

**Introduced by Senator Maldonado**February 22, 2005

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An act to amend Sections 8355 and 12990 of, and to amend and repeal Section 14851 of, the Government Code, to amend Sections 6108, 10286.1, 10295.1, 10296, 12163, and 12205 of the Public Contract Code, and to amend Sections 42480 and 42498 of the Public Resources Code, relating to public contracts.

## LEGISLATIVE COUNSEL'S DIGEST

SB 828, as introduced, Maldonado. Public contracts.

Existing law imposes various requirements and prohibitions on parties that provide goods to the state under a contract. Among these requirements is a requirement that the contractor certify that it will provide a drug-free workplace, that it has not provided goods under the contract that were produced under specified prohibited labor conditions, that, in the case of specified contracts, the goods provided meet the statutory minimum percentage of recycled paper, and that, in the case of contracts for the sale or lease of covered electronic devices or cell phones, the contractor has complied with specified provisions of law. Existing law also requires, in the case of specified contracts, that the contractor provide a sworn declaration that it is not in violation of an order from the National Labor Relations Board. Existing law further requires each party, and its affiliates, that are offered a contract to do business with the state to provide a seller's permit or certificate of registration that was issued under the State Sales and Use Tax Law, as specified. Existing law also prohibits the state from contracting with an expatriate corporation, as defined. Existing law also requires every state contract and subcontract to contain a nondiscrimination clause, as provided, and further requires

contractors and subcontractors to give written notice of their obligations under the clause to labor organizations, as specified.

This bill would specify that these requirements and prohibitions do not apply to contracts for goods of \$5,000 or less.

Existing law, until December 31, 2005, authorizes the Office of State Printing to accept paid advertisements in materials printed or published by the state.

This bill would extend to an indefinite time period the authorization for the Office of State Printing to accept paid advertisements. This bill would also require any state agency that was not authorized to accept paid advertising in its publications before the operative date of the bill to use the Office of State Printing for all paid advertising in its publications.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Section 8355 of the Government Code is  
2 amended to read:

3 8355. (a) Every person or organization awarded a contract or  
4 a grant for the procurement of any property or services from any  
5 state agency shall certify to the contracting or granting agency  
6 that it will provide a drug-free workplace by doing all of the  
7 following:

8 ~~(a)~~  
9 (1) Publishing a statement notifying employees that the  
10 unlawful manufacture, distribution, dispensation, possession, or  
11 use of a controlled substance is prohibited in the person's or  
12 organization's workplace and specifying the actions that will be  
13 taken against employees for violations of the prohibition.

14 ~~(b)~~  
15 (2) Establishing a drug-free awareness program to inform  
16 employees about all of the following:

17 ~~(1)~~  
18 (A) The dangers of drug abuse in the workplace.

19 ~~(2)~~  
20 (B) The person's or organization's policy of maintaining a  
21 drug-free workplace.

22 ~~(3)~~

1 (C) Any available drug counseling, rehabilitation, and  
2 employee assistance programs.

3 ~~(4)~~

4 (D) The penalties that may be imposed upon employees for  
5 drug abuse violations.

6 ~~(e)~~

7 (3) Requiring that each employee engaged in the performance  
8 of the contract or grant be given a copy of the statement required  
9 by subdivision (a) and that, as a condition of employment on the  
10 contract or grant, the employee agrees to abide by the terms of  
11 the statement.

12 (b) *The certification requirement set forth in subdivision (a)*  
13 *does not apply to contracts and grants for goods of five thousand*  
14 *dollars (\$5,000) or less.*

15 SEC. 2. Section 12990 of the Government Code is amended  
16 to read:

17 12990. (a) Any employer who is, or wishes to become, a  
18 contractor with the state for public works or for goods or services  
19 is subject to the provisions of this part relating to discrimination  
20 in employment and to the nondiscrimination requirements of this  
21 section and any rules and regulations ~~which~~ *that* implement it.

22 (b) Prior to becoming a contractor or subcontractor with the  
23 state, an employer may be required to submit a nondiscrimination  
24 program to the department for approval and certification and may  
25 be required to submit periodic reports of its compliance with  
26 ~~such a~~ *that* program.

27 (c) Every state contract and subcontract for public works or for  
28 goods or services shall contain a nondiscrimination clause  
29 prohibiting discrimination on the bases enumerated in this part by  
30 contractors or subcontractors. The nondiscrimination clause shall  
31 contain a provision requiring contractors and subcontractors to  
32 give written notice of their obligations under that clause to labor  
33 organizations with which they have a collective bargaining or  
34 other agreement. ~~Such~~ *These* contractual provisions shall be fully  
35 and effectively enforced. *This subdivision does not apply to*  
36 *contracts or subcontracts for goods of five thousand dollars*  
37 *(\$5,000) or less.*

38 (d) The department shall periodically develop rules and  
39 regulations for the application and implementation of this  
40 section, and submit them to the commission for consideration

1 and adoption in accordance with the provisions of Chapter 3.5  
2 (commencing with Section 11340) of Part 1. Those rules and  
3 regulations shall describe and include, but not be limited to, all of  
4 the following:

5 (1) Procedures for the investigation, approval, certification,  
6 decertification, monitoring, and enforcement of  
7 nondiscrimination programs.

8 (2) The size of contracts or subcontracts below which any  
9 particular provision of this section shall not apply.

10 (3) The circumstances, if any, under which a contractor or  
11 subcontractor is not subject to this section.

12 (4) Criteria for determining the appropriate plant, region,  
13 division, or other unit of a contractor's or subcontractor's  
14 operation for which a nondiscrimination program is required.

