

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 7219 PCB SAC 11-01 School Food Service and Nutrition Programs

SPONSOR(S): Education Committee; State Affairs Committee; McKeel and others.

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1312

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee	18 Y, 0 N	Kaiser	Hamby
1) Education Committee	15 Y, 0 N, As CS	Ourand	Klebacha
2) Appropriations Committee	22 Y, 0 N, As CS	Massengale	Leznoff

SUMMARY ANALYSIS

The bill transfers the school food and nutrition programs from the Department of Education (DOE) to the Department of Agriculture and Consumer Services (DACS). The transfer includes all powers, duties, functions, records, personnel, property, pending issues and existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds for the administration of the school food and nutrition programs. The bill also transfers the Food and Nutrition Services Trust Fund in the DOE to the DACS.

The National School Lunch Program (NSLP), the School Breakfast Program (SBP), the Summer Food Service Program (SFSP), the Commodity Food Distribution Program, and The Emergency Food Assistance Program (TEFAP) are all federal programs administered by the U.S. Department of Agriculture (USDA) at the national level. At the state level in Florida, the NSLP, SBP, and SFSP are administered by the DOE, while the Commodity Food Distribution Program and TEFAP are administered by the DACS.

The bill authorizes the DACS to conduct, supervise, and administer all school food and nutrition programs that are carried out using federal or state funds or funds from other sources, and to coordinate with the federal government to take advantage of any federal financial allotments and assistance that would benefit the school food and nutrition programs. The DACS may act as an agent of, or contract with, the federal government, another state agency, or any county or municipal government regarding the administration of the school food and nutrition program, including the distribution of funds provided by the federal government in support of the school food and nutrition program.

The bill requires each school district to submit an updated copy of its wellness policy and physical education policy to the DOE and the DACS when a change or revision is made. The DACS, as well as the DOE, must provide website links to information regarding the nutritional content of foods and beverages and to healthful food choices in accordance with the dietary guidelines of the USDA.

The bill requires the DOE, in consultation with the DACS, to develop and submit a waiver request to the USDA within 30 days of the bill becoming law. The bill also requires the DOE to provide notice of the USDA's response to certain officials.

For the 2010-11 fiscal year, Florida's matching funds include \$8.9 million for the school lunch program; \$7.6 million for the school breakfast program, and \$344,433 for cafeteria inspection fees; federal reimbursement is estimated to be \$804 million. In addition, there are federal indirect earnings as a result of participation in the NSLP, which are used to support department-wide management activities.

The bill provides multiple effective dates. The provision requiring the DOE to submit a waiver request and the provision providing the effective dates are effective upon becoming law. The effective date for all other provisions is January 1, 2012, and is contingent upon the USDA granting the waiver request on or before November 1, 2011.

See FISCAL COMMENTS and DRAFTING ISSUES OR OTHER COMMENTS.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h7219c.APC

DATE: 4/20/2011

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The National School Lunch Program (NSLP), the School Breakfast Program (SBP), the Summer Food Service Program (SFSP), the Commodity Food Distribution Program, and The Emergency Food Assistance Program (TEFAP) are all federal programs administered by the U.S. Department of Agriculture (USDA) at the national level. At the state level in Florida, the NSLP, SBP, and SFSP are administered by the Department of Education (DOE), while the Commodity Food Distribution Program and TEFAP are administered by the Department of Agriculture and Consumer Services (DACS).

Programs Administered by the DOE

National School Lunch Program (NSLP)

The NSLP is a federally assisted meal program that provides nutritionally balanced, low-cost or free lunches to more than 31 million children each school day.¹

School districts and independent schools that choose to take part in the NSLP receive cash subsidies and donated commodities from the USDA for each meal those schools serve. In return, those schools must serve lunches that meet federal requirements, and offer free or reduced-price lunches to eligible children. School lunches must meet the applicable recommendations of the Dietary Guidelines for Americans, which recommend that no more than 30 percent of an individual's calories come from fat, and less than 10 percent from saturated fat. Regulations also require school lunches to provide one-third of the Recommended Dietary Allowances of protein, Vitamin A, Vitamin C, iron, calcium, and calories. While the NSLP must meet federal nutrition requirements, the decision regarding the specific foods to serve and how they are prepared are made by local school food authorities.²

Any child at a participating school may purchase a meal through the NSLP. Children from families with incomes at or below 130 percent of the poverty level³ are eligible for free meals. Children from families with incomes between 130 percent and 185 percent of the poverty level are eligible for reduced-price meals.⁴ Children from families with incomes over 185 percent of poverty pay a full-price, though their meals are still subsidized to some extent. Local school food authorities set their own prices for full-price (paid) meals, but must operate their meal services as non-profit programs.⁵

