

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 566

Introduced by Assembly Member O'Donnell

February 24, 2015

An act to amend ~~Section 8070~~ Sections 17406 and 17407 of, and to add Section 17407.5 to, the Education Code, and to amend Section 20111.6 of the Public Contract Code, relating to ~~career technical education~~ school facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 566, as amended, O'Donnell. ~~Career technical education: advisory committee.~~ School facilities: leasing property: construction contracts.

Existing law authorizes the governing board of a school district, without advertising for bids, to lease real property for a minimum rental of \$1 per year if the instrument by which this property is leased requires the lessee to construct, or provide for the construction of, a building to be used by the school district and provides that the title to the building shall vest in the school district at the end of the lease. Existing law, until January 1, 2019, also requires the instrument, if funds for the instrument derive from the Leroy F. Greene School Facilities Act of 1998 or from any future state school bond for a public project that involves a projected expenditure of \$1,000,000 or more, to provide that the person, firm, or corporation that constructs the building shall comply with specified prequalification requirements.

Existing law also authorizes the governing board of a school district to enter into an agreement with the lowest responsible bidder to construct, or provide for the construction of, a building to be leased and used by the school district upon a designated site if the instrument

provides that the title to the building and site shall vest in the school district at the end of the lease. Existing law, until January 1, 2019, requires the agreement, if funds for the agreement derive from the Leroy F. Greene School Facilities Act of 1998 or from any future state school bond for a public project that involves a projected expenditure of \$1,000,000 or more, to provide that the person, firm, or corporation that constructs the building shall comply with specified prequalification requirements.

This bill would, until January 1, 2019, require the instrument and agreement to provide that the person, firm, or corporation that constructs the building to comply with specified prequalification requirements in this context regardless of the funding source for the public project. The bill would require that certain conditions relating to the use of a skilled and trained workforce on the project or contract be satisfied before the governing board of a school district may enter into a contract with any entity for the construction, or for providing for the construction of, a building to be leased or used by the school district.

Existing law requires, until January 1, 2019, the governing board of a school district that enters into a contract for a public project, as defined, for which the board uses moneys received pursuant to the Leroy F. Greene School Facilities Act of 1998 or moneys from future state school bonds for a public project that involves a projected expenditure of \$1,000,000 or more, to require prospective bidders for a construction contract to complete and submit a standardized prequalification questionnaire and financial statement, as provided.

This bill would impose these requirements for a public project in this context regardless of the funding source for the public project.

~~Existing law requires the governing board of each school district participating in a career technical education program to appoint a career technical education advisory committee, as specified, to develop recommendations on the program and to provide liaison between the district and potential employers:~~

~~This bill would make nonsubstantive changes to these provisions:~~

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

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

1 SECTION 1. *Section 17406 of the Education Code, as amended*
2 *by Section 1 of Chapter 408 of the Statutes of 2014, is amended*
3 *to read:*

4 17406. (a) (1) Notwithstanding Section 17417, the governing
5 board of a school district, without advertising for bids, may let,
6 for a minimum rental of one dollar (\$1) a year, to ~~any~~ a person,
7 firm, or corporation ~~any~~ real property that belongs to the *school*
8 district if the instrument by which this property is let requires the
9 lessee therein to construct on the demised premises, or provide for
10 the construction thereon of, a building or buildings for the use of
11 the school district during the term of the lease, and provides that
12 title to that building shall vest in the school district at the expiration
13 of that term. The instrument may provide for the means or methods
14 by which that title shall vest in the school district ~~prior to~~ *before*
15 the expiration of that term, and shall contain other terms and
16 conditions as the governing board *of the school district* may deem
17 to be in the best interest of the school district.