15 (5) Procedures for coordinating the nondiscrimination  
16 requirements of this section and its implementing rules and  
17 regulations with the California Plan for Equal Opportunity in  
18 Apprenticeship, with the provisions and implementing  
19 regulations of Article 9.5 (commencing with Section 11135) of  
20 Chapter 1 of Part 1, and with comparable federal laws and  
21 regulations concerning nondiscrimination, equal employment  
22 opportunity, and affirmative action by those who contract with  
23 the United States.

24 (6) The basic principles and standards to guide the department  
25 in administering and implementing this section.

26 (e) Where a contractor or subcontractor is required to prepare  
27 an affirmative action, equal employment, or nondiscrimination  
28 program subject to review and approval by a federal compliance  
29 agency, that program may be filed with the department, instead  
30 of any nondiscrimination program regularly required by this  
31 section or its implementing rules and regulations. Such a  
32 program shall constitute a prima facie demonstration of  
33 compliance with this section. Where the department or a federal  
34 compliance agency has required the preparation of an affirmative  
35 action, equal employment, or nondiscrimination program subject  
36 to review and approval by the department or a federal  
37 compliance agency, evidence of such a program shall also  
38 constitute prima facie compliance with an ordinance or  
39 regulation of any city, city and county, or county ~~which~~ *that*  
40 requires an employer to submit such a program to a local

1 awarding agency for its approval prior to becoming a contractor  
2 or subcontractor with that agency.

3 (f) Where the department determines and certifies that the  
4 provisions of this section or its implementing rules and  
5 regulations are violated or where the commission, after hearing  
6 an accusation pursuant to Section 12967, determines a contractor  
7 or subcontractor is engaging in practices made unlawful under  
8 this part, the department or the commission may recommend  
9 appropriate sanctions to the awarding agency. Any such  
10 recommendation shall take into account the severity of the  
11 violation or violations and any other penalties, sanctions, or  
12 remedies previously imposed.

13 SEC. 3. Section 14851 of the Government Code, as amended  
14 by Section 1 of Chapter 220 of the Statutes of 2002, is amended  
15 to read:

16 14851. (a) ~~(1)~~The Office of State Printing may accept paid  
17 advertisements in materials printed or published by the state,  
18 except that the department ~~may~~ shall not print or publish paid  
19 political advertising.

20 ~~(2) The office shall report to the Governor and the Legislature~~  
21 ~~on its implementation of this subdivision no later than December~~  
22 ~~31, 2005.~~

23 (b) The Office of State Printing may print checks and other  
24 printed matter necessary for the operation of any industry board  
25 or state agricultural district board at the expense of the state.

26 ~~(c) This section shall remain in effect only until January 1,~~  
27 ~~2006, and as of that date is repealed, unless a later enacted~~  
28 ~~statute, that is enacted before January 1, 2006, deletes or extends~~  
29 ~~that date. To reduce duplication of staff resources and to provide~~  
30 ~~consistency in the review for appropriateness of advertisements,~~  
31 ~~an agency of the state that was not authorized to accept paid~~  
32 ~~advertising in its publications before January 1, 2006, shall use~~  
33 ~~the services of the Office of State Printing for all paid advertising~~  
34 ~~in its publications.~~

35 SEC. 4. Section 14851 of the Government Code, as added by  
36 Section 2 of Chapter 220 of the Statutes of 2002, is repealed.

37 ~~14851. (a) No printing for the promotion of sales for any~~  
38 ~~industry shall be done in the Office of State Printing. No printing~~  
39 ~~for the promotion of any agricultural district fair shall be done in~~  
40 ~~the Office of State Printing.~~

1 ~~(b) The Office of State Printing may print checks and other~~  
2 ~~printed matter necessary for the operation of any industry board~~  
3 ~~or state agricultural district board at the expense of the state.~~

4 ~~(c) This section shall become operative on January 1, 2006.~~

5 SEC. 5. Section 6108 of the Public Contract Code is amended  
6 to read:

7 6108. (a) (1) Every contract entered into by any state agency  
8 for the procurement or laundering of apparel, garments or  
9 corresponding accessories, or the procurement of equipment,  
10 materials, or supplies, other than procurement related to a public  
11 works contract, shall require that a contractor certify that no  
12 apparel, garments or corresponding accessories, equipment,  
13 materials, or supplies furnished to the state pursuant to the  
14 contract have been laundered or produced in whole or in part by  
15 sweatshop labor, forced labor, convict labor, indentured labor  
16 under penal sanction, abusive forms of child labor or exploitation  
17 of children in sweatshop labor, or with the benefit of sweatshop  
18 labor, forced labor, convict labor, indentured labor under penal  
19 sanction, abusive forms of child labor or exploitation of children  
20 in sweatshop labor. The contractor shall agree to comply with  
21 this provision of the contract.

22 (2) The contract shall specify that the contractor is required to  
23 cooperate fully in providing reasonable access to the contractor's  
24 records, documents, agents or employees, or premises if  
25 reasonably required by authorized officials of the contracting  
26 agency, the Department of Industrial Relations, or the  
27 Department of Justice determine the contractor's compliance  
28 with the requirements under paragraph (1).

29 (b) (1) Any contractor contracting with the state who knew or  
30 should have known that the apparel, garments or corresponding  
31 accessories, equipment, materials, or supplies furnished to the  
32 state were laundered or produced in violation of the conditions  
33 specified in subdivision (a) when entering into a contract  
34 pursuant to subdivision (a), may, subject to subdivision (c), have  
35 any or all of the following sanctions imposed:

36 (A) The contract under which the prohibited apparel, garments  
37 or corresponding accessories, equipment, materials, or supplies  
38 were laundered or provided may be voided at the option of the  
39 state agency to which the equipment, materials, or supplies were  
40 provided.

