

Date of Hearing: July 12, 2017

ASSEMBLY COMMITTEE ON EDUCATION

Patrick O'Donnell, Chair

SB 730 (Pan) – As Amended May 26, 2017

**SENATE VOTE:** 40-0

**SUBJECT:** Pupil nutrition: National School Lunch Act: Buy American provision: compliance

**SUMMARY:** Requires the California Department of Education (CDE) to take specified actions in order to monitor compliance with the federal Buy American provisions for the National School Lunch program. Specifically, **this bill:**

- 1) Requires the CDE to take all of the following actions as part of the administrative review, required by federal regulations, in order to monitor compliance and to enforce the Buy America provisions:
  - a) Distribute to school food authorities the most recent Buy American requirement guidance information from the United States Department of Agriculture (USDA) on an annual basis.
  - b) Determine if school food authority solicitation and contract documents contain the language for contractors to supply products in compliance with the Buy American provision.
  - c) Review a variety of food product labels in storage facilities to ensure compliance with the Buy American provision.
  - d) Review a sample of supplier invoices and receipts to ensure the country of origin is the United States or its territories.
  - e) Request documentation justifying any exceptions identified.
  - f) Issue a finding and require corrective action if nondomestic products are identified and there is no documentation justifying an exception.
  - g) Require school food authorities to include the Buy American provision in solicitations, contracts, and product specifications.
  - h) Establish best practices for school food authorities to comply with the Buy American provision.
- 2) Expresses findings and declarations regarding the provisions of, and importance of, the Buy America provisions for procuring commodities and products for schools participating in the federal school meal programs.
- 3) Specifies that the provisions of this section will be operative only if authorized by federal law.

**EXISTING LAW:**

Existing federal law:

- 1) Requires school food authorities participating in the National School Lunch Program or the School Breakfast Program to purchase, to the maximum extent practicable, domestic commodities or products. (Title 42, Code of Federal Regulations, Section 1760(n))
- 2) Defines domestic commodity or product, for the purposes of this section, as:
  - a) An agricultural commodity that is produced in the United States; or
  - b) A food product that is processed in the United States substantially using agricultural commodities that are produced in the United States. (Title 42, Code of Federal Regulations, Section 1760(n))
- 3) Requires state agencies to conduct administrative reviews of all school food authorities participating in the National School Lunch Program (including the Afterschool Snacks and the Seamless Summer Option) and School Breakfast Program at least once during a three year review cycle, provided that each school food authority is reviewed at least once every four years. (Title 7, Code of Federal Regulations, Section 210.18)

Existing state law:

- 1) Requires each district or county superintendent of schools maintaining any kindergarten or any of grades 1 to 12, inclusive, to provide for each needy pupil one nutritionally adequate free or reduced-price meal during each schoolday. (Education Code 49550)
- 2) Provides that a nutritionally adequate meal for this purpose is a breakfast or lunch meeting specified requirements that qualifies for reimbursement under the federal child nutrition program regulations. (EC 49553)
- 3) Authorizes a school district or county office of education to use funds made available through any federal or state program the purpose of which includes the provision of meals to a pupil, including the federal School Breakfast Program, the federal National School Lunch Program, the federal Summer Food Service Program, the federal Seamless Summer Option, or the state meal program, or do so at its own expense. (EC 49550)

**FISCAL EFFECT:** According to the Senate Appropriations Committee, “to the extent there are school food authorities purchasing foods that are cheaper from outside of the United States (when such foods are grown or produced domestically) and switch to domestic foods that are more costly, the bill’s enforcement provisions could drive an increase in local costs which districts would have to absorb within existing resources.”

**COMMENTS:**

***Need for the bill.*** According to the author, additional steps are necessary to increase transparency regarding school food purchase decisions in California. In November 2015, the Sacramento Bee reported that Sacramento City Unified School District purchased Chinese canned peaches and mixed fruit even though nearly all U.S. canned peaches and plastic packaged peaches are grown

here in California, and four food processor warehouses with supplies of canned peaches are within a two-hour drive of Sacramento. A similar situation occurred with the Elk Grove Unified School District.

The author also notes that California is known worldwide as a leader on climate change. California's farmers and producers, as well as food processors, abide by the numerous regulatory agency directives to lower emissions and use cleaner burning transportation vehicles and equipment in order to reduce greenhouse gas (GHG) emissions. The state must not undermine its efforts to reduce GHGs by spending taxpayer dollars to import products from nations not complying with equivalent emissions standards.

According to the author, our farmers and producers work hard to grow safe, healthy food, and they implement environmentally friendly stewardship practices. California grown food is produced under strict regulations to ensure food safety, reduce environmental impacts, carefully manage pesticide use and protect the health of workers. Spending taxpayer dollars to source food products for our children that are grown and processed under very different standards does not seem to comport with our priorities.

Finally, the author states that California is the leading agricultural-producing state in the nation with over 400 commodities grown and produced in our state. With a wide array of nutritious food grown and produced here in California, it is incumbent upon CDE to review compliance and enforcement of the Buy American requirement. Enforcement of the Buy American requirement ensures our children consume food of the highest quality and safety, supports locally-grown products and our economy, and reinforces California's commitment as a world leader on climate change."