Children whose families participate in the Supplemental Nutrition Assistance Program (SNAP),⁶ Temporary Assistance for Needy Families (TANF), or the Food Distribution Program on Indian Reservations (FDPIR) are categorically eligible for free meals through the NSLP. Direct certification is designed to reduce the need for categorically eligible households to complete applications to receive meals through the NSLP. This is accomplished by automatically providing documentation showing categorical eligibility for NSLP for children coming from households receiving SNAP, TANF, or FDPIR benefits. Currently, states are only mandated to provide direct certification for SNAP beneficiaries, but are permitted to do so for TANF and FDPIR recipients.⁷

¹ Based on information from fiscal year 2009. United States Department of Agriculture, *National School Lunch Program Fact Sheet*, available at, <http://www.fns.usda.gov/cnd/lunch/AboutLunch/NSLPFactSheet.pdf> (last visited April 6, 2011).

² *Id.*

³ For the period July 1, 2010, through June 30, 2011, 130 percent of the poverty level is \$28,665 for a family of four; 185 percent is \$40,793. *Id.*

⁴ Reduced-price meals may not cost more than 40 cents. *Id.*

⁵ *Id.*

⁶ Formerly referred to as the Food Stamp Program.

⁷ United States Department of Agriculture, *Food and Nutrition Services, Direct Certification in the National School Lunch Program: State Implementation Progress Report to Congress*, October 2009, available at, <http://www.fns.usda.gov/ora/menu/published/CNP/FILES/NSLPDirectCertification2009.pdf> (last visited April 8, 2011).

To participate in the school lunch and breakfast programs in Florida, schools must apply through the DOE and complete the necessary requirements for participation. The requirements include:

- Completing the application process.
- Attending “Child Nutrition” training.
- Maintaining documentation and verification of children’s eligibility category and counting meals by eligibility category (free, reduced price, and paid meals).
- Maintaining meal production records and inventory records that document the amount and types of food served.
- Utilizing one of the four menu planning options.
- Maintaining records of on-site accountability reviews.
- Maintaining records of all program income and expenditures.⁸

Once approved, the schools receive funding from the DOE for each lunch and breakfast meal served as long as the schools meet established state and federal regulations.⁹ The DOE conducts periodic reviews of the school lunch and breakfast programs to ensure that state and federal regulations are being met. The DOE has authority for the administration and operation of the school food service programs.¹⁰

School Breakfast Program (SBP)

Florida law requires the SBP to be offered in all elementary public and charter schools. The SBP must be offered in schools in which 80 percent or more of the students are eligible for free or reduced-price meals. District school boards are encouraged to provide universal-free school breakfast meals to all students in each elementary, middle, and high school. The schools can choose to make the breakfast meals available at alternate areas on the school campus, such as kiosks near bus ramps.¹¹

School districts set the prices for the breakfast meals annually. Unless the district school board approves lower rates, the cost of the breakfast meals may not exceed the combined federal reimbursements and state allocations.¹²

District school boards may approve or disapprove a policy, after taking public testimony, making universal-free school breakfast meals available to all students in each middle and high school in which 80 percent or more of the students are eligible for free or reduced-price meals. The breakfast meal must be available for students arriving at school on the school bus less than 15 minutes before the first bell rings, in which case the student will be allowed at least 15 minutes to eat the breakfast.¹³

School districts are responsible for disseminating information annually to students regarding the district’s school breakfast program through school announcements and written notice provided to all parents.¹⁴

School districts may operate the SBP providing for food preparation at the school site or in central locations with distributions to designated satellite schools or any combination thereof.¹⁵

The Commissioner of Education must make every reasonable effort to ensure that schools designated as “severe need” schools receive the highest rate of reimbursement for which they are entitled for each breakfast meal served.¹⁶ The DOE is responsible for allocating the monies appropriated by the

⁸ Florida Department of Education, *National School Lunch and Breakfast Program: Program Description and Requirements*, available at, <http://www.fldoe.org/FNM/natlschoollunch/descriptions.asp> (last visited April 6, 2011).

⁹ The state must adhere to a matching funds requirement in the National School Lunch Act. For 2010-11, the state’s matching requirement was \$8.9 million, which came from the General Revenue Fund.

¹⁰ Florida Department of Education, *National School Lunch and Breakfast Program*, *supra* note 8.

¹¹ Section 1006.06, F.S.

¹² Section 1006.06(5)(b), F.S.

¹³ Section 1006.06(5)(c)-(d), F.S.