1 (B) The contractor may be assessed a penalty which shall be  
2 the greater of one thousand dollars (\$1,000) or an amount  
3 equaling 20 percent of the value of the apparel, garments or  
4 corresponding accessories, equipment, materials, or supplies that  
5 the state agency demonstrates were produced in violation of the  
6 conditions specified in paragraph (1) of subdivision (a) and that  
7 were supplied to the state agency under the contract.

8 (C) The contractor may be removed from the bidder's list for a  
9 period not to exceed 360 days.

10 (2) Any moneys collected pursuant to this subdivision shall be  
11 deposited into the General Fund.

12 (c) (1) When imposing the sanctions described in subdivision  
13 (b), the contracting agency shall notify the contractor of the right  
14 to a hearing, if requested, within 15 days of the date of the notice.  
15 The hearing shall be before an administrative law judge of the  
16 Office of Administrative Hearings in accordance with the  
17 procedures specified in Chapter 5 (commencing with Section  
18 11500) of Part 1 of Division 3 of Title 2 of the Government  
19 Code. The administrative law judge shall take into consideration  
20 any measures the contractor has taken to ensure compliance with  
21 this section, and may waive any or all of the sanctions if it is  
22 determined that the contractor has acted in good faith.

23 (2) The agency shall be assessed the cost of the administrative  
24 hearing, unless the agency has prevailed in the hearing, in which  
25 case the contractor shall be assessed the cost of the hearing.

26 (d) (1) Any state agency that investigates a complaint against  
27 a contractor for violation of this section may limit its  
28 investigation to evaluating the information provided by the  
29 person or entity submitting the complaint and the information  
30 provided by the contractor.

31 (2) Whenever a contracting officer of the contracting agency  
32 has reason to believe that the contractor failed to comply with the  
33 requirements under paragraph (1) of subdivision (a), the agency  
34 shall refer the matter for investigation to the head of the agency  
35 and, as the head of the agency determines appropriate, to either  
36 the Director of Industrial Relations or the Department of Justice.

37 (e) (1) For purposes of this section, the term "forced labor"  
38 shall have the same meaning as in Section 1307 of Title 19 of the  
39 United States Code.

1 (2) “Abusive forms of child labor” means any of the  
2 following:

3 (A) All forms of slavery or practices similar to slavery, such as  
4 the sale and trafficking of children, debt bondage, and serfdom  
5 and forced or compulsory labor, including forced or compulsory  
6 recruitment of children for use in armed conflict.

7 (B) The use, procuring, or offering of a child for prostitution,  
8 for the production of pornography, or for pornographic  
9 performances.

10 (C) The use, procuring, or offering of a child for illicit  
11 activities, in particular for the production and trafficking of illicit  
12 drugs.

13 (D) All work or service exacted from or performed by any  
14 person under the age of 18 either under the menace of any  
15 penalty for its nonperformance and for which the worker does  
16 not offer oneself voluntarily, or under a contract, the enforcement  
17 of which can be accomplished by process or penalties.

18 (E) All work or service exacted from or performed by a child  
19 in violation of all applicable laws of the country of manufacture  
20 governing the minimum age of employment, compulsory  
21 education, and occupational health and safety.

22 (3) “Exploitation of children in sweatshop labor” means all  
23 work or service exacted from or performed by any person under  
24 the age of 18 years in violation of more than one law of the  
25 country of manufacture governing wage and benefits,  
26 occupational health and safety, nondiscrimination, and freedom  
27 of association.

28 (4) “Sweatshop labor” means all work or service extracted  
29 from or performed by any person in violation of more than one  
30 law of the country of manufacture governing wages, employee  
31 benefits, occupational health, occupational safety,  
32 nondiscrimination, or freedom of association.

33 (5) “Apparel, garments or corresponding accessories”  
34 includes, but is not limited to, uniforms.

35 (6) Notwithstanding any other provision of this section,  
36 “forced labor” and “convict labor” do not include work or  
37 services performed by an inmate or a person employed by the  
38 Prison Industry Authority.

39 (7) “State agency” means any state agency in this state.

1 (f) (1) On or before February 1, 2004, the Department of  
2 Industrial Relations shall establish a contractor responsibility  
3 program, including a Sweatfree Code of Conduct, to be signed by  
4 all bidders on state contracts and subcontracts. Any state agency  
5 responsible for procurement shall ensure that the Sweatfree Code  
6 of Conduct is available for public review at least 30 calendar  
7 days between the dates of receipt and the final award of the  
8 contract. The Sweatfree Code of Conduct shall list the  
9 requirements that contractors are required to meet, as set forth in  
10 subdivision (g).

11 (2) Upon implementation in the manner described in  
12 paragraph (4), every contract entered into by any state agency for  
13 the procurement or laundering of apparel, garments or  
14 corresponding accessories, or for the procurement of equipment  
15 or supplies, shall require that the contractor certify in accordance  
16 with the Sweatfree Code of Conduct that no apparel, garments or  
17 corresponding accessories, or equipment, materials, or supplies,  
18 furnished to the state pursuant to the contract have been  
19 laundered or produced, in whole or in part, by sweatshop labor.

20 (3) The appropriate procurement agency, in consultation with  
21 the Director of Industrial Relations, shall employ a phased and  
22 targeted approach to implementing the Sweatfree Code of  
23 Conduct. Sweatfree Code of Conduct procurement policies  
24 involving apparel, garments and corresponding accessories may  
25 be permitted a phasein period of up to one year for purposes of  
26 feasibility and providing sufficient notice to contractors and the  
27 general public. The appropriate procurement agency, in  
28 consultation with the Director of Industrial Relations, shall target  
29 other procurement categories based on the magnitude of verified  
30 sweatshop conditions and the feasibility of implementation, and  
31 may set phasein goals and timetables of up to three years ~~in order~~  
32 to achieve compliance with the principles of the Sweatfree Code  
33 of Conduct.

