

AMENDED IN SENATE JUNE 17, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 566**

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**Introduced by Assembly Member O'Donnell**

February 24, 2015

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An act to amend 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 school facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 566, as amended, O'Donnell. 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~~ *on* a public project ~~in this context regardless of the~~ *if* funding source for the public project. *for the project includes reimbursement from any state school bond.*

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 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 a person, firm,

1 or corporation real property that belongs to the school district if  
2 the instrument by which this property is let requires the lessee  
3 therein to construct on the demised premises, or provide for the  
4 construction thereon of, a building or buildings for the use of the  
5 school district during the term of the lease, and provides that title  
6 to that building shall vest in the school district at the expiration of  
7 that term. The instrument may provide for the means or methods  
8 by which that title shall vest in the school district before the  
9 expiration of that term, and shall contain other terms and conditions  
10 as the governing board of the school district may deem to be in  
11 the best interest of the school district.

12 (2) For a public project, as defined in subdivision (c) of Section  
13 22002 of the Public Contract Code, regardless of its funding source,  
14 an instrument created pursuant to paragraph (1) shall also require  
15 that a person, firm, or corporation that constructs the building,  
16 including, but not limited to, the prime contractor and, if used,  
17 electrical, mechanical, and plumbing subcontractor, shall be subject  
18 to the same prequalification requirements for prospective bidders  
19 described in subdivisions (b) to (m), inclusive, of Section 20111.6  
20 of the Public Contract Code, including the requirement for the  
21 completion and submission of a standardized prequalification  
22 questionnaire and financial statement that is verified under oath  
23 and is not a public record.

24 (b) A rental of property that complies with subdivision (a) as it  
25 reads on the day that the lease is entered into shall be deemed to  
26 have thereby required the payment of adequate consideration for  
27 purposes of Section 6 of Article XVI of the California Constitution.

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

31 SEC. 2. Section 17407 of the Education Code, as amended by  
32 Section 3 of Chapter 408 of the Statutes of 2014, is amended to  
33 read:

34 17407. (a) The governing board of a school district may enter  
35 into an agreement with a person, firm, or corporation under which  
36 that person, firm, or corporation shall construct, or provide for the  
37 construction of, a building to be used by the school district upon  
38 a designated site and lease the building and site to the school  
39 district. The instrument shall provide that the title to the building  
40 and site shall vest in the school district at the expiration of the

1 lease, and may provide the means or method by which the title to  
2 the building and site shall vest in the school district before the  
3 expiration of the lease, and shall contain other terms and conditions  
4 as the governing board of the school district deems to be in the  
5 best interest of the school district.

6 (b) The agreement entered into shall be with the lowest  
7 responsible bidder who shall give the security that a governing  
8 board of a school district requires. The governing board of a school  
9 district may reject all bids. For the purpose of securing bids the  
10 governing board of a school district shall publish at least once a  
11 week for two weeks in a newspaper of general circulation published  
12 in the school district, or if there is no ~~paper~~, *newspaper*, then in a  
13 ~~paper~~ *newspaper* of general circulation circulated in the county, a  
14 notice calling for bids, stating the proposed terms of the agreement  
15 and the time and place where bids will be opened.

16 (c) For a public project, as defined in subdivision (c) of Section  
17 22002 of the Public Contract Code, regardless of its funding source,  
18 an agreement entered into pursuant to subdivision (a) shall also  
19 require that a person, firm, or corporation that constructs the  
20 building, including, but not limited to, the prime contractor and,  
21 if used, electrical, mechanical, and plumbing subcontractor, under  
22 this section shall be subject to the same prequalification  
23 requirements for prospective bidders described in subdivisions (b)  
24 to (m), inclusive, of Section 20111.6 of the Public Contract Code,  
25 including the requirement for the completion and submission of a  
26 standardized prequalification questionnaire and financial statement  
27 that is verified under oath and is not a public record.

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

31 SEC. 3. Section 17407.5 is added to the Education Code, to  
32 read:

33 17407.5. (a) The governing board of a school district shall not  
34 enter into an agreement pursuant to Section 17406 or 17407 with  
35 any entity unless the entity provides to the governing board of the  
36 school district an enforceable commitment that the entity and its  
37 subcontractors at every tier will use a skilled and trained workforce  
38 to perform all work on the project or contract that falls within an  
39 apprenticeable occupation in the building and construction trades.