¹⁴ Section 1006.06(5)(e), F.S.

¹⁵ Section 1006.06(5)(f), F.S.

¹⁶ Section 1006.06(5)(g), F.S. A “severe needs” school is a school that served 40 percent or more of its lunches as free and reduced in the second preceding year. 7 C.F.R. 220.9(d)(2).

Legislature each year to the school districts based upon each district's total number of free and reduced-price breakfast meals served.¹⁷

Children's Summer Nutrition Program (SNP)

The SNP, also known as the "Ms. Willie Ann Glenn Act," operates through the NSLP or SBP as a way of feeding children, 18 years of age or younger, from low-income areas during the summer months.¹⁸

Florida law directs school districts to develop a plan to sponsor a SNP with operational sites within 5 miles of at least one elementary school with 50 percent or more of the students eligible for free or reduced-price school meals and for a duration of 35 consecutive days. Secondary sites must be within 10 miles of each elementary school with 50 percent or more of the students eligible for free or reduced-price school meals.¹⁹

A district school board may opt out of sponsoring a SNP. To qualify for the exemption, the district must include the issue on an agenda at a regular or special district school board meeting that is publicly noticed, provide residents an opportunity to participate in the discussion, and vote on whether to be exempt from sponsoring a SNP. After deciding to become exempt, the district school board must notify the Commissioner of Education within 10 days. The district must revisit the decision to be exempt each year and notify the Commissioner of Education accordingly.²⁰

If a district school board chooses to be exempt from the SNP, the board may encourage not-for-profit entities to sponsor the SNP. Neither the district school board, school district, nor the Commissioner of Education may be held responsible for any liability as a result of a not-for-profit entity failing to complete the requirements of the SNP.²¹

The superintendent of schools may cooperate with municipal and county governmental agencies and private, not-for-profit leaders in identifying an entity and location to sponsor the SNP.²² By February 15 of each year, the DOE must provide each district school board with a list of local organizations that have filed letters of intent to participate in the SNP for a district school board to be able to determine how many sites are needed to serve the children and where to place each site.²³ Each school district with a SNP must report where the SNP will be located to the DOE by April 15 of each year.

Seamless Summer Option (SSO)

School districts participating in the NSLP or SBP are eligible to apply for the SSO to serve free meals to low-income children, 18 years of age or younger, during summer and other school vacation periods. This option reduces paperwork and administrative burdens. The reimbursement rates are the same as with the NSLP and the SBP.²⁴

Special Milk Program (SMP)

The SMP provides milk to children in schools, child care institutions, and eligible camps that do not participate in other federal child nutrition meal service programs. The program reimburses schools and institutions for the milk they serve. Schools in the NSLP or the SBP may also participate in the SMP to provide milk to children in half-day pre-kindergarten and kindergarten programs where children do not have access to school meal programs.²⁵

Fresh Fruit and Vegetable Program (FFVP)

¹⁷ Section 1006.06(5)(h), F.S.

¹⁸ Section 1006.0606, F.S.

¹⁹ Section 1006.0606(2), F.S.

²⁰ Section 1006.0606(3)(a)-(b), F.S.

²¹ Section 1006.0606(3)(c), F.S.

²² Section 1006.0606(4), F.S.

²³ Section 1006.0606(5), F.S.

²⁴ United States Department of Agriculture, *National School Lunch Program's Seamless Summer Option Questions and Answers 2009 Edition*, available at, http://www.fns.usda.gov/cnd/Governance/Policy-Memos/2009/SP_27-2009_os.pdf (last visited April 6, 2011).

²⁵ United States Department of Agriculture, *Special Milk Program Fact Sheet*, available at, <http://www.fns.usda.gov/cnd/milk/AboutMilk/SMPFactSheet.pdf> (last visited April 6, 2011).

The FFVP provides all children in participating schools with a variety of free fresh fruits and vegetables outside of the breakfast and lunch service. It is an effective and creative way of introducing fresh fruits and vegetables as healthy snack options.²⁶

Florida Farm Fresh Schools Program (FFSP)

The FFSP was created to address the need of school children for not only nutritious food for healthy physical and intellectual development, but also to combat diseases related to poor nutrition and obesity. The FFSP requires the DOE to develop policies pertaining to school food services that encourage school districts to buy fresh and high-quality foods grown in the state, when feasible. The program encourages farmers in the state to sell their products to school districts and schools. The school districts and schools are encouraged to select foods based upon maximum nutritional content and to buy organic food products when feasible. The DOE must provide outreach, guidance, and training to the school districts, schools, and various other organizations²⁷ involved in school food services regarding the benefits of fresh food products grown in the state.²⁸