***Buy American provisions.*** Federal law requires school food authorities to purchase, to the maximum extent practicable, domestic commodities or products. This Buy American provision is meant to support the mission of the Child Nutrition Programs, to serve children nutritious meals and support American agriculture.

Domestic commodity or product is defined, in federal law, as an agricultural commodity that is produced in the U.S. and a food product that is processed in the U.S. substantially using agricultural commodities produced in the U.S. This bill includes a definition of "substantial" as 51% of the final processed product consists of agricultural commodities grown domestically. This reflects language used in federal guidance, which is subject to change. ***The committee may wish to consider*** whether it is advisable to codify federal guidance into state law.

***Oversight of Buy American provisions.*** This bill lays out specific actions that the CDE must take to monitor compliance with the Buy American provision. Federal regulations currently specify a comprehensive process that state agencies must follow in conducting administrative reviews of school food authorities participating in the National School Lunch Program and the School Breakfast Program, including the following provisions:

- Administrative reviews must be conducted at least once every three years of all school food authorities and follow-up reviews are required where significant or repeated violations exist.

- The state agency must review at least one school from each local education agency (LEA) and must review all schools with a free average daily participation of 100%.
- Scope of the review includes specified requirements including ensuring that free and reduced price meals are served only to children eligible for such meals and that meals served meet all relevant nutritional and other requirements.
- Specifies the actions to be taken on the day of the review, including observing a significant number of program meals to ensure all of the meals meet the required food components and quantities for the age/grade levels being served and conducting targeted menu reviews.
- Requires the state agency to confirm the LEA has appropriate policies in place regarding establishing eligibility for free and reduced price meals, competitive food standards, availability of water, food safety, local school wellness policies and other relevant policies.
- Specifies the procedures for applying corrective actions when school food authorities are found to be in violation of any of the requirements, including training, technical assistance, and fiscal actions.

These detailed administrative reviews address compliance with the Buy American provisions in addition to numerous other requirements of the national school meal program. *The committee may wish to consider* whether it is necessary to establish a process in state law that may conflict with the process already in place in federal law and regulations.

*Is non-compliance with Buy American a major problem in California?* Since 2010 the CDE has received only two formal complaints regarding violations of the Buy American provisions:

- In 2015, the CDE was notified that the Sacramento City Unified School District had purchased fruit from China. The CDE contacted the school district, who clarified that the action was an oversight and was inconsistent with their practices. The district took steps to correct the action and prevent future occurrences and the inquiry was closed.
- The second complaint on file at CDE related to the Compton School District in 2010.

In the most recent round of administrative reviews, the CDE reports that nine out of 187 school food authorities received findings related to noncompliance with the Buy America provisions. Corrective actions were required in each case, but no funds were disallowed.

*Pending report from the State Auditor.* As a result of legislative action, the California State Auditor is currently completing an audit to provide independently developed and verified information related to whether the CDE is ensuring that public school districts are complying with the Buy American provision in federal law. The audit will include findings on the following:

- Review and evaluate the laws, rules, and regulations significant to the audit objectives.
- Assess the extent to which the CDE monitors and enforces public school districts' compliance with the Buy American requirement, including whether school districts'

procurement specifications and solicitations include Buy American provisions and whether school districts are appropriately documenting exemptions to the Buy American requirement.

- Determine whether the CDE tracks purchases of food products by individual public school districts and, if so, whether the CDE can identify those districts purchasing food for school meal programs from outside of the United States when such foods are also grown or produced domestically. To the extent possible, identify school districts making such purchases and identify the food products purchased.
- Assess whether CDE policies related to reporting school purchasing decisions are sufficient to identify foreign-sourced food products served by California school districts. Determine whether the CDE has made any recent changes to improve transparency of school districts' decisions to purchase foreign sourced food products.
- Identify and report any changes that CDE plans to make related to monitoring and enforcing Buy American requirements and assess whether such changes will ensure greater compliance with the requirements.
- Review and assess any other issues that are significant to the audit.

The office of the California State Auditor confirms that **this audit will be released on July 27, 2017. The committee may wish to consider** whether this bill is premature, given that the Legislature has asked the State Auditor to investigate this issue and provide recommendations.

#### **Staff recommends:**

- 1) Strike the specific actions the CDE is required to conduct and replace with language specifying that in order to monitor school food authorities' compliance of the Buy America provision, the CDE shall fulfill its obligations in accordance with federal regulations.
- 2) Add language requiring the CDE to make Buy American requirements, resources, and best practices available on its website.
- 3) Add language requiring CDE to distribute Buy American guidance or regulations from the USDA to school food authorities as updates are issued.
- 4) Other technical changes to clarify the role of CDE in monitoring compliance with the Buy American provisions.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

Agricultural Council of California  
Almond Alliance of California  
Apricot Producers of California

Association of California Egg Farmers  
Butte County Rice Growers Association  
California Association of Wheat Growers  
California Bean Shippers Association  
California Canning Peach Association  
California Dairies, Inc.  
California Farm Bureau Federation  
California Grain & Feed Association  
California Pear Growers Association  
California Seed Association  
California State Floral Association  
California Teamsters Public Affairs Council  
California Warehouse Association  
Horizon Nut Company  
Pacific Coast Producers  
San Luis Coastal Unified School District  
Sun-Maid Growers of California  
Sunsweet Growers  
United Ag  
Valley Fig Growers

**Opposition**

None on file

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