34 (4) In order to facilitate compliance with the Sweatfree Code  
35 of Conduct, the Department of Industrial Relations shall explore  
36 mechanisms employed by other governmental entities, including,  
37 but not limited to, New Jersey Executive Order 20, of 2002, to  
38 ensure that businesses that contract with this state are in  
39 compliance with this section and any regulations or requirements  
40 promulgated in conformance with this section, as amended by the

1 act adding this paragraph. The mechanisms explored may  
2 include, but not be limited to, authorization to contract with a  
3 competent nonprofit organization that is neither funded nor  
4 controlled, in whole or in part, by a corporation that is engaged in  
5 the procurement or laundering of apparel, garments, or  
6 corresponding accessories, or the procurement of equipment,  
7 materials, or supplies. The Department of Industrial Relations, in  
8 complying with this paragraph, shall also consider any feasible  
9 and cost-effective monitoring measures that will encourage  
10 compliance with the Sweatfree Code of Conduct.

11 (5) To ensure public access and confidence, the Department of  
12 Industrial Relations shall ensure public awareness and access to  
13 proposed contracts by postings on the Internet and through  
14 communication to advocates for garment workers, unions, and  
15 other interested parties. The appropriate agencies shall establish  
16 a mechanism for soliciting and reviewing any information  
17 indicating violations of the Sweatfree Code of Conduct by  
18 prospective or current bidders, contractors, or subcontractors.  
19 The agencies shall make their findings public when they reject  
20 allegations against bidding or contracting parties.

21 (6) Contractors shall ensure that their subcontractors comply  
22 in writing with the Sweatfree Code of Conduct, under penalty of  
23 perjury. Contractors shall attach a copy of the Sweatfree Code of  
24 Conduct to the certification required by subdivision (a).

25 (g) No state agency may enter into a contract with any  
26 contractor unless the contractor meets the following  
27 requirements:

28 (1) Contractors and subcontractors in California shall comply  
29 with all appropriate state laws concerning wages, workplace  
30 safety, rights to association and assembly, and nondiscrimination  
31 standards as well as appropriate federal laws. Contractors based  
32 in other states in the United States shall comply with all  
33 appropriate laws of their states and appropriate federal laws. For  
34 contractors whose locations for manufacture or assembly are  
35 outside the United States, those contractors shall ensure that their  
36 subcontractors comply with the appropriate laws of countries  
37 where the facilities are located.

38 (2) Contractors and subcontractors shall maintain a policy of  
39 not terminating any employee except for just cause, and  
40 employees shall have access to a mediator or to a mediation

1 process to resolve certain workplace disputes that are not  
2 regulated by the National Labor Relations Board.

3 (3) Contractors and subcontractors shall ensure that workers  
4 are paid, at a minimum, wages and benefits in compliance with  
5 applicable local, state, and national laws of the jurisdiction in  
6 which the labor, on behalf of the contractor or subcontractor, is  
7 performed. Whenever a state agency expends funds for the  
8 procurement or laundering of apparel, garments, or  
9 corresponding accessories, or the procurement of equipment,  
10 materials, or supplies, other than procurement related to a public  
11 works contract, the applicable labor standards established by the  
12 local jurisdiction through the exercise of either local police  
13 powers or local spending powers in which the labor, in  
14 compliance with the contract or purchase order for which the  
15 expenditure is made, is performed shall apply with regard to the  
16 contract or purchase order for which the expenditure is made,  
17 unless the applicable local standards are in conflict with, or are  
18 explicitly preempted by, state law. A state agency may not  
19 require, as a condition for the receipt of state funds or assistance,  
20 that a local jurisdiction refrain from applying the labor standards  
21 that are otherwise applicable to that local jurisdiction. The  
22 Department of Industrial Relations may, without incurring  
23 additional expenses, access information from any nonprofit  
24 organization, including, but not limited to, the World Bank, that  
25 gathers and disseminates data with respect to wages paid  
26 throughout the world, to allow the Department of Industrial  
27 Relations to determine whether contractors and subcontractors  
28 are compensating their employees at a level that enables those  
29 employees to live above the applicable poverty level.

30 (4) All contractors and subcontractors ~~must~~ shall comply with  
31 the overtime laws and regulations of the country in which their  
32 employees are working.

33 (5) All overtime hours shall be worked voluntarily. Workers  
34 shall be compensated for overtime at either (A) the rate of  
35 compensation for regular hours of work, or (B) as legally  
36 required in the country of manufacture, whichever is greater.

37 (6) No person may be employed who is younger than the legal  
38 age for children to work in the country in which the facility is  
39 located. In no case may children under the age of 15 years be  
40 employed in the manufacturing process. Where the age for

1 completing compulsory education is higher than the standard for  
2 the minimum age of employment, the age for completing  
3 education shall apply to this section.

4 (7) There may be no form of forced labor of any kind,  
5 including slave labor, prison labor, indentured labor, or bonded  
6 labor, including forced overtime hours.

7 (8) The work environment shall be safe and healthy and, at a  
8 minimum, be in compliance with relevant local, state, and  
9 national laws. If residential facilities are provided to workers,  
10 those facilities shall be safe and healthy as well.

11 (9) There may be no discrimination in hiring, salary, benefits,  
12 performance evaluation, discipline, promotion, retirement or  
13 dismissal on the basis of age, sex, pregnancy, maternity leave  
14 status, marital status, race, nationality, country of origin, ethnic  
15 origin, disability, sexual orientation, gender identity, religion, or  
16 political opinion.

17 (10) No worker may be subjected to any physical, sexual,  
18 psychological, or verbal ~~harassment~~ *harassment* or abuse,  
19 including corporal punishment, under any circumstances,  
20 including, but not limited to, retaliation for exercising his or her  
21 right to free speech and assembly.

