

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 389

Short Title: Transfer Child Nutrition Program to DACS. (Public)

Sponsors: Senators East, Rouzer, Apodaca; Brown, Brunstetter, Daniel, Davis, Hartsell, Pate, Rabon, Soucek, and Tillman.

Referred to: Agriculture/Environment/Natural Resources.

March 22, 2011

A BILL TO BE ENTITLED

AN ACT TO TRANSFER THE CHILD NUTRITION PROGRAM AND CHILD NUTRITION SERVICES OF THE DIVISION OF SCHOOL SUPPORT OF THE DEPARTMENT OF PUBLIC INSTRUCTION TO THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The Child Nutrition Program and Child Nutrition Services of the Division of School Support are transferred from the Department of Public Instruction to the Department of Agriculture and Consumer Services with all the elements of a Type I transfer as defined by G.S. 143A-6.

SECTION 1.(b) Article 7 of Chapter 143A of the General Statutes, is amended by adding a new section to read:

"§ 143A-65.2. Child Nutrition Program; transfer.

The Child Nutrition Program and Child Nutrition Services of the Division of School Support are transferred from the Department of Public Instruction to the Department of Agriculture and Consumer Services with all the elements of a Type I transfer as defined by G.S. 143A-6."

SECTION 2. Part 2 of Article 17 of Chapter 115C of the General Statutes reads as rewritten:

"Part 2. Food Service.

"§ 115C-263. Required provision of services.

As a part of the function of the public school system, local boards of education shall provide to the extent practicable school food services in the schools under their jurisdiction. All school food services made available under this authority shall be provided in accordance with standards and regulations recommended by the ~~Superintendent of Public Instruction~~ Commissioner of Agriculture of the Department of Agriculture and Consumer Services and approved by the ~~State Board of Education~~ Board of Agriculture.

"§ 115C-264. Operation.

(a) In the operation of their public school nutrition programs, the public schools shall participate in the National School Lunch Program established by the federal government. The program shall be under the jurisdiction of the ~~Division of School Support, Child Nutrition Services of the Department of Public Instruction~~ Department of Agriculture and Consumer Services and in accordance with federal guidelines as established by the Food and Nutrition Service of the United States Department of Agriculture.



1 (b) For nutritional purposes, the public schools shall not (i) use cooking oils in their
2 school food programs that contain trans-fatty acids or (ii) sell processed foods containing
3 trans-fatty acids that were formed during the commercial processing of the foods.

4 (c) All school food services shall be operated on a nonprofit basis, and any earnings
5 therefrom over and above the cost of operation as defined herein shall be used to reduce the
6 cost of food, to serve better food, or to provide free or reduced-price lunches to indigent
7 children and for no other purpose. The term "cost of operation" means the actual cost incurred
8 in the purchase and preparation of food, the salaries of all personnel directly engaged in
9 providing food services, and the cost of nonfood supplies as outlined under standards adopted
10 by the State Board of Education. "Personnel" means child nutrition supervisors or directors,
11 bookkeepers directly engaged in food service record keeping and those persons directly
12 involved in preparing and serving food. Child nutrition personnel shall be paid from the funds
13 of food services only for services rendered in behalf of the child nutrition program. Any cost
14 incurred in the provisions and maintenance of school food services over and beyond the cost of
15 operation shall be included in the budget request filed annually by local boards of education
16 with boards of county commissioners. Public schools are not required to comply with
17 G.S. 115C-522(a) in the purchase of supplies and food for such school food services.

18 **"§ 115C-264.1. Preference to high-calcium foods and beverages in purchasing contracts.**

19 (a) In addition to any requirements established by the United States Department of
20 Agriculture under the National School Lunch Program, the School Breakfast Program, or other
21 federally supported food service programs, local boards of education shall give preference in
22 purchasing contracts to high-calcium foods and beverages. For purposes of this section,
23 "high-calcium foods and beverages" means foods and beverages that contain a higher level of
24 calcium and that are equal to or lower in price than other products of the same type or quality.

25 (b) Notwithstanding the provisions of subsection (a) of this section, if a local school
26 board determines that a high-calcium food or beverage would interfere with the proper
27 treatment and care of an individual receiving services from the public school food program, the
28 local school board shall not be required to purchase a high-calcium food or beverage for that
29 individual. A local school board that has entered into a contract with a supplier to purchase
30 food or beverages before the effective date of this section is not required to purchase
31 high-calcium foods or beverages for the duration of that contract if purchasing those products
32 would change the terms of the contract.

33 **"§ 115C-264.2. Vending machine sales.**

34 (a) Each school may, with the approval of the local board of education, sell to students
35 beverages in vending machines during the school day so long as:

- 36 (1) Soft drinks are not sold (i) during the breakfast and lunch periods, (ii) at
37 elementary schools, or (iii) contrary to the requirements of the National
38 School Lunch Program;
- 39 (2) Sugared carbonated soft drinks, including mid-calorie carbonated soft
40 drinks, are not offered for sale in middle schools;
- 41 (3) Not more than fifty percent (50%) of the offerings for sale to students in
42 high schools are sugared carbonated soft drinks;
- 43 (4) Diet carbonated soft drinks are not considered in the same category as
44 sugared carbonated soft drinks; and
- 45 (5) Bottled water products are available in every school that has beverage
46 vending.

47 (b) Nothing in subsection (a) of this section prohibits a school from adopting stricter
48 policies with respect to beverage vending.

49 (c) Snack vending in all schools shall, by school year 2006-2007, meet the Proficient
50 Level of the NC Eat Smart Nutrition Standards, such that in elementary schools, no snack

1 vending is available to students, and in middle and high schools, seventy-five percent (75%) of
2 snack vending products have not more than 200 calories per portion or snack vending package.

