



AB-416 California Deforestation-Free Procurement Act: public works projects: wood and wood products. (2021-2022)

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CALIFORNIA LEGISLATURE— 2021–2022 REGULAR SESSION

ASSEMBLY BILL**NO. 416**

Introduced by Assembly Member Kalra
(Principal coauthors: Assembly Members Bloom, Eduardo Garcia, and Lee)
(Principal coauthors: Senators Allen and Stern)
(Coauthors: Assembly Members Friedman, Muratsuchi, and Luz Rivas)
(Coauthor: Senator Laird)

February 04, 2021

An act to add Sections 6105 and 10130 to the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 416, Kalra. California Deforestation-Free Procurement Act: public works projects: wood and wood products.

Existing law governs the bidding and awarding of public contracts by various state agencies. Existing law imposes requirements on contractors awarded various public contracts, including, among others, certifying that no equipment, materials, supplies, apparel, garments, or accessories provided under specified contracts are produced by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor, or exploitation of children in sweatshop labor.

This bill would establish the California Deforestation-Free Procurement Act. The bill would require a contractor, as defined, and specified subcontractors, for any contract entered into, extended, or renewed on or after January 1, 2024, contracting with a state agency for the procurement of products comprised wholly or in part of forest-risk commodities to certify that the commodities were not grown, derived, harvested, reared, or produced on land where tropical deforestation occurred on or after January 1, 2022. The bill would exempt a credit card purchase of goods of \$2,500 or less, not to exceed a total of \$7,500 of goods per contractor per year, from these certification requirements. The bill would require specified contractors to have a No Deforestation, No Peat,

No Exploitation policy, as specified, and would require the contractors to make the policy and corresponding data publicly available. The bill would require, on or before July 1, 2023, the Department of General Services to issue an informational notice or memorandum on a Deforestation-Free Code of Conduct to be used by contractors that includes, among other things, a list of forest-risk commodities subject to these provisions.

This bill would impose sanctions on contractors who knew or should have known that a product furnished to the state was comprised wholly or in part of a forest-risk commodity in violation of these provisions. The bill would specify that any person who certifies as true any material matter that the person knows to be false is guilty of a misdemeanor. By creating a new crime, this bill would impose a state-mandated local program.

The State Contract Act governs the bidding and award of public works contracts by specific state agencies and requires an awarding department, before entering into any contract for a project, to prepare full, complete, and accurate plans, specifications, and estimates of cost. The act prohibits, except in specified circumstances, a state agency responsible for letting public works contracts from drafting bid specifications in a manner that limits the bidding to any one concern or product, except under certain circumstances.

This bill would prohibit a state agency from including in bid specifications for public works projects any wood or wood products whose importation and use are prohibited under the federal Lacey Act.

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

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

- (a) Tropical forests cover roughly 7 percent of the Earth's surface, but harbor close to 50 percent of all species on Earth.
- (b) Humans are behind the current rate of species extinction, which is at least 100 to 1,000 times higher than nature intended. World Wildlife Fund's 2016 Living Planet Report found global populations of fish, birds, mammals, amphibians, and reptiles declined by 58 percent between 1970 and 2012.
- (c) An estimated 18,000,000 acres of forest, an area the size of Panama or nearly one-fifth the size of California, are lost every year to deforestation according to the Food and Agriculture Organization of the United Nations, with over one-half of the Earth's tropical forests already gone. At the current pace, the Earth's tropical rainforests will be gone within the next 100 years.
- (d) An estimated 20 percent of the world's greenhouse gas emissions come from deforestation and forest degradation. Taking into account carbon sequestration potential, stopping the loss of tropical forests, mangroves, and wetlands could provide over 20 percent of climate mitigation by 2030.
- (e) California is an outspoken leader in addressing the climate crisis, with a plan to reduce the state's greenhouse gas emissions to 40 percent below 1990 levels by 2030.
- (f) Deforestation and forest degradation in many countries is closely associated with violations of the land rights of indigenous peoples and local communities and with the exploitation of workers, including forced labor and child labor, and in many cases is enabled by corruption, criminality, and violence against land defenders.
- (g) Tropical deforestation in many countries is also closely associated with illegal wildlife trafficking, including, but not limited to, various bird and reptile species, pangolins, and orangutans, and in many cases is enabled by corruption, criminality, and violence against conservationists.
- (h) California is inadvertently promoting and sanctioning tropical forest degradation and deforestation through the purchase of goods and products that have been produced in supply chains that contribute to forest degradation and deforestation.
- (i) California is the fifth largest economy in the world and its purchasing power has significant market force.
- (j) Hundreds of major consumer brands, commodity traders, and national and subnational governments have shown support for ending tropical deforestation. The New York Declaration on Forests set a goal to halve deforestation by 2020 and to end it by 2030, and is currently endorsed by more than 50 governments, more than 50 of the world's biggest companies, and more than 50

influential civil society and indigenous peoples' organizations. As a signatory to the New York Declaration on Forests, California has committed to ending deforestation by 2030.