18 ~~(2) If the instrument meets the criteria of subdivision (a) of~~
19 ~~Section 20111.6 of the Public Contract Code, the~~ *For a public*
20 *project, as defined in subdivision (c) of Section 22002 of the Public*
21 *Contract Code, regardless of its funding source, an instrument*
22 *created pursuant to paragraph (1) shall also require that a person,*
23 *firm, or corporation that constructs the building, including, but not*
24 *limited to, the prime contractor and, if used, electrical, mechanical,*
25 *and plumbing subcontractor, shall be subject to the same*
26 *prequalification requirements for prospective bidders described in*
27 *subdivisions (b) to (m), inclusive, of Section 20111.6 of the Public*
28 *Contract Code, including the requirement for the completion and*
29 *submission of a standardized prequalification questionnaire and*
30 *financial statement that is verified under oath and is not a public*
31 *record.*

32 ~~(b) Any~~ *A rental of property that complies with subdivision (a)*
33 *as it reads on the day that the lease is entered into shall be deemed*
34 *to have thereby required the payment of adequate consideration*
35 *for purposes of Section 6 of Article XVI of the California*
36 *Constitution.*

1 (c) This section shall remain in effect only until January 1, 2019,
2 and as of that date is repealed, unless a later enacted statute, that
3 is enacted before January 1, 2019, deletes or extends that date.

4 *SEC. 2. Section 17407 of the Education Code, as amended by*
5 *Section 3 of Chapter 408 of the Statutes of 2014, is amended to*
6 *read:*

7 17407. (a) The governing board of ~~any~~ a school district may
8 enter into an agreement with ~~any~~ a person, firm, or corporation
9 under which that person, firm, or corporation shall construct, or
10 provide for the construction of, a building to be used by the *school*
11 district upon a designated site and lease the building and site to
12 the *school* district. The instrument shall provide that the title to
13 the building and site shall vest in the *school* district at the expiration
14 of the lease, and may provide the means or method by which the
15 title to the building and site shall vest in the *school* district ~~prior~~
16 ~~to~~ before the expiration of the lease, and shall contain other terms
17 and conditions as the governing board of the *school* district deems
18 to be in the best interest of the *school* district.

19 (b) The agreement entered into shall be with the lowest
20 responsible bidder who shall give the security that ~~any~~ a governing
21 board of a *school* district requires. The governing board of a *school*
22 district may reject all bids. For the purpose of securing bids the
23 governing board of a *school* district shall publish at least once a
24 week for two weeks in ~~some~~ a newspaper of general circulation
25 published in the *school* district, or if there is no paper, then in ~~some~~
26 a paper of general circulation circulated in the county, a notice
27 calling for bids, stating the proposed terms of the agreement and
28 the time and place where bids will be opened.

29 (c) ~~If the agreement meets the criteria of subdivision (a) of~~
30 ~~Section 20111.6 of the Public Contract Code, the~~ For a public
31 project, as defined in subdivision (c) of Section 22002 of the Public
32 Contract Code, regardless of its funding source, an agreement
33 entered into pursuant to subdivision (a) shall also require that a
34 person, firm, or corporation that constructs the building, including,
35 but not limited to, the prime contractor and, if used, electrical,
36 mechanical, and plumbing subcontractor, under this section shall
37 be subject to the same prequalification requirements for prospective
38 bidders described in subdivisions (b) to (m), inclusive, of Section
39 20111.6 of the Public Contract Code, including the requirement
40 for the completion and submission of a standardized

1 prequalification questionnaire and financial statement that is
2 verified under oath and is not a public record.

3 (d) This section shall remain in effect only until January 1, 2019,
4 and as of that date is repealed, unless a later enacted statute, that
5 is enacted before January 1, 2019, deletes or extends that date.

