001, proposed requiring California state-owned or state-run institutions to purchase agricultural products grown in California before those that are grown outside this state, provided the prices for California grown products do not exceed the lowest price of products grown outside California by more than 5%. It also included California public schools, but only when price and quality were equal to products grown outside California. This bill was vetoed by Governor Davis.

SB 1893 (Perata) of 2000, proposed requiring state agencies and school districts to purchase agricultural products produced in California if the cost and quality are equal or superior to those produced outside California. This bill was held on the Senate Appropriations suspense file.

AB 214 (Wiggins) of 1999, proposed establishing preferences for the purchase of U.S. and California manufactured materials, with respect to public works contracts entered into by public entities. The bill was vetoed by Governor Davis.

REGISTERED SUPPORT / OPPOSITION:

Support

Beaumont Chamber of Commerce
Big Bear Chamber of Commerce
Bizfed Central Valley
California Apple Commission
California Blueberry Commission
California Cattlemen's Association
California Citrus Mutual
California Date Commission
California Farm Bureau Federation
California Farmworker Foundation
California Fresh Fruit Association
Chino Valley Chamber of Commerce
Coachella Valley Water District
Corona Chamber of Commerce
Desert Fresh INC
Fontana Chamber of Commerce
Greater Coachella Valley Chamber of
Commerce
Greater High Desert Chamber of Commerce
Greater Ontario Business Council

Growing Coachella Valley
Hemet San Jacinto Valley Chamber of
Commerce
Highland Area Chamber of Commerce
Inland Empire Economic Partnership (IEEP)
Menifee Valley Chamber of Commerce
Monterey County Farm Bureau
Moreno Valley Chamber of Commerce
Munger Farms
Murrieta Wildomar Chamber of Commerce
Olive Growers Council of California
Perris Valley Chamber of Commerce
Pomona Chamber of Commerce
Rancho Cucamonga Chamber of Commerce
Redlands Chamber of Commerce
Temecula Valley Chamber of Commerce
Twenty-nine Palms Band of Mission Indians
Upland Chamber of Commerce
Western United Dairymen

Support If Amended

Agricultural Council of California

Opposition

None on file

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