22 (11) No worker may be forced to use contraceptives or take  
23 pregnancy tests. No worker may be exposed to chemicals,  
24 including glues and solvents, that endanger reproductive health.

25 (12) Contractors and bidders shall list the names and addresses  
26 of each subcontractor to be utilized in the performance of the  
27 contract, and list each manufacturing or other facility or  
28 operation of the contractor or subcontractor for performance of  
29 the contract. The list, which shall be maintained and updated to  
30 show any changes in subcontractors during the term of the  
31 contract, shall provide company names, owners or officers,  
32 addresses, telephone numbers, e-mail addresses, and the nature of  
33 the business association.

34 (h) Any person who certifies as true any material matter  
35 pursuant to this section that he or she knows to be false is guilty  
36 of a misdemeanor.

37 (i) The provisions of this section, as amended by the act  
38 adding this subdivision, shall be in addition to any other  
39 provisions that authorize the prosecution and enforcement of  
40 local labor laws and may not be interpreted to prohibit a local

1 prosecutor from bringing a criminal or civil action against an  
2 individual or business that violates the provisions of this section.

3 *(j) The certification requirements set forth in subdivisions (a)*  
4 *and (f) do not apply to contracts for goods of five thousand*  
5 *dollars (\$5,000) or less.*

6 SEC. 6. Section 10286.1 of the Public Contract Code is  
7 amended to read:

8 10286.1. (a) For purposes of this part, except as otherwise  
9 provided in subdivisions (b) and (c), a state agency ~~may~~ *shall* not  
10 enter into any contract with an expatriate corporation or its  
11 subsidiaries, *except for a contract for goods of five thousand*  
12 *dollars (\$5,000) or less.*

13 (b) (1) For purposes of this article, an “expatriate corporation”  
14 means a foreign incorporated entity that is publicly traded in the  
15 United States to which all of the following apply:

16 (A) The United States is the principal market for the public  
17 trading of the foreign incorporated entity.

18 (B) The foreign incorporated entity has no substantial business  
19 activities in the place of incorporation.

20 (C) Either clause (i) or clause (ii) applies:

21 (i) The foreign entity was established in connection with a  
22 transaction or series of related transactions pursuant to which (I)  
23 the foreign entity directly or indirectly acquired substantially all  
24 of the properties held by a domestic corporation or all of the  
25 properties constituting a trade or business of a domestic  
26 partnership or related foreign partnership, and (II) immediately  
27 after the acquisition, more than 50 percent of the publicly traded  
28 stock, by vote or value, of the foreign entity is held by former  
29 shareholders of the domestic corporation or by former partners of  
30 the domestic partnership or related foreign partnership. For  
31 purposes of subclause (II), any stock sold in a public offering  
32 related to the transaction or a series of transactions is  
33 disregarded.

34 (ii) The foreign entity was established in connection with a  
35 transaction or series of related transactions pursuant to which (I)  
36 the foreign entity directly or indirectly acquired substantially all  
37 of the properties held by a domestic corporation or all of the  
38 properties constituting a trade or business of a domestic  
39 partnership or related foreign partnership, and (II) the acquiring

1 foreign entity is more than 50 percent owned, by vote or value,  
2 by domestic shareholders or partners.

3 (iii) For purposes of this subparagraph, indirect acquisition of  
4 property includes the acquisition of a stock share, or any portion  
5 thereof, of the owner of that property.

6 (2) Notwithstanding subdivision (a), a state agency may  
7 contract with an expatriate corporation, or its subsidiary, if it was  
8 an expatriate corporation before January 1, 2004, to which both  
9 of the following apply:

10 (A) The foreign entity provides, by operation of law, by  
11 provisions of its governing documents, by resolution of its board  
12 of directors, or in any other manner, at least the following  
13 shareholders' rights:

14 (i) Shareholders of the entity have the right to inspect, at a  
15 principal place of business in the United States, copies of the  
16 entity's books and records, including, but not limited to,  
17 shareholder names, addresses, and shareholdings in accordance  
18 with the corporation law, as amended from time to time and as  
19 that law is interpreted by the courts, of the United States  
20 jurisdiction in which the entity was previously incorporated, or, if  
21 the entity was not previously incorporated, in accordance with  
22 the terms set forth in the Model Business Corporation Act, as that  
23 act may be amended from time to time, provided that, if the  
24 corporate law of the United States jurisdiction in which the entity  
25 was previously incorporated or the Model Business Corporation  
26 Act does not provide access to the shareholder names, addresses,  
27 and shareholdings, these books and records are available for  
28 inspection by shareholders for purposes properly related to their  
29 status as shareholders of the entity.

30 (ii) The entity permits its shareholders to bring derivative  
31 proceedings on behalf of the entity, provided that these derivative  
32 proceedings are brought on a basis and under the terms  
33 applicable under the law, as amended from time to time and as  
34 interpreted by, or required by, the courts of the United States  
35 jurisdiction in which the entity was previously incorporated, or, if  
36 the entity was not previously incorporated, on a basis and under  
37 the terms set forth in the Model Business Corporations Act as  
38 that act may be amended from time to time and as it is interpreted  
39 by, or required by, the courts.

1 (iii) Entity transactions in which any director is interested are  
2 approved in accordance with the applicable law, as amended  
3 from time to time and as interpreted by the courts, of the United  
4 States jurisdiction in which the entity was previously  
5 incorporated, or, if the entity was not previously incorporated, in  
6 accordance with the terms set forth in the Model Business  
7 Corporations Act, as may be amended from time to time and as  
8 interpreted by the courts.

9 (iv) The entity has consented to the jurisdiction, for any  
10 otherwise available cause of action by or on behalf of the entity's  
11 shareholders, including any pendent state causes of action, of all  
12 of the following courts:

13 (I) The state courts of one or more states.

