

## **Senate Bill No. 490**

### **CHAPTER 602**

An act to add and repeal Chapter 8 (commencing with Section 58596.1) of Part 1 of Division 21 of the Food and Agricultural Code, relating to agricultural food products.

[Approved by Governor September 27, 2022. Filed with  
Secretary of State September 27, 2022.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

SB 490, Caballero. The Buy American Food Act: public institutions: purchase of nondomestic agricultural food products.

(1) Existing law requires all California state-owned or state-run institutions, except public universities and colleges and school districts, to purchase an agricultural product grown in California when 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 and the quality of the California-grown agricultural product is comparable. Existing law also requires the institutions, when they solicit or intend to accept a bid or price for agricultural products grown outside the state, to accept the bid or price from a vendor that packs or processes these agricultural products in the state before accepting a bid or price from a vendor that packs or processes these agricultural products outside of the state when specified conditions are met. Existing law 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 the bid or price of the California-grown agricultural product does not exceed the lowest bid or price for an agricultural product produced outside the state and the quality of the California-grown agricultural product is comparable. Under existing law, these provisions 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.

This bill would enact the Buy American Food Act to require public institutions, as defined, that receive federal meal reimbursement funding to provide prepared meals and that solicit bids for the purchase of agricultural food products, as defined, to include in their solicitation for bids and contracts that only the purchase of agricultural food products grown, packed, or processed domestically is authorized, unless 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, the quality of the domestic

agricultural food product is inferior to the quality of the agricultural food product grown, packed, or produced nondomestically, or the agricultural food product is not produced or manufactured domestically in sufficient and reasonably available quantities of a satisfactory quality to meet the needs of the public institution. The bill would exempt local educational agencies with annual federal meal reimbursement funding of less than \$1,000,000 from these provisions. The bill would require the public institution to retain documentation relating to the purchase of agricultural food products for 3 years and to make that documentation available to the public upon request. The bill would provide that the bill's provisions neither limit nor expand California's obligations under the Agreement on Government Procurement of the World Trade Organization. The bill would provide that these provisions do not apply to the Child and Adult Care Food Program, the Summer Food Service Program, the Department of Corrections and Rehabilitation, or to agricultural food products purchased by or provided to a public institution through the United States Department of Agriculture. The bill would provide an exception to the above requirement for public institutions when a vendor substitutes an agricultural food product without notice or because a product is not available. To the extent that this bill would impose additional duties for local educational agencies and community colleges, this bill would impose a state-mandated local program.

(2) Existing federal law, the National School Lunch Act, establishes a federal subsidy program to provide free and reduced-price meals to eligible children in schools. As a condition of participation, federal law requires the State Department of Education and participating local educational agencies to comply with a provision, known as the Buy American provision, that requires school food authorities, as defined, to purchase, to the maximum extent possible, domestic commodities or products. Existing federal regulations establish procedures for administrative review and compliance with specific program requirements, including the Buy American provision. Under existing state law, the State Department of Education and local educational agencies administer the National School Lunch Act programs.

This bill would require the department to annually post on its internet website the aggregate information on reports received from participating local educational agencies on price increases for agricultural food products, as specified. The bill would require the department to add a question to the federally required administrative review, as specified, regarding increases to the price of agricultural food products and the annual costs associated with implementing the requirement on purchasing domestic agricultural food products.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature finds and declares all of the following:

(a) Over one-third of the country's vegetables and two-thirds 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 percent of the nation's total agricultural value.

(b) California is the sole producer (99 percent or more) in the nation of almonds, artichokes, dates, figs, garlic, grapes, raisins, kiwi, melons, olives, clingstone peaches, pistachios, rice, and walnuts, and a lead producer in many more agricultural products.

(c) On January 25, 2021, President Joseph R. Biden issued Executive Order No. 14005, titled "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) 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.

SEC. 2. Chapter 8 (commencing with Section 58596.1) is added to Part 1 of Division 21 of the Food and Agricultural Code, to read:

#### CHAPTER 8. THE BUY AMERICAN FOOD ACT

58596.1. This chapter shall be known, and may be cited, as the Buy American Food Act.

58596.2. For purposes of this chapter, the following definitions apply:

(a) "Agricultural food product" means a fresh or processed product, including fruits, nuts, vegetables, herbs, mushrooms, dairy, shell eggs, honey, grains, livestock meats, poultry meats, and fish, including shellfish.

(b) "Domestic" means inside of the United States.

(c) “Local educational agency” has the same meaning as defined in Section 49557.5 of the Education Code.

(d) “Nondomestic” means outside of the United States.

(e) “Public institution” means any state, city, or county agency, including a public postsecondary educational institution and a local educational agency as defined by this section.

(f) “Public postsecondary educational institution” means the California Community Colleges and the California State University, but not the University of California.

58596.3. (a) A public institution that receives federal meal reimbursement funding to provide prepared meals and that solicits bids for the purchase of an agricultural food product shall include in their solicitation for bids and contracts that only the purchase of agricultural food products grown, packed, or processed domestically is authorized, unless any of the following applies:

(1) The bid or price of the nondomestic agricultural food product is more than 25 percent lower than the bid or price of the domestic agricultural food product.

(2) The quality of the domestic agricultural food product is inferior to the quality of the agricultural food product grown, packed, or produced nondomestically.

(3) The agricultural food product is not produced or manufactured domestically in sufficient and reasonably available quantities of a satisfactory quality to meet the needs of the public institution.

(b) Subdivision (a) shall not apply to any of the following:

(1) The Child and Adult Care Food Program.

(2) The Summer Food Service Program.

(3) The Department of Corrections and Rehabilitation.

(c) Subdivision (a) shall not apply to agricultural food products purchased by or provided to a public institution through the United States Department of Agriculture.

(d) (1) A public institution subject to this section shall retain documentation relating to bids or contracts for, and for the purchase of, agricultural food products for three years from the date of purchase.

(2) The documentation required to be retained pursuant to paragraph (1) shall be made available to the public upon request during the applicable three-year period. The requirement of this paragraph may be satisfied by providing documentation that may include, but is not limited to, vendor invoices or contract specifications requiring that vendors meet the requirements of this section.

(e) If a vendor substitutes an agricultural food product without notice or because a product is not available, the public institution shall not be in violation of this section.

(f) This section shall neither limit nor expand California’s obligations under the Agreement on Government Procurement of the World Trade Organization.

(g) Local educational agencies with an annual federal meal reimbursement of less than one million dollars (\$1,000,000) are exempt from this section.

(h) (1) This section shall become operative on January 1, 2024.

(2) If an existing contract is in place between a public institution and a food supplier on January 1, 2024, this section shall apply to that public institution upon the next successive contract.

58596.4. (a) To monitor price gouging, any local educational agency participating in a federal school lunch or school meal program subject to subdivision (a) of Section 58596.3 may report to the State Department of Education any increases in the prices of agricultural food products that exceeds 25 percent of the previous year's prices and is encouraged to retain documentation to support the complaint. Documentation may include, but is not limited to, an invoice, receipt, or bill of sale.

(b) The State Department of Education shall annually post on its internet website the aggregate information on reports received from local educational agencies pursuant to subdivision (a) on price increases.

(c) The State Department of Education shall add a question to the administrative review required pursuant to Section 210.18 of Title 7 of the Code of Federal Regulations (7 C.F.R. 210.18) regarding any increases of the price of agricultural food products and the annual costs associated with implementing Section 58596.3.

58596.5. This chapter shall remain in effect only until January 1, 2029, and as of that date is repealed.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.