Other

Each school district must submit an updated copy of its wellness policy and physical education policy to the DOE when a change or revision is made. The DOE must provide website links to information regarding the nutritional content of foods and beverages and to healthful food choices in accordance with the dietary guidelines of the USDA.²⁹

DOE Administration of Child Nutrition Programs

The DOE employs 45 staff with an administrative budget of \$6,461,745³⁰ to administer the school and child nutrition programs for the following sponsors:

- 248 NSLP sponsors, including 3,578 breakfast sites, 3,651 lunch sites, and 1,655 snack sites;
- 135 SNP and SSO sponsors;
- 18 SMP sponsors; and
- 133 elementary schools that are participating in the 2010-2011 FFVP.³¹

In addition, the DOE:

- Operates and maintains a web-based computer application to process \$745 million of claims reimbursements, sponsor applications, administrative program reviews, and federal reports.
- Provides sponsor training and technical support in child nutrition, food safety, and administrative services for all sponsors.
- Conducts on-site monitoring and administrative reviews of program administration and meal services for all sponsors.
- Evaluates and provides nutrient analysis of breakfast and lunch menus for all sponsors.
- Provides outreach throughout the state to attract potential sponsors for the SNP and increase participation in the SBP.³²

To provide these services, the DOE works with the Florida Atlantic University to administer two grants:

- \$700,000 to deliver on-site training in a variety of areas, including producing and maintaining appropriate food service records, food preparation and safety, preparing and serving fresh fruits and vegetables, and the production of training videos; and
- \$900,000 to observe and evaluate the scope of difficulties related to compliance, provide technical assistance to individual sponsors, provide technical assistance to companies that contract to deliver food products and services, assist sponsors with completing paperwork and

²⁶ United States Department of Agriculture, *Fresh Fruit and Vegetable Program (FFVP)*, available at, http://www.fns.usda.gov/cga/FactSheets/FFVP_Quick_Facts.htm (last visited April 6, 2011); Florida Department of Education, *Fresh Fruit and Vegetable Program*, available at, <http://www.fldoe.org/FNM/ffvp/> (last visited April 8, 2011).

²⁷ School food service directors, parent and teacher organizations, and students.

²⁸ Section 1006.06(6), F.S.

²⁹ Section 1003.453(1)-(2), F.S.

³⁰ Based on the 2010-11 fiscal year.

³¹ Department of Education Analysis at 6.

³² *Id.*

taking the steps necessary to achieve and maintain regulatory compliance related to free and reduced meals, and the maintenance and technical support of DOE's "FUNDamental" financial software, which is used to measure critical indicators of the financial effectiveness of a sponsor's child nutrition program.³³

The DOE has formed several alliances and initiatives to help meet nutrition guideline requirements, combat childhood obesity, and promote interagency participation and coordination.³⁴ The DOE's Office of Healthy Schools also helps to provide nutrition education to school districts throughout the state.³⁵

Programs Administered by the DACS

The Commodity Program Portion of the NSLP and the SNP

The DACS administers the Commodity Program portion of the NSLP and the SNP.³⁶ The Richard B. Russell National School Lunch Act requires that no less than 12 percent of the federal support received by schools pursuant to the NSLP each year must be in the form of USDA food (commodities).³⁷

Each year, the DACS receives an allocation from the USDA based upon the number of meals served the previous year. As the state agency responsible for ordering the commodities for the schools, the DACS provides information to the schools on which foods the USDA intends to acquire, determines from the schools how much, if any, of each of the commodities available they would like to requisition and orders the foods. The USDA is responsible for procuring and purchasing these commodities.³⁸

During school year 2010, the DACS provided more than 69 million pounds of USDA food valued at approximately \$55,516,427 to about 193 participating schools (public school districts, private schools, residential child care institutions, etc.) throughout the state. An additional \$4,442,500 in fresh fruits and vegetables was also provided.

In 2011, the DACS will provide more than 75 million pounds of USDA food, valued at more than \$66 million, in addition to another \$3,077,000 in fresh fruits and vegetables to participating Florida schools.

The DACS developed and maintains the Florida Farm to School Program website to bring schools and farmers together to assess each other's needs and determine how best to meet those needs. As a founding member of the Farm to School Alliance, the DACS participates and provides input at Alliance meetings. For the last three years, the DACS has participated in various panel presentations and exhibitions promoting the consumption of fresh produce at the Florida Small Farms and Alternative Enterprises Conference.