14 (II) The United States federal courts in any state in which the  
15 entity consents to the jurisdiction of that state's courts pursuant  
16 to subclause (I).

17 (v) The entity has appointed an agent for service of process in  
18 the state or states in which the entity has consented to  
19 jurisdiction, as described in clause (iv), and the entity meets at  
20 least one of the following conditions:

21 (I) The entity has unencumbered assets in the United States,  
22 which assets may include equity or debt investments in United  
23 States companies, with a book value in excess of fifty million  
24 dollars (\$50,000,000), and the entity delivers to the Secretary of  
25 State an opinion of an attorney licensed in the United States that  
26 judgments rendered against the entity may be satisfied by using  
27 these assets.

28 (II) The entity posts a bond or similar security in an amount of  
29 at least fifty million dollars (\$50,000,000).

30 (III) The entity has directors' and officers' insurance in an  
31 amount of at least fifty million dollars (\$50,000,000).

32 (vi) The entity agrees that, in connection with any lawsuit  
33 brought against it by its shareholders in any court in which the  
34 entity has consented to jurisdiction as described in clause (iv), the  
35 entity will provide to the court notice of the manner in which the  
36 entity complied with clause (v) and, if the entity complied with  
37 that clause in the manner specified in subclause (I) of clause (v),  
38 a copy of the opinion described in that subclause.

39 (vii) Shareholder approval is required for any sale of all or  
40 substantially all of the entity's assets in accordance with the law,

1 as amended from time to time and as it is interpreted by the  
2 courts, of the United States jurisdiction in which it was  
3 previously incorporated, or, if it was not previously incorporated,  
4 in accordance with the terms set forth in the Model Business  
5 Corporations Act, as it may be amended from time to time.

6 (viii) The directors and officers of the entity occupy a  
7 fiduciary relationship with the entity and its shareholders and  
8 these directors and officers, in performing their duties, act in  
9 good faith in a manner that a director or officer believes to be in  
10 the best interests of the entity and its shareholders, as that  
11 standard of care is interpreted by the courts.

12 (ix) The entity agrees to hold no more than one of every four  
13 annual shareholder meetings in a location outside the United  
14 States and, in the event that the entity holds an annual meeting  
15 outside the United States, the entity agrees to provide access to  
16 that meeting through a Web cast or other technology that allows  
17 the entity's shareholders to do both of the following:

18 (I) Listen to the meeting, watch the meeting, or both.

19 (II) Send questions that will be addressed at the meeting.

20 (x) The entity provides a description of the shareholder rights  
21 described in clauses (i) to (ix), inclusive, and any subsequent  
22 changes to these rights, on the entity's Web site or in its 10K  
23 filings with the United States Securities and Exchange  
24 Commission.

25 (B) The entity uses worldwide combined reporting to calculate  
26 the income on which it pays taxes to the state.

27 (c) The chief executive officer of a state agency or his or her  
28 designee may waive the prohibition specified in subdivision (a) if  
29 the executive officer or his or her designee has made a written  
30 finding that the contract is necessary to meet a compelling public  
31 interest. For purposes of this section, a "compelling public  
32 interest" includes, but is not limited to, ensuring the provision of  
33 essential services, ensuring the public health and safety, or an  
34 emergency as defined in Section 1102. If a waiver is granted to a  
35 vendor pursuant to this subdivision, the requirement to submit a  
36 declaration of compliance, as set forth in paragraph (1) of  
37 subdivision (d), does not apply to that vendor.

38 (d) (1) For purposes of this chapter, "state agency" means  
39 every state office, department, division, bureau, board,  
40 commission, and the California State University, but does not

1 include the University of California, the Legislature, the courts,  
2 or any agency in the judicial branch of government.

3 (2) On or after January 1, 2004, all state agencies shall, as a  
4 condition of the contract, require any vendor that is offered a  
5 contract to do business with the state to submit a declaration  
6 stating that the vendor is eligible to contract with the state  
7 pursuant to this section.

8 (3) A vendor that declares as true any material matter in a  
9 declaration described in this subdivision that he or she knows to  
10 be false is guilty of a misdemeanor.

11 (e) (1) Except as provided in paragraph (2) *and subdivision*  
12 *(f)*, this section applies to contracts that are entered into on or  
13 after January 1, 2004.

14 (2) With respect to an entity that was an expatriate  
15 corporation, as defined in paragraph (1) of subdivision (b), before  
16 January 1, 2004, this section applies to contracts that are entered  
17 into on or after April 1, 2004.

18 *(f) On and after January 1, 2006, the declaration requirement*  
19 *set forth in subdivision (d) does not apply to contracts for goods*  
20 *of five thousand dollars (\$5,000) or less.*

21 SEC. 7. Section 10295.1 of the Public Contract Code is  
22 amended to read:

23 10295.1. (a) A state department or agency ~~may~~ *shall* not  
24 contract for the purchase of tangible personal property *or for the*  
25 *purchase of other goods that exceed five thousand dollars*  
26 *(\$5,000) from a vendor, contractor, or an affiliate of a vendor or*  
27 *contractor, unless that vendor, contractor, and all of its affiliates*  
28 *that make sales for delivery into California are holders of a*  
29 *California seller's permit issued pursuant to Article 2*  
30 *(commencing with Section 6066) of Chapter 2 of Part 1 of*  
31 *Division 2 of the Revenue and Taxation Code, or are holders of a*  
32 *certificate of registration issued pursuant to Section 6226 of the*  
33 *Revenue and Taxation Code. A vendor or contractor that sells*  
34 *tangible personal property to a state department or agency, and*  
35 *each affiliate of that vendor or contractor that makes sales for*  
36 *delivery into California, shall be regarded as a "retailer engaged*  
37 *in business in this state" and shall be required to collect the*  
38 *California sales or use tax on all its sales into the state in*  
39 *accordance with Part 1 (commencing with Section 6001) of*  
40 *Division 2 of the Revenue and Taxation Code.*

