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# SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair

2015 - 2016 Regular

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**Bill No:** AB 566  
**Author:** O'Donnell  
**Version:** March 26, 2015  
**Urgency:** No  
**Consultant:** Kathleen Chavira  
**Hearing Date:** June 10, 2015  
**Fiscal:** Yes

**Subject:** School facilities: leasing property: construction contracts

## SUMMARY

This bill expands prequalification requirements currently applicable to state bond funded school facility construction projects to include all school facility construction projects, regardless of the funding source, and requires that school districts that enter into lease/leaseback or lease-to-own contracts for school facility construction must use a skilled workforce, as specified.

## BACKGROUND

### *Prequalification*

Existing law authorizes the governing board of a school district to require prequalification of prospective bidders for a contract for a public project. A prospective bidder may be required to complete and submit to the district a standardized questionnaire and financial statement in a form specified by the district, including a complete statement of the prospective bidder's financial ability and experience in performing public works. A school district that establishes a prequalification process is required to adopt and apply a uniform system of rating bidders on the basis of the completed questionnaires and financial statements. School districts are authorized to establish a process for prequalifying prospective bidders on a quarterly basis and to consider a prequalification to be valid for up to one calendar year following the date of initial prequalification. (Public Contract Code § 20111.5)

Existing law requires, until January 1, 2019, school districts with an average daily attendance (ADA) of more than 2,500 using state school facilities bond funds for school construction projects 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 and submit a standardized prequalification questionnaire and a financial statement subject to the same requirements outlined in PCC § 20111.5. Existing law requires the Director of Industrial Relations to submit a report to the Legislature, on or before January 1, 2018, evaluating whether, during the years prequalification applied to contracts, violations of the Labor Code on school district projects have decreased as compared to the same number of years immediately preceding required prequalification, and any recommended improvements on the prequalification system. (PCC § 20111.6)

*Leasing*

Existing law authorizes the governing board of a school district to enter into a lease/leaseback contract without advertising for bids. Current law prescribes that real property may be let by the district for a minimum rental of \$1 per year if the lessee is required to construct, or provide for the construction of a building/buildings for the use of the school district during the term of the lease, and requires that title of the building vests in the school district at the expiration of that term. (Education Code § 17406)

Existing law authorizes the governing board of a school district to enter into a lease to own agreement in which a person, firm, or corporation is required to construct or provide for the construction of a building to be used, and leased by the district. Current law requires that title of the building vests in the school district at the expiration of that term and authorizes the vesting of title to the property prior to the expiration of the lease. Current law requires that the agreement be entered into with the lowest responsible bidder as specified. (Education Code § 17407)

Current law, until January 1, 2019, requires that school districts entering into lease/leaseback or lease-to-own contracts comply with specified pre-qualification requirements, if the project is funded with state bond funds, the expenditure of the project is \$1 million or more, and the average daily attendance (ADA) of the school district is greater than 2,500. (EC § 17406 and § 17407)

**ANALYSIS**

This bill:

- 1) Expands prequalification requirements currently applicable to projects funded with state school facility bond funds to be applicable to all school facility construction projects regardless of the funding source.
- 2) Prohibits a school district from entering into a lease/leaseback or lease-to-own agreement unless the entity has provided an enforceable commitment that it, and its subcontractors will use a skilled and trained workforce on the project, as specified. It:
  - a) Establishes the following definitions for purposes of these requirements:
    - i) "Skilled journeyman" as a worker who either graduated from an applicable apprenticeship program which met specified state or federal approval requirements, or had at least as many hours of on-the-job experience in an applicable occupation as would be required for graduation from a state-approved apprenticeship program.
    - ii) "Apprenticeable occupation" as an occupation for which the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations had approved an apprenticeship program before January 1, 2014.
    - iii) "Skilled and trained workforce" as a workforce in which all the workers are skilled journeymen or apprentices registered in an apprenticeship program

approved by the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations.

- b) Establishes the following phased-in implementation of the proportion of skilled journeypersons and subcontractors at every tier, employed that must be approved apprenticeship program graduates to meet the condition of having a “skilled and trained workforce” :
    - i) At least 30% by January 1, 2016.
    - ii) At least 40% by January 1, 2017.
    - iii) At least 50% by January 1, 2018.
    - iv) At least 60% by January 1, 2019.
  - c) Provides that, for an apprenticable occupation with no approved program prior to January 1, 1995, up to one-half of the apprenticeship program graduate percentage requirements may be met by skilled journeypersons who commenced work in the occupation prior to the approval of an applicable apprentice program in the county of the project’s location.
  - d) Authorizes three methods by which an entity may establish that it has committed to the use of a skilled and trained workforce on a project/contract. These include:
    - i) An agreement between the entity and the school district governing board to comply with these requirements and the provision of a monthly report demonstrating such compliance during the performance of the project/contract.
    - ii) A project labor agreement (PLA), entered into by the school district governing board, that includes these requirements and that binds all contractors/subcontractors working on the project/contract and agreement by the entity to become a party to the PLA.
    - iii) Evidence that the entity has entered into a PLA that includes these requirements and that binds the entity and all its subcontractors at every tier performing the project/contract.
- 3) Requires that a monthly report provided in compliance with 2(D)(i) be:
- a) Subject to the California Public Records Act and open to public inspection.
  - b) Cause for cessation of payments to the entity in the event of a failure to provide the report to the school district governing board.
- 4) Makes a number of technical changes.

