

Date of Hearing: June 22, 2022

ASSEMBLY COMMITTEE ON AGRICULTURE

Robert Rivas, Chair

SB 1308 (Caballero) – As Amended May 19, 2022

SENATE VOTE: 38-0

SUBJECT: Public educational institutions: purchase of nondomestic agricultural food products

SUMMARY: This bill expands the existing Buy American Provision to prohibit public postsecondary educational institutions and school districts from purchasing agricultural products grown, packed, or processed non-domestically with exceptions. Specifically, **this bill:**

- 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 "domestic" to mean inside the United States.
- 3) Defines "nondomestic" to mean outside the United States.
- 4) Defines "agricultural food product" to mean a fresh or processed product, including fruits, nuts, vegetables, herbs, mushrooms, dairy, shell eggs, honey, pollen, unprocessed bees wax,

propolis, royal jelly, flowers, grains, nursery stock, raw sheared wool, livestock meats, poultry meats, and fish, including shellfish.

- 5) Requires a school district that solicits bids for the purchase of an agricultural product shall accept a bid or price for that agricultural product when it is grown in California before accepting a bid or price for a domestic agricultural product that is grown outside the state when both of the following are met:
 - a) The bid or price for the California-grown agricultural product does not exceed the lowest bid or price for a domestic agricultural product produced outside the state;
 - b) The quality of the California-grown agricultural product is comparable to that domestic agricultural product produced outside the state.
- 6) Requires California Community Colleges, the California State University, and all local educational agencies as specified, that solicit bids for the purchase of an agricultural food product shall not purchase agricultural food products grown, packed, or processed nondomestically and requests the University of California to refrain from purchasing agricultural food products grown, packed, or processed nondomestically unless the following apply:
 - a) The bid or price for the nondomestic agricultural food product is more than 25% lower than the bid or price for the domestic agricultural food product;
 - b) The quality of the domestic agricultural food product is inferior to the quality of the agricultural food product grown, packed, or produced nondomestically.
- 7) Makes the provisions of this bill operative on January 1, 2024.
- 8) States this section shall neither limit nor expand California's obligations under the Agreement on Government Procurement of the World Trade Organization.

EXISTING LAW:

- 1) Requires all California state-owned or state-run institutions, except public universities, colleges, and school districts, that purchase an agricultural product shall accept a bid or price for that agricultural product when it is grown in California when both of the following are met:
 - a) 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;
 - b) The quality of the California-grown agricultural product is comparable to that agricultural product produced outside the state.
- 2) Requires all California state-owned or state-run institutions, except public universities, colleges, and school districts, that intend to accept a bid or price for agricultural products grown outside the state shall accept the bid or price from a vendor that packs or processes those agricultural products in the state before accepting a bid or price from a vendor that

packs or processes those agricultural products outside the state, when both of the following are met:

- a) The bid or price of the agricultural product grown outside the state and packed or processed in the state does not exceed by more than 5% the lowest bid or price for the agricultural product packed or processed outside the state;
 - b) The quality of the agricultural product packed or processed in the state is comparable to those packed or processed outside the state.
- 3) Requires a school district that solicits bids for the purchase of an agricultural product to accept a bid or price for that agricultural product when it is grown in California before accepting a bid or price for an agricultural product that is grown outside the state, when both of the following are met:
- a) The bid or price of the agricultural product grown in California does not exceed the lowest bid or price for an agricultural product produced outside the state;
 - b) The quality of the California-grown agricultural product is comparable to that agricultural product produced outside the state.
- 4) States this section shall only apply 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: Existing California law prohibits state institutions 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.

A 2017 state audit, "California Department of Education (CDE): It Has Not Ensured That School Food Authorities Comply with the Federal Buy American Requirement," found that:

- 1) CDE compliance review process has weaknesses that have led to inadequate and inconsistent reviews;
- 2) None of the six school districts reviewed had adequate policies and procedures related to the Buy American requirement and they had purchased foreign sourced food items, but did not have adequate documentation to justify the purchases; and,

- 3) Verifying compliance with the requirement will be challenging because federal food labeling laws do not always mandate that the country of origin for food items or their ingredients be included on labels.

Subsequent legislation requires CDE to take specified actions in order to monitor compliance with the Buy American Provisions, including posting resources and best practices on their web site.

The author states this bill “will clarify and strengthen the Buy American policy by requiring California public schools, colleges and universities 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.”

Supporters state “federal law for the purchase of school meals includes a Buy American provision that requires the purchase of domestic agricultural products. However, school districts can bypass the existing Buy American requirement and purchase imported food products if there is a significant cost differential between domestic and imported food products. The law does not define “significant cost differential” creating a huge loophole and resulting in widespread non-compliance. The Biden Administration is proposing regulations to narrow Buy America loopholes across industries, including state purchasers of school lunch products. This bill would build upon that effort by clarifying that “significant cost differential” means 25% more expensive.”

Opponents state “this bill would make it near impossible for school districts to purchase any agricultural product overseas. California school districts try their best to purchase items within the state, but there are situations out of their control that make it difficult, such as the size and quantity of fruit. As a real life example, a school district had to purchase additional kiwis elsewhere because the kiwis they received locally were not large enough to fulfill the meal serving requirements. SB 1308’s restrictions would also limit the availability of produce to season, which would lead to an increase in food costs.”

Related legislation.

AB 1025 (Rivas, 2021) would have required all California state-owned or state-run institutions, all segments of public postsecondary education, and all LEAs to purchase domestic agricultural food products as specified. AB 1025 was referred to but not heard in the Assembly Accountability and Administrative Review Committee.

AB 778 (E Garcia, 2021) would have expanded the requirement that all state-owned or state-run institutions purchase only California-grown agricultural food products, as specified to include public colleges/universities and school districts. AB 778 passed the Assembly, but was not heard in the Senate.

REGISTERED SUPPORT / OPPOSITION:

Support

Agricultural Council of California
Association of California Egg Farmers

Butte County Rice Growers Association
California Apple Commission
California Blueberry Association
California Cannery Industry Labor-management Cooperation Committee
California Canning Peach Association
California Cherry Growers and Industry Association
California Citrus Mutual
California Fresh Fruit Association
California Labor Federation, AFL-CIO
California Olive Oil Council
California Pear Growers Association
California Teamsters Public Affairs Council
California Women for Agriculture
Far West Equipment Dealers Association
Olive Growers Council of California
Pacific Coast Producers
Sun-maid Growers of California
Sunsweet Growers
Teamsters Food Processing Division
Teamsters Local 517
Teamsters Local 856
Teamsters Local 890
Teamsters Local 948
United Ag
United Food and Commercial Workers, Western States Council
Wawona Frozen Foods

Oppose

Association of California School Administrators
California School Boards Association

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