1 (b) Beginning on and after January 1, 2004, each vendor,  
2 contractor, or affiliate of a vendor or contractor that is offered a  
3 contract to do business with a state department or state agency  
4 shall submit to that state department or agency a copy, as  
5 applicable, of that retailer's seller's permit or certificate of  
6 registration, and a copy of each of the retailer's applicable  
7 affiliate's seller's permit or certificate of registration, as  
8 described in subdivision (a). *This subdivision does not apply to*  
9 *contracts for goods of five thousand dollars (\$5,000) or less that*  
10 *are offered on or after January 1, 2006.*

11 (c) A state department or state agency is exempted from the  
12 provisions of subdivision (a) if the executive director, or his or  
13 her designee, of that state department or agency makes a written  
14 finding that the contract is necessary to meet a compelling state  
15 interest.

16 (d) For the purposes of this section:

17 (1) "Affiliate of the vendor or contractor" means any person or  
18 entity that is controlled by, or is under common control of, a  
19 vendor or contractor through stock ownership or any other  
20 affiliation.

21 (2) "Compelling state interest" includes, but is not limited to,  
22 the following:

23 (A) Ensuring the provision of essential services.

24 (B) Ensuring the public health, safety and welfare.

25 (C) Responding to an emergency, as defined in Section 1102.

26 (3) "State department or agency" means every state office,  
27 department, division, bureau, board, commission and the  
28 California State University, but does not include the University  
29 of California, the Legislature, the courts, and any agency in the  
30 judicial branch of government.

31 SEC. 8. Section 10296 of the Public Contract Code is  
32 amended to read:

33 10296. (a) Every contract entered into by any state agency  
34 for any purpose specified in subdivisions (a) ~~through~~ to (d),  
35 inclusive, of Section 10295 shall contain a statement by which  
36 the contractor swears under penalty of perjury that no more than  
37 one final, unappealable finding of contempt of court by a federal  
38 court has been issued against the contractor within the  
39 immediately preceding two-year period because of the  
40 contractor's failure to comply with an order of a federal court

1 which orders the contractor to comply with an order of the  
2 National Labor Relations Board. For purposes of this section, a  
3 finding of contempt does not include any finding ~~which~~ *that* has  
4 been vacated, dismissed, or otherwise removed by the court  
5 because the contractor has complied with the order which was  
6 the basis for the finding. The state may rescind any contract in  
7 which the contractor falsely swears to the truth of the statement  
8 required by this section.

9 *(b) This section does not apply to contracts for goods of five*  
10 *thousand dollars (\$5,000) or less.*

11 SEC. 9. Section 12163 of the Public Contract Code is  
12 amended to read:

13 12163. (a) The director, in consultation with the board, shall  
14 review the procurement specifications currently used by the  
15 department in order to eliminate, wherever economically  
16 feasible, discrimination against the procurement of recycled  
17 paper products.

18 (b) The director, in consultation with the board, shall review  
19 the recycled paper product specifications at least annually to  
20 consider increasing the percentage of recycled paper product in  
21 paper and woodpulp product purchases. The director shall  
22 include his or her conclusions and recommendations in the  
23 department's annual report pursuant to Section 12225.

24 (c) When contracting with the department for the sale of  
25 material subject to this article, the contractor shall certify in  
26 writing to the contracting officer or his or her representative that  
27 the material offered contains the minimum percentage of  
28 recycled paper required by Section 12161 and shall specify the  
29 minimum, if not exact, percentage of secondary and  
30 postconsumer material in the paper products. The certification  
31 shall be furnished under penalty of perjury. *The certification*  
32 *requirement set forth in this subdivision does not apply to a*  
33 *contract for goods of five thousand dollars (\$5,000) or less.*

34 (d) The department, in consultation with the board, shall  
35 establish purchasing practices which, to the maximum extent  
36 economically feasible, assure purchase of materials which may  
37 be recycled or reused when discarded.

38 (e) The department shall make every effort to eliminate  
39 purchases of paper products deemed potential contaminants to  
40 the state's recycling program pursuant to Section 12165.

1 SEC. 10. Section 12205 of the Public Contract Code is  
2 amended to read:

3 12205. (a) (1) All state agencies shall require all contractors  
4 to certify in writing the minimum percentage, if not the exact  
5 percentage, of postconsumer and secondary material in the  
6 materials, goods, or services provided or used. This certification  
7 shall be furnished under penalty of perjury.

8 (2) *The certification requirement set forth in paragraph (1)*  
9 *does not apply to contracts for goods of five thousand dollars*  
10 *(\$5,000) or less.*

11 (b) The department, in consultation with the board, shall  
12 review and revise the procurement specifications used by state  
13 agencies in order to eliminate restrictive specifications and  
14 discrimination against the procurement or purchase of recycled  
15 products. Fitness and quality being equal, all state agencies shall  
16 purchase recycled products instead of nonrecycled products  
17 whenever recycled products are available at the same total cost as  
18 nonrecycled products. All state agencies shall allow a price  
19 preference, as determined by the board pursuant to Section  
20 12162. In determining procurement specifications, with the  
21 exception of any specifications that have been established to  
22 preserve the public health and safety, all state procurement and  
23 purchasing specifications shall be established in a manner that  
24 results in the maximum state procurement and purchase of  
25 recycled products.