For years, the DACS has been an active participant in the Florida School Nutrition Association annual conference. In addition to conducting workshops on the administration of the USDA foods, the DACS, in conjunction with the Department of Defense, is an exhibitor at the conference, promoting the consumption of fresh produce, in particular Florida fresh fruits and vegetables, in schools. At the 2011 conference, the DACS' chef will be demonstrating ways to entice students to consume more Florida fruits and vegetables.

In keeping with the DACS's mission of providing healthy nutrition from the time children are young, the DACS has developed the Fresh From Florida Kids Program. The program is designed to help parents instill healthy eating habits in their children who are just beginning to eat solid food. Research suggests

³³ *Id.*

³⁴ *Id.* at 6-7.

³⁵ *Id.* at 7.

³⁶ Office of Program Policy Analysis and Government Accountability (OPPAGA), *No changes are necessary to the State's Organization of School Nutrition Programs*, Report No. 09-03, January 2009, available at, <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0903rpt.pdf> (last visited April 6, 2011).

³⁷ 42 U.S.C. 1755(e).

³⁸ OPPAGA, *supra* note 36.

that taste preferences and eating habits are fully developed by the time a child is three years old, so starting early is essential.³⁹

As children get older, the DACS introduces them to good nutrition through Xtreme Cuisine. Xtreme Cuisine Cooking School teaches children about nutrition and introduces them to an array of fresh, nutritious foods available in Florida. The program can be used by teachers, extension agents, health and family services professionals, and many others who work with Florida youth to teach children the nutritional attributes and other pertinent information about Florida agricultural commodities while providing basic cooking skills.⁴⁰

Commodity Food Distribution Program

Through the Schools/Nutrition Commodity Programs, the USDA purchases foods through direct appropriations from Congress, and under surplus-removal and price-support activities. The foods are distributed to state agencies for use by school food authorities participating in the NSLP.⁴¹ In Florida, DACS is the agency responsible for commodity distribution.⁴²

The Emergency Food Assistance Program (TEFAP)

TEFAP is a federal program that helps improve the diets of low-income Americans, regardless of age, by providing them with emergency food and nutrition assistance at no cost. Under TEFAP, commodity foods are made available by the USDA to the states. The states provide the food to eligible recipient agencies that distribute it to the needy through local emergency feeding organizations such as food banks, food pantries, soup kitchens, or other feeding sights.⁴³

In Florida, the recipient agencies are selected by the DACS, every four years, as a result of a competitive procurement process or bid. TEFAP commodities are provided to each of the contracted recipient agencies according to the counties they serve. Each county's share is determined using a formula that bases the allocation on each county's relative share of the state's total number of persons with incomes below the poverty line and the total number of unemployed persons. This formula, which is similar to the one used by the federal government to allocate resources to the states, is adjusted annually.⁴⁴

Office of Program Policy and Government Accountability (OPPAGA), Report No. 09-02⁴⁵

In January 2009, the OPPAGA reviewed the practices of school districts for ways to reduce their food service program costs. In the report, *Best Practices Could Help School Districts Reduce Their Food Service Program Costs*, the OPPAGA found:

- Districts should maximize the use of USDA commodities.
- Districts should ensure that program employees have access to policies and procedures.
- Districts should ensure that the food service staff receives appropriate training.
- Districts should promote their food service program.
- Districts should identify and reduce participation barriers.

³⁹ Florida Department of Agriculture and Consumer Services, *Fresh From Florida Kids*, available at, <http://www.freshfromfloridakids.com/> (last visited April 8, 2011).

⁴⁰ Florida Department of Agriculture and Consumer Services, *Xtreme Cuisine Cooking School*, available at, <http://www.florida-agriculture.com/xtreme.htm> (last visited April 8, 2011).

⁴¹ United States Department of Agriculture, *Schools/CN Commodity Programs*, available at, http://www.fns.usda.gov/fdd/programs/schcnp/schcnp_faqs.htm (last visited April 6, 2011).

⁴² Section 570.072, F.S.

⁴³ United States Department of Agriculture, *TEFAP Frequently Asked Questions*, available at, http://www.fns.usda.gov/fdd/programs/tefap/tefap_faqs.htm (last visited April 6, 2011).

⁴⁴ Florida Department of Agriculture, *The Emergency Food Assistance Program (TFAP)*, available at, http://www.florida-agriculture.com/foodprograms/emergency_food_program.htm (last visited April 6, 2011).

⁴⁵ Office of program Policy and Government Accountability (OPPAGA), *Best Practices Could Help School Districts Reduce Their Food Service Program Costs*, Report No. 09-02, January 2009, available at, <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0902rpt.pdf> (last visited April 6, 2011).

