
SENATE COMMITTEE ON AGRICULTURE
Senator Andreas Borgeas, Chair
2021 - 2022 Regular

Bill No: SB 1308 **Hearing Date:** 3/24/22
Author: Caballero
Version: 3/14/22
Urgency: No **Fiscal:** Yes
Consultant: Reichel Everhart

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

SUMMARY:

This bill requires school districts that solicit 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 a domestic (within the United States) agricultural product that is grown outside of California unless the bid or price of the California-grown agricultural product exceeds the lowest bid or price of the domestic agricultural product produced outside the state. This bill also prohibits California Community Colleges, California State University, and all local educational agencies, and encourages the University of California to refrain, from purchasing agricultural food products grown, packed, or processed nondomestically (outside of the United States) unless the price of the nondomestic agricultural food product is more than 25% lower than the bid or price of the domestic agricultural food product and the quality of the product is comparable to the product grown in California. This bill defines “domestic” to mean within the United States and defines “nondomestic” to mean outside of the United States. It defines “agricultural food product” to mean a fresh or processed product. Finally, this bill incorporates findings and declarations to reference the President’s Executive Order “Ensuring the Future is Made in All of America by All of America’s Workers.”

BACKGROUND AND EXISTING LAW:

Existing state 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.

Existing federal law:

- 1) Establishes the Agreement on Government Procurement of the World Trade Organization (WTO).

PROPOSED LAW:

This bill:

- 1) Establishes 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.

- b. California produces over 99% of the almonds, artichokes, dates, figs, garlic, grapes, raisins, kiwi, melons, olives, clingstone peaches, pistachios, rice, and walnuts in the nation and is a lead producer of many more agricultural products.
 - c. 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” that stated, “It is the policy of my Administration that the United States Government should, consistent with applicable law, use terms and conditions of Federal financial assistance awards and Federal procurements to maximize the use of goods, products, and materials produced in, and services offered in, the United States. The United States Government should, whenever possible, procure goods, products, materials, and services from sources that will help American businesses compete in strategic industries and help America’s workers thrive.”
 - d. 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.
 - e. According to figures from the National Council of Farmer Cooperatives, 81% of the apple juice served in the school lunch program is imported; and 50-60% of the fish served in schools is “caught by Russian ships and processed in China.”
 - f. Competition from nondomestic producers hurts California agriculture and threatens to eliminate the jobs that workers depend on to feed their own families.
 - g. 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.
 - h. 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 defined in Education Code Section 49557.5 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) States this section shall neither limit nor expand California's obligations under the Agreement on Government Procurement of the World Trade Organization.

ARGUMENTS IN SUPPORT:

According to the author:

“SB1308 will clarify and strengthen California’s Buy American policy by requiring all 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. SB1308 would improve the quality and safety of public school, college and university meal and nutrition programs, protect California jobs, and support

California’s agricultural industry by clarifying and strengthening the Buy American policy for public institutions at the state level.”

“SB1308 does not mandate that schools buy American products, nor does it dictate the kind of products that they must purchase. SB 1308 provides schools the flexibility to adjust menus and procurement to avoid increased costs and gives them a “safety valve” if there is no affordable domestic product available. President Biden issued an Executive Order on “Ensuring the Future Is Made in All of America by All of America’s Workers” with the goal to use federal funds to maximize the purchase of agricultural products, goods, materials, and services offered in the United States. This measure expresses the State Legislatures support for Buy American requirements for all school food purchases. Additionally it calls on the 117th Congress to help the USDA meet its obligations under the President’s Executive Order, to maximize domestic procurement in the upcoming reauthorization of the Child Nutrition Act.”

The California Cannery Industry Labor-Management Cooperation Committee writes in support, stating this bill closes a loophole in the existing federal Buy American law and would ultimately support the California cannery industry and its workers.

ARGUMENTS IN OPPOSITION:

None received.

COMMENTS:

The WTO is the only global international organization dealing with the rules of trade between nations. At its heart are the WTO agreements, negotiated and signed by the bulk of the world’s trading nations and ratified by their parliaments, including the United States. The goal is to help producers of goods and services, exporters, and importers conduct business. This bill states it will not affect contracts 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 Government Procurement Agreements of the WTO (*full text:* https://www.wto.org/english/docs_e/legal_e/gpr-94_01_e.htm).

The Senate Rules Committee has double referred this bill to the Senate Governmental Organization Committee as the second committee of referral. Therefore, if this measure is approved by this committee, the motion should include an action to re-refer the bill to the Senate Committee on Governmental Organization.

RELATED LEGISLATION:

AB 1025 (Rivas) of 2021: This bill would have required all California state-owned or state-run institutions, all segments of public postsecondary education, and all local educational agencies that solicit bids for the purchase of an agricultural food product to purchase agricultural food products grown, packed, or processed domestically unless either the bid or price of the nondomestic agricultural food product is more than 25% lower than the bid or price of the domestic agricultural food product or the quality of the domestic agricultural food product is inferior to the nondomestic agricultural food product. (*Died in the Assembly Accountability and Administrative Review Committee without a hearing*).

SUPPORT:

Agricultural Council of California
Association of California Egg Farmers
California Apple Commission
California Blueberry Association
California Blueberry Commission
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 Pear Growers Association
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 Local 517
Teamsters Local 856
Teamsters Local 890
Teamsters Local 948
United Ag
United Food and Commercial Workers, Western States Council
Wawona Frozen Foods

OPPOSITION:

None received

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