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# SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

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**Bill No:** SB 730 **Hearing Date:** April 26, 2017  
**Author:** Pan  
**Version:** February 17, 2017  
**Urgency:** No **Fiscal:** Yes  
**Consultant:** Brandon Darnell

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

## SUMMARY

This bill requires the California Department of Education (CDE) to monitor compliance and enforce the Buy American provision of the National School Lunch Program by taking certain actions, to establish best practices for school food authorities to comply with the Buy American provision, and to establish a process for school food authorities to request an exception to the Buy American requirement before purchasing nondomestic products.

## BACKGROUND

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, United States Code, § 1760(n))
- 2) 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, §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)

## ANALYSIS

This bill requires the California Department of Education (CDE) to monitor compliance and enforce the Buy American provision of the National School Lunch Program by taking certain actions, to establish best practices for school food authorities to comply with the Buy American provision, and to establish a process for school food authorities to request an exception to the Buy American requirement before purchasing nondomestic products. Specifically, this bill:

- 1) In order to monitor compliance and to enforce the Buy American provision, requires CDE to do all of the following:
  - a) Distribute to school food authorities the most recent Buy American requirement guidance information from the United States Department of Food and Agriculture 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 in (d).
  - 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.
  - i) Establish a process for school food authorities to request an exception to the Buy American requirement before purchasing nondomestic products.
- 2) Once an exception process is established, if a school food authority uses an exception, requires CDE to require the school food authority to do both of the following:

- a) Notify the public by posting on the school food authority's Internet Web site the fact that the school food authority is serving a foreign commodity or product pursuant to an exception to the Buy American provision.
  - b) Electronically mail a notice to the parents or guardians of pupils enrolled in the free or reduced-price meals program that states that the school food authority is serving a foreign commodity pursuant to an exception to the Buy American requirement and identifies the exception being used.
- 3) Specifies that its provisions are operative only to the extent authorized under federal law.

## STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, "Additional steps are necessary to increase transparency regarding school food purchase decisions in California. Recent actions by some public school districts in California show a deviation with the Buy American requirement. 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. In addition, California is known worldwide as a leader on climate change and this commitment is clear given the legislature's significant work on this issue. As Such, California should ensure that actions by state agencies do not implement a double standard when it comes to 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."
- 2) ***Audit to be conducted.*** On August 6, 2016 the California State Auditor's Office announced that it approved Senator Galgiani's audit request regarding the Buy American provision. "The audit by the California State Auditor will provide independently developed and verified information related to whether the California Department of Education's (CDE) is ensuring that public school districts under its jurisdiction are complying with the Buy American provision in the federal William F. Goodling Child Nutrition Reauthorization Act of 1998, and will include, but not be limited to, the following:
  - a) Review and evaluate the laws, rules, and regulations significant to the audit objectives.
  - b) 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.

- c) 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.
- d) 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.
- e) 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.
- f) Review and assess any other issues that are significant to the audit.”

The committee may wish to consider waiting for the results of the state audit before pursuing legislation.

- 3) ***Existing waiver authority/exceptions.*** According to guidance issued by the United States Department of Agriculture , “There are limited exceptions to the Buy American provision which allow for the purchase of products not meeting the “domestic” standard as described above (“non-domestic”) in circumstances when use of domestic products is truly not practicable. However, before utilizing an exception, alternatives to purchasing non-domestic food products should be considered. For example, school food authorities (SFAs) should ask:

- a) Are there other domestic sources for this product?
- b) Is there a domestic product that could be easily substituted, if the non-domestic product is less expensive (e.g. substitute domestic pears for non-domestic apples)?
- c) Am I soliciting bids for this product at the best time of year? If I contracted earlier or later in the season, would prices and/or availability change?

Again, although exceptions to the Buy American provision exist, they are to be used as a last resort. These exceptions, as originally outlined in the 2012 guidance, are:

- a) The product is not produced or manufactured in the U.S. in sufficient and reasonable available quantities of a satisfactory quality; or

- b) Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product.

If a school food authorities (SFA) is using one of the above exceptions, there is no requirement to request a waiver in order to purchase a non-domestic product. SFAs must, however, keep documentation justifying the exception(s).”

This bill would make utilization of exceptions to the Buy American provision more restrictive than the federal guidance’s permissive approach. Instead, the bill would require SFAs

- 4) **CDE’s existing monitoring role.** This bill codifies the United States Department of Agriculture’s (USDA) existing Buy American provision monitoring guidance. (<https://www.fns.usda.gov/sites/default/files/cn/SP24-2016os.pdf>). According to the United States Department of Agriculture’s (USDA) guidance, “Monitoring by the SFA and oversight by the state agency are critical functions in enforcing the Buy American Provision... and state agencies conducting procurement reviews in conjunction with or as a separate review from administrative reviews in 7 CFR Part 210.18, must ensure SFA compliance with the Buy American provision. Similar to SFA monitoring, State agencies must determine if a SFA’s solicitation and contract documents contain the language for contractors to supply products in compliance with the Buy American provision; review the label on a variety of food products in storage facilities; and review a sample of supplier invoices/receipts to ensure the country of origin is the United States or its territories. If exceptions are identified, the State agency must request documentation justifying the exception(s) outlined above. If non-domestic products are identified and there is no documentation justifying the exception, the State agency must issue a finding and require corrective action.” **Staff recommends** that the bill be amended as follows:

“(b) In order to monitor compliance and to enforce the Buy American provision, as part of its administrative review pursuant to Section 210.18 of Title 7 of Code of Federal Regulations, the department shall do all of the following:”

**Staff also recommends** that the bill amended to delete “~~(B) Electronically mail a notice to the parents or guardians of pupils enrolled in the free or reduced-price meals program that states that the school food authority is serving a foreign commodity pursuant to an exception to the Buy American requirement and identifies the exception being used.~~”

- 5) **Related legislation.** SB 782 (Skinner, 2017) would establish the California Grown Fresh School Meals Grant Program within California Department of Food and Agriculture (CDFA) to provide grants for public schools to buy California-grown food and expand the number of freshly prepared school meals that use these food products. SB 782 is scheduled to be heard by this Committee on April 26, 2017.

## SUPPORT

Almond Alliance of California  
Apricot Producers of California  
Butte County Rice Growers Association  
California Association of Wheat Growers  
California Bean Shippers Association  
California Canning Peach Association  
California Farm Bureau Association (Farm Bureau)  
California Grain & Feed Association  
California League of Food Processors  
California State Floral Association  
California Warehouse Association  
Horizon Nut Company  
Pacific Coast Producers  
Seneca Foods Corporation, LLC  
Sunsweet  
UnitedAg  
Valley Fig Growers

**OPPOSITION**

None received.

**-- END --**