(k) Legislative efforts to address the market for goods and products contributing to tropical deforestation have been lacking, yet the market is a key impetus for deforestation and degradation.

(l) It is the intent of the Legislature that it be the policy of this state to ensure companies contracting with the state are not contributing to tropical deforestation directly or through their supply chains.

SEC. 2. Section 6105 is added to the Public Contract Code, to read:

6105. (a) This section shall be known as the California Deforestation-Free Procurement Act.

(b) For purposes of this section, the following definitions shall apply:

(1) "Contractor" means any person, corporation, partnership, business entity, other organization, or combination thereof, that has entered into a contractual relationship with a state agency. "Contractor" does not include a contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a contractual relationship with a state agency for a public works project.

(2) "Forest-risk commodity" means any commodity, whether in raw or processed form, that is commonly grown, derived, harvested, reared, or produced on land where tropical deforestation occurred. Forest-risk commodities include, but are not limited to, palm oil, soy, beef, leather, lumber, paper, rubber, cocoa, coffee, wood, and wood pulp.

(3) "Free, Prior, and Informed Consent" (FPIC) means the principle that a community has the right to give or withhold its consent to proposed developments that may affect the land and waters it legally or customarily owns, occupies, or otherwise uses, as described in the United Nations Declaration on the Rights of Indigenous Peoples, the Indigenous and Tribal Peoples Convention of 1989, also known as the International Labor Organization Convention 169, and other international instruments. FPIC implies informed, noncoercive negotiations between investors, companies, or governments, and indigenous peoples and local communities, prior to project development.

(4) "Intact forest" means a tropical forest that has never been industrially logged and has developed following natural disturbances and under natural processes, regardless of its age. Intact forests have experienced nonindustrial-scale human impacts, such as those impacted only by traditional or subsistence activities, including traditional or subsistence activities carried out by indigenous communities.

(5) "Peat" means a soil that is rich in organic matter composed of partially decomposed plant materials equal to or greater than 40 centimeters of the top 100 centimeters of the soil.

(6) "Peatlands" means wetlands with a layer of peat made up of dead and decaying plant material. Peatlands includes moors, bogs, mires, peat swamp forests, and permafrost tundra.

(7) "Point-of-origin" means the geographical location, as identified by the smallest administrative unit of land, where a commodity was grown, derived, harvested, reared, or produced.

(8) "Tropical deforestation" or "deforestation" means direct human-induced conversion of tropical forest to agriculture, a tree plantation, or other nonforest land use, or severe and sustained degradation of a tropical forest resulting in significant intact forest loss or a profound change in species composition, structure, or ecological function of that forest.

(9) (A) "Tropical forest" means a natural ecosystem within the tropics containing native species composition, structure, and ecological function, with a tree canopy cover of more than 10 percent over an area of at least 0.5 hectares.

(B) "Tropical forest" shall include all of the following:

(i) Human-managed tropical forest or partially degraded tropical forest that is regenerating.

(ii) Forest areas within tropical latitudes identified as High Conservation Value (HCV) areas, as defined by the HCV Resource Network, as High Carbon Stock forests, as defined by the High Carbon Stock Approach, or by another methodology with equivalent or higher standards that includes primary forests and peatlands of any depth.

(C) "Tropical forest" shall not include tree plantations of any type.

(c) (1) Every contract entered into by a state agency that includes the procurement of any product comprised wholly or in part of a forest-risk commodity shall require that the contractor certify that the commodity furnished to the state pursuant to the contract

was not grown, derived, harvested, reared, or produced on land where tropical deforestation occurred on or after January 1, 2022. The contractor shall agree to comply with this provision of the contract.

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

(3) Contractors shall exercise due diligence in ensuring that their subcontractors comply with the requirements under paragraph (1). Contractors shall require each subcontractor to certify that the subcontractor is in compliance with the requirements of paragraph (1).

(d) (1) Any contractor contracting with the state for products comprised wholly or in part of a forest-risk commodity shall have a No Deforestation, No Peat, No Exploitation (NDPE) policy and shall make the policy and corresponding data publicly available.