The OPPAGA reviewed Florida's school nutrition programs in January 2009. In the report, *No Changes Are Necessary to the State's Organization of School Nutrition Programs*, the OPPAGA found:

- The current structure aligns key program activities with the core missions of state agencies.
- There is no compelling reason to change the current structure of Florida's school nutrition programs.
- Changing the structure would not produce identifiable cost savings or other substantial benefits.
- Transferring programs and functions from one agency to another would likely result in short-term disruptions in services to school districts.
- There would need to be procedures in place to protect the privacy of information that needs to be shared in order to determine eligibility for the programs and to ensure that school districts would not have to provide duplicate data to both state agencies.⁴⁷

In the same report, the OPPAGA outlines advantages of consolidating the school nutrition and commodity programs in Florida, including:

- Potential efficiencies;
- Improved coordination;
- Increased program visibility and administrative support; and
- Programs could take advantage of the DACS's food and nutrition mission and expertise.

Waiver Request Requirements

Section 12 of the Richard B. Russell National School Lunch Act (NSLA) requires "state educational agencies" to have an agreement with the USDA, which affirms the administrative responsibilities for these programs.⁴⁸ A state may not transfer the NSLP to a non-educational state agency, such as the DACS, unless the state officially requests a waiver of the law and applicable program regulations and the USDA approves the waiver request.⁴⁹

A waiver request submitted by a state must include specific details to be considered. The requirements for a waiver are set forth in section 12(l) of the NSLA.⁵⁰ At a minimum the request must include:

- Identification of the state agency for which the waiver is being sought, including a description of the size and scope of its program.
- A description of the specific statutory or regulatory requirements for which the waiver is being sought.
- A description of the impediments to the efficient operation and administration of the program that caused the waiver to be sought.
- A description of the actions the state has undertaken to remove any state-level barriers, either statutory or regulatory, to achieve the result sought under the waiver (if applicable).
- A description of the state's expectation as to how the waiver will improve services and the expected outcomes if the waiver is granted.
- A description of the process used by the state to provide notice and information to the public regarding the proposed waiver.⁵¹

In addition, the waiver must provide information and assurance that there will be no increase in the federal cost of the program.⁵²

⁴⁶ OPPAGA, *supra* note 36.

⁴⁷ For a greater discussion of the privacy issue, see the subsection entitled Confidentiality.

⁴⁸ 42 U.S.C. 1760(b).

⁴⁹ 42 U.S.C. 1760(l).

⁵⁰ *Id.*

⁵¹ United States Department of Agriculture, *Public Law 104-193 Changes to Applications for Waivers in the Child Nutrition Programs*, December 2, 1996, available at, <http://www.fns.usda.gov/cnd/Care/Regs-Policy/policymemo/1999-1996/1996-12-2.pdf#xml=http://65.216.150.153/tehis/search/pdfhi.txt?query=waiver+request+and+school+lunch&pr=FNS&prox=page&rorder=500&rprox=500&rdfreq=500&rwfreq=500&rlead=500&rdepth=0&sufs=0&order=r&mode=&opts=&cq=&sr=&id=4d9cfc1956> (last visited April 6, 2011).

⁵² 42 U.S.C. 1760(l)(1)(A)(iii).

On March 4, 2011, the USDA sent a letter to the DOE and DACS stating that the waiver requirements would have to be met for the waiver to be approved and the NSLP, SBP, SMP, and SFSP to be transferred to the DACS.

Type Two Transfer

There are two types of transfers provided by statute for the reorganization of the executive branch.⁵³ A type one transfer involves transferring an entire agency or department to another agency or department to become a unit of that agency or department.⁵⁴

Type two transfers involve merging an existing agency, department, program, activity, or function into another agency or department.⁵⁵ All of the statutory powers, duties, and functions, and records, personnel, property, and unexpended balances of appropriations, allocations, or other funds are also transferred.⁵⁶ The head of the agency or department to which the agency, department, program, activity, or function is transferred is authorized to establish units or subunits to which the agency or department is assigned, and to assign administrative authority for identifiable programs, activities, or functions.⁵⁷ Finally, the administrative rules in effect immediately before the transfer remain in effect until specifically changed.⁵⁸

Confidentiality

To administer the school nutrition programs, the DOE and the Department of Children and Family Services (DCF) need to share sensitive information about the students to determine eligibility based on whether students receive SNAP benefits, temporary cash assistance (TCA), or Medicaid. Such information includes: name, county of residence, social security number, date of birth, race, and sex. The DOE and DCF currently have a Memorandum of Understanding (MOU), which provides that both parties agree to adhere to the state and federal laws which protect the disclosure of such information.⁵⁹

