

Date of Hearing: March 22, 2017

ASSEMBLY COMMITTEE ON EDUCATION

Patrick O'Donnell, Chair

AB 591 (O'Donnell) – As Introduced February 14, 2017

SUBJECT: School property: lease: county boards of education

SUMMARY: Requires a county board of education that uses the lease-leaseback or lease-to-own contracting methods to comply with specified requirements. Specifically, **this bill**:

- 1) Specifies, in the provisions of law outlining the authority and responsibilities of county boards of education, that if a county board of education enters into an agreement to let to any person, firm, or corporation any real property that belongs to the county office of education (COE) or a school district and requires the lessee to construct on the demised premises or provide for the construction of a building for use by the COE or a school district, the county board of education shall comply with all requirements applicable to the governing board of a school district pursuant to Education Code (EC) Sections 17406 (lease-leaseback), 17407 (lease-to-own), and 17407.5 (skilled and trained workforce).
- 2) Specifies that the provisions in EC Sections 17406, 17407, and 17407.5 apply to any agreement entered into by a county board of education to let to any person, firm, or corporation any real property that belongs to the COE or a school district and requires the lessee to construct on the demised premises or provide for the construction of a building thereon for use by the county office of education or a school district.

EXISTING LAW:

- 1) Requires the governing board of a school district to competitively bid and award to the lowest bidder contracts involving the following:
 - a) An expenditure of \$50,000 or more for the purchase of equipment, materials, or supplies, services (except for construction services), and repairs.
 - b) An expenditure of \$15,000 or more for a public contract project defined as construction, reconstruction, erection, alteration, renovation, improvement, demolition, repair, painting or repainting of any publicly owned, leased, or operated facility. (Public Contract Code (PCC) Sections 20111 and 22002)
- 2) Authorizes the governing board of a school district to let, for a minimum rental of \$1 a year, to any person, firm, or corporation any real property that belongs to the school district if the instrument by which such property is let requires the lessee therein to construct on the demised premises, or provide for the construction thereon of, a building or buildings for the use of the school district during the term thereof, and provides that the title to that building shall vest in the school district at the expiration of that term. (EC Section 17406)
- 3) Requires, until January 1, 2019, a school district with an average daily attendance (ADA) of more than 2,500 using state school facility bond funds for a public project with an expenditure of \$1 million or more to require prospective bidders, and if utilized, all electrical, mechanical, and plumbing subcontractors, to complete and submit a standardized prequalification questionnaire and financial statement. (PCC Section 20111.6(a)(i)(l))

- 4) Prohibits a school district governing board from entering into a lease-leaseback or lease-to-own contract with any entity unless the entity provides to the governing board of the school district an enforceable commitment that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades. (EC Section 17407)

FISCAL EFFECT: None. This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS: *Contracting.* Under current law, school districts are required to competitively bid any public works contract over \$15,000 and award the contract to the lowest responsible bidder. Alternative methods for awarding contracts include design-build, which enables a school district to issue a request for proposal for both design and construction of projects; best value, which authorizes school districts to consider factors other than cost; and job order contracting, which is based on prices for specific construction tasks.

Lease-leaseback and lease-to-own. Lease-leaseback is a process whereby a governing board of a school district may rent district property for a minimum of \$1 a year, to any person, firm or corporation. The person, firm or corporation constructs the school building and rents the facility back to the school district. At the end of the lease, the district resumes title to the building and site. Last year, AB 2316 (O'Donnell), Chapter 521, Statutes of 2016, established a competitive selections process for award of lease-leaseback contracts.

In a lease-to-own agreement, the governing board of a school district, through a bidding process, may enter into a contract with a person, firm, or corporation with the lowest bid, under which that entity that receives the contract will construct the building on a designated site and lease the property to the school district. The school district gets the title at the end of the lease.

Prequalification. School districts over 2,500 average daily attendance using state school facilities bond funds are required, until January 1, 2019, to establish a prequalification process whereby a prospective bidder, and any electrical, mechanical and plumbing subcontractors, of a public works contract with a projected expenditure of \$1 million or more, is required to complete a standardized questionnaire provided by the district and submit a financial statement.