6 *SEC. 3. Section 17407.5 is added to the Education Code, to*
7 *read:*

8 *17407.5. (a) The governing board of a school district shall*
9 *not enter into an agreement pursuant to Section 17406 or 17407*
10 *with any entity unless the entity provides to the governing board*
11 *of the school district an enforceable commitment that the entity*
12 *and its subcontractors at every tier will use a skilled and trained*
13 *workforce to perform all work on the project or contract that falls*
14 *within an apprenticeable occupation in the building and*
15 *construction trades.*

16 *(b) For purposes of this section:*

17 *(1) "Apprenticeable occupation" means an occupation for*
18 *which the Chief of the Division of Apprenticeship Standards of the*
19 *Department of Industrial Relations had approved an apprenticeship*
20 *program pursuant to Section 3075 of the Labor Code before*
21 *January 1, 2014.*

22 *(2) "Chief" means the Chief of the Division of Apprenticeship*
23 *Standards of the Department of Industrial Relations.*

24 *(3) "Skilled and trained workforce" means a workforce that*
25 *meets all of the following conditions:*

26 *(A) All the workers are either skilled journeypersons or*
27 *apprentices registered in an apprenticeship program approved by*
28 *the chief.*

29 *(B) (i) As of January 1, 2016, at least 30 percent of the skilled*
30 *journeypersons employed to perform work on the contract or*
31 *project by the entity and each of its subcontractors at every tier*
32 *are graduates of an apprenticeship program for the applicable*
33 *occupation that was either approved by the chief pursuant to*
34 *Section 3075 of the Labor Code or located outside California and*
35 *approved for federal purposes pursuant to the apprenticeship*
36 *regulations adopted by the federal Secretary of Labor.*

37 *(ii) As of January 1, 2017, at least 40 percent of the skilled*
38 *journeypersons employed to perform work on the contract or*
39 *project by the entity and each of its subcontractors at every tier*
40 *are graduates of an apprenticeship program for the applicable*

1 occupation that was either approved by the chief pursuant to
2 Section 3075 of the Labor Code or located outside California and
3 approved for federal purposes pursuant to the apprenticeship
4 regulations adopted by the federal Secretary of Labor.

5 (iii) As of January 1, 2018, at least 50 percent of the skilled
6 journeypersons employed to perform work on the contract or
7 project by the entity and each of its subcontractors at every tier
8 are graduates of an apprenticeship program for the applicable
9 occupation that was either approved by the chief pursuant to
10 Section 3075 of the Labor Code or located outside California and
11 approved for federal purposes pursuant to the apprenticeship
12 regulations adopted by the federal Secretary of Labor.

13 (iv) As of January 1, 2019, at least 60 percent of the skilled
14 journeypersons employed to perform work on the contract or
15 project by the entity and each of its subcontractors at every tier
16 are graduates of an apprenticeship program for the applicable
17 occupation that was either approved by the chief pursuant to
18 Section 3075 of the Labor Code or located outside California and
19 approved for federal purposes pursuant to the apprenticeship
20 regulations adopted by the federal Secretary of Labor.

21 (C) For an apprenticeable occupation in which no
22 apprenticeship program had been approved by the chief before
23 January 1, 1995, up to one-half of the graduation percentage
24 requirements of subparagraph (B) may be satisfied by skilled
25 journeypersons who commenced working in the apprenticeable
26 occupation before the chief's approval of an apprenticeship
27 program for that occupation in the county in which the project is
28 located.

29 (4) "Skilled journeyperson" means a worker who either:

30 (A) Graduated from an apprenticeship program for the
31 applicable occupation that was approved by the chief or located
32 outside California and approved for federal purposes pursuant to
33 the apprenticeship regulations adopted by the federal Secretary
34 of Labor.

35 (B) Has at least as many hours of on-the-job experience in the
36 applicable occupation as would be required to graduate from an
37 apprenticeship program for the applicable occupation that is
38 approved by the chief.

1 (c) An entity's commitment that a skilled and trained workforce
2 will be used to perform the project or contract may be established
3 by any of the following:

4 (1) (A) The entity's agreement with the governing board of the
5 school district that the entity and its subcontractors at every tier
6 will comply with the requirements of this section and that the entity
7 will provide to the governing board of the school district, on a
8 monthly basis while the project or contract is being performed, a
9 report demonstrating that the entity and its subcontractors are
10 complying with the requirements of this section.