40 (b) For purposes of this section:

1 (1) “Apprenticeable occupation” means an occupation for which  
2 the Chief of the Division of Apprenticeship Standards of the  
3 Department of Industrial Relations had approved an apprenticeship  
4 program pursuant to Section 3075 of the Labor Code before  
5 January 1, 2014.

6 (2) “Chief” means the Chief of the Division of Apprenticeship  
7 Standards of the Department of Industrial Relations.

8 (3) “Skilled and trained workforce” means a workforce that  
9 meets all of the following conditions:

10 (A) All the workers are either skilled journeypersons or  
11 apprentices registered in an apprenticeship program approved by  
12 the chief.

13 (B) (i) As of January 1, 2016, at least 30 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 (ii) As of January 1, 2017, at least 40 percent of the skilled  
22 journeypersons employed to perform work on the contract or  
23 project by the entity and each of its subcontractors at every tier  
24 are graduates of an apprenticeship program for the applicable  
25 occupation that was either approved by the chief pursuant to  
26 Section 3075 of the Labor Code or located outside California and  
27 approved for federal purposes pursuant to the apprenticeship  
28 regulations adopted by the federal Secretary of Labor.

29 (iii) As of January 1, 2018, at least 50 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 (iv) As of January 1, 2019, at least 60 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 (C) For an apprenticeable occupation in which no apprenticeship  
6 program had been approved by the chief before January 1, 1995,  
7 up to one-half of the graduation percentage requirements of  
8 subparagraph (B) may be satisfied by skilled journeypersons who  
9 commenced working in the apprenticeable occupation before the  
10 chief's approval of an apprenticeship program for that occupation  
11 in the county in which the project is located.

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

13 (A) Graduated from an apprenticeship program for the applicable  
14 occupation that was approved by the chief or located outside  
15 California and approved for federal purposes pursuant to the  
16 apprenticeship regulations adopted by the federal Secretary of  
17 Labor.

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

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

25 (1) (A) The entity's agreement with the governing board of the  
26 school district that the entity and its subcontractors at every tier  
27 will comply with the requirements of this section and that the entity  
28 will provide to the governing board of the school district, on a  
29 monthly basis while the project or contract is being performed, a  
30 report demonstrating that the entity and its subcontractors are  
31 complying with the requirements of this section.

32 (B) If the entity fails to provide to the governing board of the  
33 school district the monthly report pursuant to subparagraph (A),  
34 the governing board of the school district shall immediately cease  
35 making payments to the entity pursuant to the instrument or  
36 agreement described in Section 17406 or 17407.

37 (C) The monthly report provided to the governing board of the  
38 school district pursuant to this paragraph shall be a public record  
39 under the California Public Records Act (Chapter 3.5 (commencing

1 with Section 6250) of Division 7 of Title 1 of the Government  
2 Code), and shall be open to public inspection.

3 (2) If the governing board of a school district has entered into  
4 a project labor agreement that will bind all contractors and  
5 subcontractors performing work on the project or contract and that  
6 includes the requirements of this section, the entity's agreement  
7 that it will become a party to that project labor agreement.

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

12 SEC. 4. Section 20111.6 of the Public Contract Code is  
13 amended to read:

14 20111.6. (a) This section shall apply only to public projects,  
15 as defined in subdivision (c) of Section 22002, ~~regardless of the~~  
16 ~~funding source, for which the governing board of the district uses~~  
17 *funds received pursuant to the Leroy F. Greene School Facilities*  
18 *Act of 1998 (Chapter 12.5 (commencing with Section 17070.10)*  
19 *of Part 10 of Division 1 of Title 1 of the Education Code) or any*  
20 *funds received, including funds reimbursed, from any future state*  
21 *school bond* for a public project that involves a projected  
22 expenditure of one million dollars (\$1,000,000) or more.

23 (b) If the governing board of the school district enters into a  
24 contract meeting the criteria of subdivision (a), then the governing  
25 board of the school district shall require that prospective bidders  
26 for a construction contract complete and submit to the governing  
27 board of the school district a standardized prequalification  
28 questionnaire and financial statement. The questionnaire and  
29 financial statement shall be verified under oath by the bidder in  
30 the manner in which civil pleadings in civil actions are verified.  
31 The questionnaires and financial statements shall not be public  
32 records and shall not be open to public inspection.