26 (c) (1) To assist the state in meeting the requirements of  
27 subdivision (a) of Section 12162 and subdivision (e) of this  
28 section, the department, in consultation with the board, may also  
29 establish recycled-content disclosure, recycled product-only bids,  
30 cooperative purchasing arrangements, or conduct an analysis of  
31 solid waste diversion from disposal facilities, to meet the  
32 requirements for recycled products and to encourage the  
33 maximum state procurement and purchase of recycled products.  
34 All state agencies shall, if feasible, implement recycled  
35 product-only bids for recycled products as defined in subdivision  
36 (a) of Section 12200, in order to meet the requirements for  
37 recycled products set forth in this section and Section 12162.

38 (2) This subdivision applies to the procurement or purchase of  
39 the following materials, goods, and supplies, or products  
40 containing the following recycled resources:

1 (A) Paper products, that include, but are not limited to, fine  
2 papers, such as xerographic and envelope papers and form bond,  
3 corrugated boxes, newsprint, tissue, and toweling.

4 (B) Compost and cocompost products.

5 (C) Glass.

6 (D) Oil.

7 (E) Plastic.

8 (F) Solvents and paint, including water-based paint.

9 (G) Tires.

10 (H) Steel.

11 (I) Antifreeze.

12 (d) All state agencies shall, if feasible, establish purchasing  
13 practices that ensure the purchase of materials, goods, and  
14 supplies that may be recycled or reused when discarded.

15 (e) The department shall set the following requirements for  
16 purchases made by state agencies:

17 (1) By January 1, 1996, at least 20 percent of state purchases  
18 are of recycled products.

19 (2) By January 1, 1998, at least 30 percent of state purchases  
20 are of recycled products.

21 (3) On and after January 1, 2000, at least 50 percent of state  
22 purchases are of recycled products.

23 (4) The requirements specified in this subdivision shall be  
24 applied to the purchases of state agencies for products listed in  
25 this section, except in subparagraph (A) of paragraph (2) of  
26 subdivision (c) for which requirements are specified in Section  
27 12162.

28 (f) The purchases of the state agencies shall meet each  
29 requirement for, and be applied to the total dollar amount of,  
30 each specified product category as defined in this section. The  
31 purchase of a recycled-content product from one category may  
32 not be applied toward the requirements for, or the total dollar  
33 amount of, any other category listed in this section or Section  
34 12157, 12162, 12301, or 12305.

35 SEC. 11. Section 42480 of the Public Resources Code is  
36 amended to read:

37 42480. (a) (1) A state agency that purchases or leases  
38 covered electronic devices shall require each prospective bidder,  
39 to certify that it, and its agents, subsidiaries, partners, joint  
40 venturers, and subcontractors for the procurement, have complied

1 with this chapter and any regulations adopted pursuant to this  
2 chapter, or to demonstrate that this chapter is inapplicable to all  
3 lines of business engaged in by the bidder, its agents,  
4 subsidiaries, partners, joint venturers, or subcontractors.

5 (2) *The certification requirement set forth in paragraph (1)*  
6 *does not apply to prospective bidders for contracts for the*  
7 *purchase or lease of covered electronic devices of five thousand*  
8 *dollars (\$5,000) or less.*

9 (b) Failure to provide certification pursuant to this section  
10 shall render the prospective bidder and its agents, subsidiaries,  
11 partners, joint venturers, and subcontractors ineligible to bid on  
12 the procurement of covered electronic devices.

13 (c) The bid solicitation documents shall specify that the  
14 prospective bidder is required to cooperate fully in providing  
15 reasonable access to its records and documents that evidence  
16 compliance with this chapter.

17 (d) Any person awarded a contract by a state agency that is  
18 found to be in violation of this section is subject to the following  
19 sanctions:

20 (1) The contract shall be voided by the state agency to which  
21 the equipment, materials, or supplies were provided.

22 (2) The contractor is ineligible to bid on any state contract for  
23 a period of three years.

24 (3) If the Attorney General establishes in the name of the  
25 people of the State of California that any money, property, or  
26 benefit was obtained by a contractor as a result of violating this  
27 section, the court may, in addition to any other remedy, order the  
28 disgorgement of the unlawfully obtained money, property, or  
29 benefit in the interest of justice.

30 SEC. 12. Section 42498 of the Public Resources Code is  
31 amended to read:

32 42498. (a) (1) A state agency that purchases or leases cell  
33 phones shall require each prospective bidder, to certify that it,  
34 and its agents, subsidiaries, partners, joint venturers, and  
35 subcontractors for the procurement, have complied with this  
36 chapter and any regulations adopted pursuant to this chapter, or  
37 to demonstrate that this chapter is inapplicable to all lines of  
38 business engaged in by the bidder, its agents, subsidiaries,  
39 partners, joint venturers, or subcontractors.

1     (2) *The certification requirement set forth in paragraph (1)*  
2 *does not apply to prospective bidders for contracts for the*  
3 *purchase or lease of cell phones of five thousand dollars (\$5,000)*  
4 *or less.*

5     (b) Failure to provide certification pursuant to this section  
6 shall render the prospective bidder and its agents, subsidiaries,  
7 partners, joint venturers, and subcontractors ineligible to bid on  
8 the procurement of cell phones.

9     (c) The bid solicitation documents shall specify that the  
10 prospective bidder is required to cooperate fully in providing  
11 reasonable access to its records and documents that evidence  
12 compliance with this chapter.

13     (d) Any person awarded a contract by a state agency that is  
14 found to be in violation of this section is subject to the following  
15 sanctions:

16     (1) The contract shall be voided by the state agency to which  
17 the equipment, materials, or supplies were provided.

18     (2) The contractor is ineligible to bid on any state contract for  
19 a period of three years.

20     (3) If the Attorney General establishes in the name of the  
21 people of the State of California that any money, property, or  
22 benefit was obtained by a contractor as a result of violating this  
23 section, the court may, in addition to any other remedy, order the  
24 disgorgement of the unlawfully obtained money, property, or  
25 benefit in the interest of justice.