11 (B) If the entity fails to provide to the governing board of the
12 school district the monthly report pursuant to subparagraph (A),
13 the governing board of the school district shall immediately cease
14 making payments to the entity pursuant to the instrument or
15 agreement described in Section 17406 or 17407.

16 (C) The monthly report provided to the governing board of the
17 school district pursuant to this paragraph shall be a public record
18 under the California Public Records Act (Chapter 3.5 (commencing
19 with Section 6250) of Division 7 of Title 1 of the Government
20 Code), and shall be open to public inspection.

21 (2) If the governing board of a school district has entered into
22 a project labor agreement that will bind all contractors and
23 subcontractors performing work on the project or contract and
24 that includes the requirements of this section, the entity's
25 agreement that it will become a party to that project labor
26 agreement.

27 (3) Evidence that the entity has entered into a project labor
28 agreement that includes the requirements of this section and that
29 will bind the entity and all its subcontractors at every tier
30 performing the project or contract.

31 SEC. 4. Section 20111.6 of the Public Contract Code is
32 amended to read:

33 20111.6. (a) This section shall apply only to public projects,
34 as defined in subdivision (c) of Section 22002, ~~for which the~~
35 ~~governing board of the district uses funds received pursuant to the~~
36 ~~Leroy F. Greene School Facilities Act of 1998 (Chapter 12.5~~
37 ~~(commencing with Section 17070.10) of Part 10 of Division 1 of~~
38 ~~Title 1 of the Education Code) or any funds from any future state~~
39 ~~school bond regardless of the funding source, for a public project~~

1 that involves a projected expenditure of one million dollars
2 (\$1,000,000) or more.

3 (b) If the governing board of the *school* district enters into a
4 contract meeting the criteria of subdivision (a), then the governing
5 board of the *school* district shall require that prospective bidders
6 for a construction contract complete and submit to the *governing*
7 board of the *school* district a standardized prequalification
8 questionnaire and financial statement. The questionnaire and
9 financial statement shall be verified under oath by the bidder in
10 the manner in which civil pleadings in civil actions are verified.
11 The questionnaires and financial statements shall not be public
12 records and shall not be open to public inspection.

13 (c) The *governing* board of the *school* district shall adopt and
14 apply a uniform system of rating bidders on the basis of the
15 completed questionnaires and financial statements. This system
16 shall also apply to a person, firm, or corporation that constructs a
17 building described in Section 17406 or 17407 of the Education
18 Code.

19 (d) The questionnaire and financial statement described in
20 subdivision (b), and the uniform system of rating bidders described
21 in subdivision (c), shall cover, at a minimum, the issues covered
22 by the standardized questionnaire and model guidelines for rating
23 bidders developed by the Department of Industrial Relations
24 pursuant to subdivision (a) of Section 20101.

25 (e) Each prospective bidder shall be furnished by the school
26 district letting the contract with a standardized proposal form that,
27 when completed and executed, shall be submitted as his or her bid.
28 Bids not presented on the forms so furnished shall be disregarded.

29 (f) A proposal form required pursuant to subdivision (e) shall
30 not be accepted from any person or other entity that is required to
31 submit a completed questionnaire and financial statement for
32 prequalification pursuant to subdivision (b) or from any person or
33 other entity that uses a subcontractor that is required to submit a
34 completed questionnaire and financial statement for
35 prequalification pursuant to subdivision (b), but has not done so
36 at least 10 business days ~~prior to~~ *before* the date fixed for the public
37 opening of sealed bids or has not been prequalified for at least five
38 business days ~~prior to~~ *before* that date. The *school* district may
39 require the completed questionnaire and financial statement for
40 prequalification to be submitted more than 10 business days ~~prior~~

1 ~~to~~ before the fixed date for the public opening of sealed bids. The
2 school district may also require the prequalification more than five
3 business days ~~prior to~~ before the fixed date.