Effect of Proposed Changes

The bill implements a type two transfer of the school food and nutrition programs from the Department of Education (DOE) to the Department of Agriculture and Consumer Services (DACS) and refers to the act as the "Healthy Schools for Healthy Lives Act." The transfer includes all powers, duties, functions, records, personnel, property, pending issues and existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds for the administration of the school food and nutrition programs. The bill also transfers the Food and Nutrition Services Trust Fund⁶⁰ in the DOE to the DACS.⁶¹

The bill authorizes the DACS to conduct, supervise and administer all school food and nutrition programs that are carried out using federal or state funds or funds from other sources, and to cooperate with the federal government to benefit from any federal financial allotments and assistance that would benefit the school food and nutrition programs. The DACS may act as an agent of, or contract with, the federal government, another state agency, or any county or municipal government regarding the

⁵³ Section 20.06, F.S.

⁵⁴ Section 20.06(1), F.S.

⁵⁵ Section 20.06(2), F.S.

⁵⁶ Section 20.06(2)(a), F.S. Except for those statutory powers, duties, and functions, and records, personnel, property, and unexpended balances of appropriations, allocations, or other funds transferred elsewhere or unless otherwise provided by law. *Id.*

⁵⁷ Section 20.06(2)(b), F.S.

⁵⁸ Section 20.06(2)(c), F.S.

⁵⁹ DOE and DCF, *Memorandum of Understanding*. The MOU is authorized by Section 9(b) of the Richard B. Russell National School Lunch Act and Section II of the SNAP Act. *Id.*; 42 U.S.C. § 1758(b); 7 U.S.C. § 2020(u).

⁶⁰ FLAIR number 48-2-2315, in DOE, is transferred to DACS, FLAIR number 42-2-2315.

⁶¹ Federal law requires that state education agencies administer the school food and nutrition program. However, two states, Texas and New Jersey, have sought and received federal approval to administer their school food and nutrition programs through their agricultural agency. Therefore, Florida would have to apply for, and receive, a waiver before the DACS could take over the administration of the school food and nutrition program. E-mail, United States Department of Agriculture, April 7, 2011.

administration of the school food and nutrition programs, including the distribution of funds provided by the federal government in support of the school food and nutrition programs.

The bill requires each school district to submit an updated copy of its wellness policy and physical education policy to the DOE and the DACS when a change or revision is made. The DACS, as well as the DOE, shall provide website links to information regarding the nutritional content of foods and beverages and to healthful food choices in accordance with the dietary guidelines of the USDA.

The bill transfers statutory language regarding the administration of the school food and nutrition program from chapter 1006, F.S., which falls under the jurisdiction of the DOE, to chapter 570, F.S., which falls under the jurisdiction of the DACS.

The bill requires the DOE, in consultation with the DACS, to develop and submit a request for a waiver to the USDA within 30 days of the bill becoming law. It further requires the DOE to report the USDA's response to the President of the Senate, the Speaker of the House of Representatives, and the Governor. The DOE must include a copy of the response in this notice.

The bill provides multiple effective dates. The provision requiring the DOE to submit a waiver request and the provision providing the effective dates are effective upon becoming law. The effective date for all other provisions is January 1, 2012, and is contingent upon the USDA granting the waiver request on or before November 1, 2011.

B. SECTION DIRECTORY:

Section 1: Designates the act as the "Healthy Schools for Healthy Lives Act."

Section 2: Transfers the Food and Nutrition Services Trust Fund from the Department of Education (DOE) to the Department of Agriculture and Consumer Services (DACCS).

Section 3: Transfers all powers, duties, functions, records, personnel, property, pending issues and existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds for the administration of the school food and nutrition program by a type two transfer from the DOE to the DACCS.

Section 4: Creates s. 570.98, F.S.; directs the DACCS to conduct, supervise and administer all school food and nutrition programs carried out using federal or state funds, or funds from any other source; and directs the DACCS to cooperate with the federal government and its agencies and instrumentalities to receive benefit of all federal financial allotments and assistance possible to carry out the school food and nutrition program.

Section 5: Transfers and renumbers s. 1006.06, F.S., to s. 570.981, F.S.; changes jurisdiction from the DOE to the DACCS; and, removes obsolete dates.

Section 6: Transfers and renumbers s. 1006.0606, F.S., to s. 570.982, F.S.; removes obsolete dates; and, changes jurisdiction from the DOE to the DACCS.

Section 7: Transfers and renumbers s. 1010.77, F.S., to s. 570.983, F.S.; changes jurisdiction from the DOE to the DACCS.

