

Revised – As Amended RN1965808

SENATE THIRD READING

SB 490 (Caballero)

As Amended June 8, 2022

Majority vote

SUMMARY

This requires California Public Institutions (CPIs) to purchase agricultural products grown, packed, or processed domestically, with some exceptions.

Major Provisions

1) Makes legislative findings and declarations:

- a) Over 1/3 of the country's vegetables and 2/3 of the country's fruits and nuts are grown in California. California's agricultural abundance includes more than 400 commodities. California is the leading state in the nation for cash farm receipts, accounting for over 13% of the nation's total agricultural value, and that Californian produces over 99% of 14 different Ag commodities.
- b) On January 25, 2021, President Joseph R. Biden issued an executive order on "Ensuring the Future Is Made in All of America by All of America's Workers." The order aimed at boosting the purchase of American produced products.
- c) 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. This loophole has resulted in widespread noncompliance with Buy American Provision requirements.
- d) Competition from nondomestic producers hurts California agriculture and threatens to eliminate the jobs that workers depend on to feed their own families.
- e) Those who rely on publicly purchased nutrition programs, including school nutrition programs, are often among the most vulnerable children and families. They should have access to high quality, healthy meals, such as those grown, packed, and produced in California.
- f) 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) Defines the following:

- a) "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.
- b) "Domestic" means inside of the United States.

- c) “Local educational agency” has the same meaning as defined in Section 49557.5 of the Education Code.
 - d) “Nondomestic” means outside of the United States.
 - e) “CPI” means any state, city, or county agency, including a public postsecondary educational institution and a local educational agency as defined by this section.
 - f) “Public postsecondary educational institution” means the California Community Colleges and the California State University (CSU), but not the University of California.
- 3) Require CPIs that receive federal meal reimbursement funding to provide prepared meals and that solicit bids for the purchase of agricultural food products, as defined, to include in their solicitation for bids and contracts that only the purchase of agricultural food products grown, packed, or processed domestically is authorized.
 - a) Allows for an exemption, if the bid or price of the nondomestic agricultural food product is more than 25% lower, the quality of the domestic agricultural food product or the agricultural food product is not produced or manufactured domestically in sufficient to meet the CPIs needs.
 - 4) Provides that these provisions do not apply to the Child and Adult Care Food Program, the Summer Food Service Program, the Department of Corrections and Rehabilitation, or to agricultural food products purchased by or provided to a public institution through the United States Department of Agriculture.
 - 5) Require CPIs to retain documentation relating to the purchase of agricultural food products for 3 years and to make that documentation available to the public upon request.
 - 6) Provides that these provisions neither limit nor expand California’s obligations under the Agreement on Government Procurement of the World Trade Organization.
 - 7) Provides an exception to the above requirement for public institutions when a vendor substitutes an agricultural food product without notice or because a product is not available.
 - 8) Exempt local educational agencies with annual federal meal reimbursement funding of less than \$1,000,000 from these provisions.
 - 9) Requires these provisions to become operative January 1, 2024, with the exception that if there is a current contract between a CPI and food supplier on January 1, 2024, these provisions will apply in the next contract.
 - 10) Require the California Department of Education (CDE) to annually post on its internet website the aggregate information on reports received from participating local educational agencies on price increases for agricultural food products, as specified.

11) Require CDE to add a question to the federally required administrative review, as specified, regarding increases to the price of agricultural food products and the annual costs associated with implementing the requirement on purchasing domestic agricultural food products.

12) Repeals these provisions on January 1, 2029.

COMMENTS

Existing California law prohibits CPIs from purchasing agricultural food products not grown, packed, or processed non-domestically, unless the price of the non-domestic product is more than 5% lower than the same quality products and exempts public K-14 schools. Because California produced food products meet higher environmental and labor standards, that five percent is far below the actual cost differential particularly for California grown, packed and processed food in an industry providing jobs to many unionized California workers. As a result, schools are routinely purchasing the cheaper option, resulting in food that is subject to lower environmental and safety standards and the elimination of union jobs in the industry.

This bill expands the 5% differential to 25% and will include K-14 public school, the California Community College system and CSUs.

School budget implications. Historically, federal meal reimbursement rates have been insufficient to cover school meal costs, and recent food cost inflation has exacerbated the amount that school food service programs encroach on their school's general fund. The provisions of this bill could increase the costs per meal even further, which will lead to more school food service programs operating with a deficit.

School meal programs have always operated on tight budgets. Pandemic-related losses and service disruptions left many programs at risk financially. In National School Nutrition Association's 2021 Supply Chain Survey, 97% of meal programs nationally reported challenges with higher costs, compared to contracted bids, with nearly three quarters citing it as a "significant challenge." In California, about 25-30% of school food service programs encroach on their school's general fund to support their food service operations that can negatively affect educational funding. National labor shortages have also required school meal programs, which often compete with local restaurants for employees, to increase pay to attract employees.>

According to the Author

This bill will clarify and strengthen the Buy American policy by requiring all CPIs to purchase agricultural products grown, packaged or processed domestically, unless the price of the foreign product is more than twenty-five percent lower than a domestic product.

Arguments in Support

Food grown and processed in California and the U.S. meets strict requirements for food safety, pesticide use, packaging, and climate standards, as well as protections to ensure workers have safe and fair wages and working conditions. Unions represent workers throughout the food production and processing industry, ensuring workplace fairness.

Buy American provisions ensure Californians receive safe, healthy meals that support the local economy and protect jobs. The following provisions address stakeholders:

- Exempt products not grown in sufficient and available quantities in the U.S., such as bananas or others.
- Exempt any food bought directly from the US Department of Agriculture (USDA).
- Delay implementation a year to January 1, 2024, and a 5-year sunset.
- Protections to prevent excessive price increases and require price monitoring.

Arguments in Opposition

None on file.

FISCAL COMMENTS

Unknown

VOTES**SENATE FLOOR: 36-0-4**

YES: Allen, Archuleta, Atkins, Becker, Borgeas, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Melendez, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

ABS, ABST OR NV: Bates, Bradford, Dahle, Min

ASM HOUSING AND COMMUNITY DEVELOPMENT: 7-0-1

YES: Wicks, Carrillo, Gabriel, Kalra, Kiley, Quirk-Silva, Ward

ABS, ABST OR NV: Seyarto

ASM APPROPRIATIONS: 13-3-0

YES: Holden, Bryan, Calderon, Arambula, Davies, Mike Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, McCarty

NO: Bigelow, Megan Dahle, Fong

UPDATED

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