3 ~~"§ 115C-264.3. Child Nutrition Program standards.~~

4 ~~The State Board of Education, in direct consultation with a cross section of local directors~~
5 ~~of child nutrition services, shall establish statewide nutrition standards for school meals, a la~~
6 ~~carte foods and beverages, and items served in the After School Snack Program administered~~
7 ~~by the Department of Public Instruction and child nutrition programs of local school~~
8 ~~administrative units. The nutrition standards will promote gradual changes to increase fruits~~
9 ~~and vegetables, increase whole grain products, and decrease foods high in total fat, trans fat,~~
10 ~~saturated fat, and sugar. The nutrition standards adopted by the State Board of Education shall~~
11 ~~be implemented initially in elementary schools. All elementary schools shall achieve a basic~~
12 ~~level by the end of the 2009-2010 school year, followed by middle schools and then high~~
13 ~~schools."~~

14 **SECTION 3.** Part 5 of Article 1 of Chapter 106 of the General Statutes is amended
15 by adding a new section to read:

16 **"§ 106-26.3. Child Nutrition Program in public schools.**

17 (a) All school food services made available under Part 2 of Article 17 of Chapter 115C
18 of the General Statutes shall be provided in accordance with standards and regulations
19 recommended by the Commissioner of Agriculture of the Department of Agriculture and
20 Consumer Services and approved by the Board of Agriculture. Further, the National School
21 Lunch Program established by the federal government shall be under the jurisdiction of the
22 Department of Agriculture and Consumer Services and in accordance with federal guidelines as
23 established by the Food and Nutrition Service of the United States Department of Agriculture.
24 The public schools shall, in the operation of their public school nutrition programs, participate
25 in the National School Lunch Program consistent with the provisions of Part 2 of Article 17 of
26 Chapter 115C of the General Statutes.

27 (b) The Board of Agriculture, in direct consultation with a cross section of local
28 directors of child nutrition services, shall establish statewide nutrition standards for school
29 meals, a la carte foods and beverages, and items served in the After School Snack Program
30 administered by the Department of Agriculture and Consumer Services and child nutrition
31 programs of local school administrative units. The nutrition standards will promote gradual
32 changes to increase fruits and vegetables, increase whole grain products, and decrease foods
33 high in total fat, trans fat, saturated fat, and sugar. The nutrition standards adopted by the Board
34 of Agriculture shall be implemented initially in elementary schools. All middle schools shall
35 achieve a basic level by the end of the 2011-2012 school year, followed by high schools."

36 **SECTION 4.** G.S. 106-22 is amended by adding a new subdivision to read:

37 "(18) Child Nutrition Program. – Have jurisdiction of the National School Lunch
38 Program and the Child Nutrition Program established by the federal
39 government."

40 **SECTION 5.** The Department of Public Instruction and the Department of
41 Agriculture and Consumer Services shall fully cooperate with, and assist in, the transfer of the
42 Child Nutrition Program and the transfer of Child Nutrition Services of the Division of School
43 Support under this act. All of the following are specific areas where cooperation and assistance
44 is needed to assure that a seamless transition occurs and there is no interruption in providing
45 child nutrition services to public school students:

46 (1) The Department of Public Instruction shall assist the Department of
47 Agriculture and Consumer Services in requesting and securing a waiver
48 from, and the approval of, the United States Department of Agriculture as
49 required under the federal National School Lunch Act, 42 U.S.C. § 1760(l),
50 for the transfer of the administrative responsibilities of the federally
51 supported National School Lunch Program from the State educational

1 agency, the Department of Public Instruction, to another State agency, the
2 Department of Agriculture and Consumer Services.

3 (2) The Department of Public Instruction shall cooperate in the transfer to the
4 Department of Agriculture and Consumer Services of any financial software
5 and computer equipment that is necessary to effectuate the transfer of federal
6 funds from the State department administering the federal Child Nutrition
7 Program to the school administrative units and child nutrition programs of
8 the school administrative units.

9 (3) The Department of Public Instruction and the Department of Agriculture and
10 Consumer Services shall cooperatively manage the transition of the direct
11 certification process. Accordingly, the Department of Public Instruction shall
12 share with the Department of Agriculture and Consumer Services the
13 information made available to the Department of Health and Human
14 Services under the federal Supplemental Nutrition Assistance Program
15 identifying which students are from households that receive benefits under
16 this federal Program. Further, the Department of Public Instruction shall
17 transfer to the Department of Agriculture and Consumer Services the
18 capability of the Department of Public Instruction to convey this information
19 to the school administrative units so that these identified students may
20 continue to receive free school meals without interruption and without the
21 need for an application to be submitted by the student's head of household.

22 (4) The Department of Public Instruction and the Department of Agriculture and
23 Consumer Services shall work cooperatively to manage and maintain the
24 confidentiality of confidential student information, including the information
25 that relates to eligibility for free lunches and lunches at a reduced price.

26 (5) Any current procurement alliance or partnership of local boards of education
27 to procure food and school supplies for the alliance or partnership shall
28 continue in order to obtain more competitive pricing than would be available
29 to an individual local board of education. Accordingly, any duties and
30 functions of the Department of Public Instruction regarding any such
31 alliance or partnership as such duties and functions pertain to the
32 procurement of food or supplies for the Child Nutrition Program or Child
33 Nutrition Services shall be transferred to the Department of Agriculture and
34 Consumer Services.

35 **SECTION 6.** The Revisor of Statutes shall make the conforming statutory changes
36 necessary to reflect the transfers under Section 1 of this act. The Revisor of Statutes may
37 correct any reference in the General Statutes to the statutes that are recodified by this act and
38 make any other conforming changes necessitated by this act.

39 **SECTION 7.** This act becomes effective July 1, 2011.