Section 8: Amends s. 1003.453, F.S.; removes obsolete dates; requires each school district to submit a copy of its school wellness policy to the DACCS when a change or revision is made; and requires the DACCS to provide website access to information regarding nutritional content of foods and beverages, as well as healthful food choices in accordance with the dietary guidelines of the U.S. Department of Agriculture.

Section 9: Requires the DOE, in consultation with the DACCS, to develop and submit a request for a waiver to the USDA to transfer administration of the school food service and nutrition programs;

requires notification relating to the outcome of the request for a waiver; and provides an effective date of becoming law for this section only.

Section 10: Provides for contingent effect based upon federal approval of a request for a waiver; provides effective dates.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments section.

2. Expenditures:

See Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Below is the projected revenue and expenditures for the school food and nutrition programs. The Fiscal Year 2011-12 increase in federal funds is based on projected enrollment growth and the number of students eligible for the programs. The \$2 million reduction in the School Breakfast Program is the result of a reduction taken in the supplemental funding in the House proposed General Appropriations Act for the 2011-12 fiscal year. This does not, however, affect federal reimbursement.

In Fiscal Year 2009-10, the DOE received \$631,410 in federal indirect earnings as a result of participation in the National School Lunch Program. These earnings are used to support management activities that are department-wide in nature and include activities such as purchasing, accounting, human resources, grants management, and legal services.⁶² The DACS would receive any earnings that arise as a result of participation in the National School Lunch Program after the transfer.

The bill transfers the programs from Department of Education to the Department of Agriculture and Consumer Services effective January 1, 2012, leaving approximately half of Fiscal Year 2011-12 in DOE and half in DACS.

Program	FY 2010-11	FY 2011-12
National School Lunch Program General Revenue (State Match)	\$8.9 million	\$8.9 million
School Breakfast Program General Revenue (State Match)	\$7.6 million	\$5.6 million

⁶² The information contained in this section was prepared by the House Agriculture and Natural Resources Appropriations Subcommittee staff. E-mail, Agriculture and Natural Resources Staff, April 6, 2011.

Cafeteria Inspection Fees General Revenue*	\$344,433	\$344,433
USDA Food and Nutrition Services Trust Fund	\$804.3 million	\$942.3 million

*Available remaining balance used to offset a small portion of participating schools' health inspection costs.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Rule-making authority regarding the school food and nutrition programs is granted to the Department of Agriculture and Consumer Services through the type two transfer.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On April 7, 2011, the USDA sent an e-mail to the DOE regarding the waiver process. The USDA stated that both of the waivers for Texas and New Jersey are non-permanent and contain the following disclaimer:

While we have granted this waiver, we have serious reservations with moving programs that substantially benefit from a close link with the educational establishment in the State to a non-education agency. The NSLP, SBP and SMP are most effective in their long-term impact on students when they are combined with a nutrition education component. The dual functions of providing meals and educating can most readily be accomplished by the TEA with its combined school management and education responsibilities. Given our belief that nutrition education is an integral component of a child's overall education and that programs such as the NSLP and SBP to be truly effective must educate, we are approving this transfer cautiously.

Moreover, the USDA stated that the waiver-processing time depends on several factors, including:

- The completeness of the state agency's initial submission;
- The justification or rationale provided; and
- The ability of the alternate agency to administer the programs.

Finally, the USDA stated that the waiver process can also be delayed if the USDA requires additional information or adjustments to the state agency proposal that would require negotiation.⁶³

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 20, 2011, the Appropriations Committee adopted an amendment that removed the repeal of the Food and Nutrition Services Trust Fund. Because the bill transfers the trust fund from the DOE to the DACS and renumbers s. 1010.77, F.S., to s. 570.983, F.S., which changes jurisdiction from the DOE to the DACS, the repeal is not necessary.

⁶³ E-mail, United States Department of Agriculture, April 7, 2011.

On April 13, 2011, the Education Committee adopted two amendments and reported the bill favorably as a committee substitute. Amendment one repealed s. 1010.77, F.S., relating to the Food and Nutrition Services Trust Fund within the DOE.

Amendment two required the DOE, in consultation with the DACS, to develop and submit a waiver request to the USDA within 30 days of the bill becoming law. The amendment further required the DOE to provide written notice of the USDA's response to the President of the Senate, the Speaker of the House of Representatives, and the Governor. The DOE must include a copy of the USDA's response in this notice. Amendment two also provided multiple effective dates. The provision requiring the DOE to submit a waiver request and the provision providing the effective dates are effective upon becoming law. The effective date for all other provisions is January 1, 2012, and is contingent upon the USDA granting the waiver request on or before November 1, 2011.