The questionnaire may require contractors to provide detailed information regarding the company and its financial status, including whether the company has been in bankruptcy or involved in a civil lawsuit; licensing information; prior contracting experience (whether the contractor has completed other public works projects); whether the contractor has been involved or been found to have violated any federal, state or local laws; and whether the contractor has violated any labor and health and safety laws, including prevailing wage.

The questionnaire is rated and a local agency can exclude bids from companies that do not meet minimum points. While there is no guarantee that a company that meets minimum points may not have financial problems or provide substandard work, prequalification reduces those risks.

Skilled and trained workforce. Under current law, school districts and a number of local and state entities authorized to use alternative contracting methods are required to ensure that the entity with which it enters into a contract provides to the governing board of the school district an enforceable commitment that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an

apprenticeable occupation in the building and construction trades. Skilled and trained workforce means a workforce where all of the workers working on the project are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Chief of the Division of Apprenticeship Standards within the Department of Industrial Relations. Last year, SB 693 (Hueso), Chapter 774, Statutes of 2016, made consistent all the requirements to have a skilled and trained workforce specified in various code sections.

This bill clarifies that county boards of education that choose to use lease-leaseback and lease-to-own contracting methods must comply with all the requirements for using these contracting methods, which include competitive selections, prequalification and ensuring the entity and its subcontractors at every tier receiving the contract have a skilled and trained workforce.

County boards of education are not given explicit authority to use lease-leaseback and lease-to-own contracts. However, according to the author, some county boards of education, under general authority given to county boards of education to conduct contracting, have chosen to use lease-leaseback contracting method, but in a selective manner; for example, by not complying with the skilled and trained workforce requirement. They argue that those requirements only apply to the "governing boards of school districts". The author states that this bill makes it clear that county boards of education who choose to use this contracting method must also comply with all of the requirements.

Committee amendment. Staff recommends a technical amendment to establish the language in a separate, stand-alone section.

Prior legislation. AB 2316 (O'Donnell), Chapter 521, Statutes of 2016, establishes, until July 1, 2022, a competitive selections process for awarding lease-leaseback contracts, and allows a contractor to be paid the reasonable cost of labor, equipment, materials, and services furnished by the contractor meeting specified conditions if a lease-leaseback contract entered into prior to July 1, 2015, is found to be invalid by a court.

SB 693 (Hueso), Chapter 774, Statutes of 2016, consolidates the "skilled and trained workforce" requirements of various provisions of law related to alternative construction delivery methods, defines the terms of these requirements, and makes other conforming changes.

AB 566 (O'Donnell), Chapter 214, Statutes of 2015, prohibits a school district governing board from entering into a lease-leaseback or lease-to-own contract with any entity unless the entity provides to the governing board of the school district an enforceable commitment that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades.

AB 1581 (Buchanan), Chapter 408, Statutes of 2014, requires school districts entering into lease-leaseback and lease-to-own contracts to comply with the requirements to prequalify and rate prospective bidders, if the project is funded with state bond funds, the expenditure of the project is \$1 million or more, and the average daily attendance of the school district is more than 2,500.

AB 1565 (Fuentes), Chapter 808, Statutes of 2012, requires, until January 1, 2019, school districts using state school facilities bond funds to establish a prequalification process whereby a prospective bidder, and any electrical, mechanical and plumbing subcontractors, of a public

works contract with a projected expenditure of \$1 million or more, is required to complete a standardized questionnaire provided by the district and submit a financial statement.

SB 600 (Rubio), introduced in 2011, was a similar bill to AB 1565. The bill was held in the Assembly Appropriations Committee suspense file in 2011.

REGISTERED SUPPORT / OPPOSITION:

Support

State Building and Construction Trades Council (sponsor)

Opposition

None on file

Analysis Prepared by: Sophia Kwong Kim / ED. / (916) 319-2087