(2) The NDPE policy shall contain at a minimum all of the following:

(A) Due diligence measures to identify the point-of-origin of forest-risk commodities and ensure compliance with the policy where supply chain risks are present.

(B) Data detailing the complete list of direct and indirect suppliers and supply chain traceability information, including refineries, processing plants, farms, and plantations, and their respective owners, parent companies, and farmers, maps, and geo-locations, for each forest-risk commodity found in products that may be furnished to the state.

(C) Measures taken to ensure the product does not contribute to tropical deforestation.

(D) Measures taken to ensure the FPIC of directly affected indigenous peoples and local communities.

(E) Measures taken to protect biodiversity and prevent the poaching of endangered species in all operations and adjacent areas.

(F) Measures taken to ensure compliance with the laws of countries where forest-risk commodities in a company's supply chain were produced.

(e) A contractor shall, on an annual basis or upon request from a state agency, provide evidence that the contractor is implementing its NDPE policy to the state agency the contractor is contracting with or to the Department of General Services or the Department of Justice.

(f) (1) Any contractor contracting with the state who knew or should have known that a product comprised wholly or in part of a forest-risk commodity was furnished to the state in violation of subdivision (c), may, subject to paragraph (2), have any or all of the following sanctions imposed:

(A) The contract under which the prohibited forest-risk commodity was furnished may be voided at the option of the state agency to which the commodity was furnished.

(B) The contractor may be assessed a penalty that shall be the greater of one thousand dollars (\$1,000) or an amount equaling 20 percent of the value of the product that the state agency demonstrates was comprised wholly or in part of a forest-risk commodity and furnished to the state in violation of subdivision (c).

(2) Notwithstanding paragraph (1), a contractor that has complied with the provisions of paragraph (3) of subdivision (c) shall not be subject to sanctions for violations, of which the contractor had no knowledge, of the requirements of subdivision (c) that were committed solely by a subcontractor. Sanctions described under paragraph (1) shall instead be imposed against the subcontractor that committed the violation.

(g) (1) When imposing the sanctions described in subdivision (f), the contracting agency shall notify the contractor or subcontractor of the right to a hearing, if requested, within 15 days of the date of the notice. The hearing shall be before an administrative law judge of the Office of Administrative Hearings in accordance with the procedures specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The administrative law judge shall take into consideration any measures the contractor has taken to ensure compliance with this section.

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

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

(2) Whenever a contracting officer of the contracting agency has reason to believe that the contractor failed to comply with subdivision (c) or (d), the agency shall refer the matter for investigation to the head of the agency and, as the head of the agency determines appropriate, to either the Director of General Services or the Department of Justice.

(i) Any person who certifies as true any material matter pursuant to this section that the person knows to be false shall be guilty of a misdemeanor.

(j) On or before July 1, 2023, the Department of General Services shall issue an informational notice or memorandum on a Deforestation-Free Code of Conduct to be used by contractors for purposes of complying with subdivisions (c) and (d). The notice or memorandum shall not be subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The Deforestation-Free Code of Conduct shall include, but is not limited to, all of the following:

(1) A list of forest-risk commodities subject to requirements in this section, including, but not limited to, palm oil, soy, beef, leather, lumber, paper, rubber, cocoa, coffee, wood, and wood pulp. The list shall be reviewed and updated every three years.

(2) A list of products derived wholly or in part from forest-risk commodities.

(3) A list of products furnished to the state or used by state contractors in high-volume purchases that contain or are comprised wholly or in part of forest-risk commodities.

(4) A set of responsible sourcing guidelines and policies derived from best practices in supply chain transparency to the point-of-origin.

(5) Guidance for contractors to assist the contractors in identifying forest-risk commodities in the supply chain and certifying that the commodity did not contribute to tropical deforestation.

(6) The full set of requirements for a contractor's No Deforestation, No Peat, No Exploitation policy pursuant to subdivision (d).

(k) (1) The certification requirements set forth in this section shall not apply to a credit card purchase of goods of two thousand five hundred dollars (\$2,500) or less.

(2) The total amount of goods exempted pursuant to paragraph (1) shall not exceed seven thousand five hundred dollars (\$7,500) per year for each contractor from which a state agency is purchasing goods by credit card. It shall be the responsibility of each state agency to monitor the use of this exemption and adhere to these restrictions on these purchases.

(l) This section shall apply to all contracts entered into, extended, or renewed on or after January 1, 2024.

SEC. 3. Section 10130 is added to the Public Contract Code, to read:

10130. A state agency shall not include in bid specifications for a public works project any wood or wood products whose importation and use is prohibited under the federal Lacey Act (16 U.S.C. Sec. 3371, et seq.).

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.