4 (g) (1) The governing board of the school district may establish
5 a process for prequalifying prospective bidders pursuant to this
6 section on a quarterly or annual basis and a prequalification
7 pursuant to this process shall be valid for one calendar year
8 following the date of initial prequalification.

9 (2) The governing board of the school district shall establish a
10 process to prequalify a person, firm, or corporation, including, but
11 not limited to, the prime contractor and, if used, an electrical,
12 mechanical, and plumbing subcontractor, to construct a building
13 described in Section 17406 or 17407 of the Education Code on a
14 quarterly or annual basis. A prequalification pursuant to this
15 process shall be valid for one calendar year following the date of
16 initial prequalification.

17 (h) This section shall not preclude the governing board of the
18 school district from prequalifying or disqualifying a subcontractor
19 of any specialty classification described in Section 7058 of the
20 Business and Professions Code.

21 (i) For purposes of this section, bidders shall include both of
22 the following:

23 (1) A prime contractor, as defined in Section 4113, that is either
24 of the following:

25 (A) A general engineering contractor described in Section 7056
26 of the Business and Professions Code.

27 (B) A general building contractor described in Section 7057 of
28 the Business and Professions Code.

29 (2) If utilized, each electrical, mechanical, and plumbing
30 contractor, whether as a prime contractor or as a subcontractor, as
31 defined in Section 4113.

32 (j) If a public project covered by this section includes electrical,
33 mechanical, or plumbing components that will be performed by
34 electrical, mechanical, or plumbing contractors, a list of
35 prequalified general contractors and electrical, mechanical, and
36 plumbing subcontractors shall be made available by the school
37 district to all bidders at least five business days ~~prior to~~ before the
38 dates fixed for the public opening of sealed bids. The school district
39 may require the list to be made available more than five business

1 days ~~prior to~~ *before* the fixed dates for the public opening of sealed
 2 bids.

3 (k) For purposes of this section, electrical, mechanical, and
 4 plumbing subcontractors are contractors licensed pursuant to
 5 Section 7058 of the Business and Professions Code, specifically
 6 contractors holding C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38,
 7 C-42, C-43, and C-46 licenses, pursuant to regulations of the
 8 Contractors' State License Board.

9 (l) This section shall not apply to a school district with an
 10 average daily attendance of less than 2,500.

11 (m) (1) This section shall apply only to contracts awarded on
 12 or after January 1, 2014.

13 (2) The amendments made to this section by the act adding this
 14 paragraph shall apply only to contracts awarded on or after January
 15 1, 2015.

16 (n) (1) On or before January 1, 2018, the Director of Industrial
 17 Relations shall (A) submit a report to the Legislature evaluating
 18 whether, during the years this section has applied to contracts,
 19 violations of the Labor Code on school district projects have
 20 decreased as compared to the same number of years immediately
 21 preceding the enactment of this section, and (B) recommend
 22 improvements to the system for prequalifying contractors and
 23 subcontractors on school district projects.

24 (2) A report to be submitted pursuant to this subdivision shall
 25 be submitted in compliance with Section 9795 of the Government
 26 Code.

27 (o) This section shall become inoperative on January 1, 2019,
 28 and, as of July 1, 2019, is repealed.

29 ~~SECTION 1. Section 8070 of the Education Code is amended~~
 30 ~~to read:~~

31 ~~8070. (a) The governing board of each school district~~
 32 ~~participating in a career technical education program shall appoint~~
 33 ~~a career technical education advisory committee to develop~~
 34 ~~recommendations on the program and to provide liaison between~~
 35 ~~the district and potential employers.~~

36 ~~(b) The committee shall consist of one or more representatives~~
 37 ~~of the general public knowledgeable about the disadvantaged,~~
 38 ~~pupils, teachers, business, industry, school administration, and the~~
 39 ~~field office of the Employment Development Department.~~

O