**STAFF COMMENTS**

- 1) ***Need for the bill.*** According to the author, requiring the use of registered apprentices and graduates of registered apprenticeship programs ensures the quality of a project, especially when the contract is not awarded based on a public bidding process. The provisions of this bill relative to a skilled workforce are very similar to recently adopted provisions regarding the use of a design-build method for awarding public works contracts by state and local agencies (SB 785, Chapter 931, Statutes of 2014), as well as contracts for the construction, alteration, demolition, installation, repair, or maintenance work at petroleum refineries (SB 54, Chapter 795, Statutes of 2013).
- 2) ***Leasing provisions.*** Current law requires the governing board of a school district, to competitively bid, and award to the lowest responsible bidder, any contract for a public project involving an expenditure of \$15,000 or more. Lease/leaseback is a process whereby a governing board of a school district may, without advertising for a bid, 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. In practice, some school districts have used state and local bond funds to make construction payments during construction. The lease is terminated when the building is constructed.

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 the entity that receives the contract will construct the building on a designated site and lease the property to the school district. The school district secures title to the property at the end of the lease.

- 3) ***Concerns about lease/leaseback.*** In January 2004, the State Allocation Board was presented with a report to discuss the use of lease/leaseback agreements for project delivery of facilities funded through the School Facility Program. According to that report, the use of this project delivery method was growing. Increasingly, districts were interpreting existing law to allow the use of these provisions to award a public works project without a competitive bid. The report noted that some districts do institute a competitive selection process voluntarily, but many do not, and expressed concern that an interpretation that would potentially allow billions of state bond dollars to be contracted through a "sole-source" mechanism should be closely examined.

The report concluded that the State Allocation Board (SAB) might wish to consider whether new construction and modernization projects interpreting the authority as an exemption from competitive bidding requirements should continue to be presented for state funding, and whether legislation clarifying the appropriate use of this authority was necessary. The SAB did not accept the report, some members expressed interest in pursuing proposed legislation to address this issue, and staff were directed to provide written notification to school districts to proceed with caution when using lease/leaseback and interpreting the law.

This bill does not propose changes or clarifications to the broader issues and concerns surrounding lease/leaseback agreements and competitive bidding. According to the sponsors, it is intended to address issues such as the sole sourcing of projects to less than qualified contractors and violations of labor laws for public works projects by "significantly raising the standards for contractors, increasing the quality of construction, and protecting taxpayers and workers on lease-leaseback construction projects."

- 4) **Apprenticeship programs.** According to the Department of Industrial Relations (DIR), apprenticeship programs combine training on the job with related and supplemental instruction at school. Each program operates under apprenticeship training standards agreed to by labor and/or management in accordance with State and Federal laws. The period of training is from 1 to 6 years, depending upon the trade with most programs being about 4 years. Apprentices attend classes of related technical instruction, giving apprentices a comprehensive understanding of the theoretical aspects of their work. In most cases this means attending classes at night 4 hours each week, for at least 108 hours a year. Instruction includes such subjects as safety laws and regulations, mathematics, drafting, blueprint reading and other sciences connected with the trade.

In March 2015, the Legislative Analyst's Office reported that there are more than 50,000 apprentices registered in 47 trades, with the vast majority in the construction trades and public safety. The state budget currently provides \$23 million for the education component of apprenticeship programs. The Governor has proposed a \$29 million augmentation to Apprenticeship Programs in the 2015-16 budget.

- 5) **Premature expansion?** AB 1565 (Fuentes, Chapter 808, Statutes of 2012), established a prequalification pilot program which required a report from the DIR in order to evaluate the effectiveness of the prequalification requirements in reducing Labor Code violations as well as to identify and recommend improvements to the prequalification system.

While the history of concerns around lease/leaseback and lease-to-own agreements provides some argument for applying the prequalification requirements to these agreements regardless of the funding source, this bill expands these requirements to all school facility construction projects regardless of the project delivery method. Is it reasonable to expand these provisions to traditional design-bid-build projects prior to the report from DIR in 2018? Is there sufficient information to evaluate whether expansion of prequalification requirements to include all funding sources for regular school construction projects is advisable?

According to the sponsor, the intent of these provisions is to ensure and clarify, that school districts seeking reimbursement from future state bonds for projects completed with local funding sources shall be subject to the prequalification requirements.

**Staff recommends** the bill be amended to rewrite Section 4 of the bill to reinstate current law, but clarify that projects seeking reimbursement from state bond funds are also subject to the prequalification requirements of Public Contract Code § 20111.6.

**SUPPORT**

Air Conditioning Sheet Metal Association  
Air-conditioning & Refrigeration Contractors Association  
California Labor Federation  
California Legislative Conference of the Plumbing, Heating and Piping Industry  
California State Association of Electrical Workers  
California State Pipe Trades Council  
Finishing Contractors Association of Southern California  
National Electrical Contractors Association  
State Building and Construction Trades Council  
United Contractors  
Wall and Ceiling Alliance  
Western State Council of Sheet Metal Workers

**OPPOSITION**

Air Conditioning Trade Association  
Associated Builders and Contractors – San Diego Chapter  
Associated Builders and Contractors – Southern California  
Associated Builders and Contractors of California  
Baker Roofing Company  
J.H. Bryant Jr., Inc.  
Mark Hoffman General Engineering  
Pacific Power & Systems  
Plumbing-Heating-Cooling Contractors Association of California  
Western Electrical Contractors Association

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