33 (c) The governing board of the school district shall adopt and  
34 apply a uniform system of rating bidders on the basis of the  
35 completed questionnaires and financial statements. This system  
36 shall also apply to a person, firm, or corporation that constructs a  
37 building described in Section 17406 or 17407 of the Education  
38 Code.

39 (d) The questionnaire and financial statement described in  
40 subdivision (b), and the uniform system of rating bidders described

1 in subdivision (c), shall cover, at a minimum, the issues covered  
2 by the standardized questionnaire and model guidelines for rating  
3 bidders developed by the Department of Industrial Relations  
4 pursuant to subdivision (a) of Section 20101.

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

9 (f) A proposal form required pursuant to subdivision (e) shall  
10 not be accepted from any person or other entity that is required to  
11 submit a completed questionnaire and financial statement for  
12 prequalification pursuant to subdivision (b) or from any person or  
13 other entity that uses a subcontractor that is required to submit a  
14 completed questionnaire and financial statement for  
15 prequalification pursuant to subdivision (b), but has not done so  
16 at least 10 business days before the date fixed for the public  
17 opening of sealed bids or has not been prequalified for at least five  
18 business days before that date. The school district may require the  
19 completed questionnaire and financial statement for  
20 prequalification to be submitted more than 10 business days before  
21 the fixed date for the public opening of sealed bids. The school  
22 district may also require the prequalification more than five  
23 business days before the fixed date.

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

29 (2) The governing board of the school district shall establish a  
30 process to prequalify a person, firm, or corporation, including, but  
31 not limited to, the prime contractor and, if used, an electrical,  
32 mechanical, and plumbing subcontractor, to construct a building  
33 described in Section 17406 or 17407 of the Education Code on a  
34 quarterly or annual basis. A prequalification pursuant to this  
35 process shall be valid for one calendar year following the date of  
36 initial prequalification.

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



- 1 (i) For purposes of this section, bidders shall include both of  
2 the following:
- 3 (1) A prime contractor, as defined in Section 4113, that is either  
4 of the following:
- 5 (A) A general engineering contractor described in Section 7056  
6 of the Business and Professions Code.
- 7 (B) A general building contractor described in Section 7057 of  
8 the Business and Professions Code.
- 9 (2) If utilized, each electrical, mechanical, and plumbing  
10 contractor, whether as a prime contractor or as a subcontractor, as  
11 defined in Section 4113.
- 12 (j) If a public project covered by this section includes electrical,  
13 mechanical, or plumbing components that will be performed by  
14 electrical, mechanical, or plumbing contractors, a list of  
15 prequalified general contractors and electrical, mechanical, and  
16 plumbing subcontractors shall be made available by the school  
17 district to all bidders at least five business days before the dates  
18 fixed for the public opening of sealed bids. The school district may  
19 require the list to be made available more than five business days  
20 before the fixed dates for the public opening of sealed bids.
- 21 (k) For purposes of this section, electrical, mechanical, and  
22 plumbing subcontractors are contractors licensed pursuant to  
23 Section 7058 of the Business and Professions Code, specifically  
24 contractors holding C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38,  
25 C-42, C-43, and C-46 licenses, pursuant to regulations of the  
26 Contractors' State License Board.
- 27 (l) This section shall not apply to a school district with an  
28 average daily attendance of less than 2,500.
- 29 (m) (1) This section shall apply only to contracts awarded on  
30 or after January 1, 2014.
- 31 (2) The amendments made to this section by the act adding this  
32 paragraph shall apply only to contracts awarded on or after January  
33 1, 2015.
- 34 (n) (1) On or before January 1, 2018, the Director of Industrial  
35 Relations shall (A) submit a report to the Legislature evaluating  
36 whether, during the years this section has applied to contracts,  
37 violations of the Labor Code on school district projects have  
38 decreased as compared to the same number of years immediately  
39 preceding the enactment of this section, and (B) recommend

1 improvements to the system for prequalifying contractors and  
2 subcontractors on school district projects.

3 (2) A report to be submitted pursuant to this subdivision shall  
4 be submitted in compliance with Section 9795 of the Government  
5 Code.

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

O