

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Rules Committee

BILL: CS/CS/SB 1312

INTRODUCER: Budget Committee, Agriculture Committee, and Senators Siplin and Gaetz

SUBJECT: School Nutrition Programs

DATE: April 22, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhavein</u>	<u>Spalla</u>	<u>AG</u>	Fav/CS
2.	<u>Blizzard</u>	<u>DeLoach</u>	<u>BGA</u>	Favorable
3.	<u>Blizzard</u>	<u>Meyer, C.</u>	<u>BC</u>	Fav/CS
4.	<u>Blizzard</u>	<u>Phelps</u>	<u>RC</u>	Favorable
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes
 B. AMENDMENTS..... Technical amendments were recommended
 Amendments were recommended
 Significant amendments were recommended

I. Summary:

This bill creates the “Healthy Schools for Healthy Lives Act.” It provides for a type two transfer of the administration of school food and nutrition programs from the Department of Education (DOE) to the Department of Agriculture and Consumer Services (DACS). It provides for the administration of the U.S. Department of Agriculture child food and nutrition programs by the DACS. It also creates the Healthy Schools for Healthy Lives Council within the DACS. The bill requires the DOE, in consultation with the DACS, to develop and submit a waiver request to the U.S. Department of Agriculture (USDA) to transfer administration of the school food service and nutrition programs from the DOE to the DACS, within 30 days of the bill becoming law.

This bill transfers 45 full-time equivalent positions and an estimated \$810 million in federal funds and \$16.8 million in general revenue from the DOE to the DACS for the administration of the school food and nutrition programs.

This bill substantially amends section 1003.453, Florida Statutes. The bill substantially amends, transfers, and renumbers the following sections of the Florida Statutes: 1006.06 to 570.981; 1006.0606 to 570.982; and 1010.77, F.S. to 570.983.

The bill creates section 570.98, Florida Statutes. The bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Both the federal and state governments have adopted policies for local school districts to operate school nutrition programs.¹ Federal regulations implementing the Richard B. Russell National School Lunch Act (7 C.F.R. § 210.3(b)) provide for the programs to be administered by a state's educational agency. This is the case in all but two of the 50 states.² Currently, the administration of school food and nutrition programs is divided between the DOE and the DACS. For instance, the School Lunch, Breakfast, and Summer Programs are administered by the DOE, while the commodity Food Distribution program, Disaster Feeding program, and the Emergency Food Assistance Program (EFAP) are managed by the DACS. In addition, the Marketing Division within the DACS administers the Fresh from Florida Kids and Xtreme Cuisine programs.

Florida Department of Education

The DOE is responsible for the administration, review, and evaluation of seven USDA-funded child nutrition programs. During the 2009-2010 fiscal year, the following programs generated \$745 million in reimbursements to program sponsors, which include all of Florida's 67 public school districts, 78 charter schools, 3 university schools, 49 private schools, and 49 residential facilities.

National School Lunch, School Breakfast, and After School Snack Programs – \$718.6 Million in Reimbursements

The National School Lunch Program (NSLP) and School Breakfast Program provide non-profit school lunch programs with reimbursement for nutritious meals served to school children. Participating schools may also receive USDA commodity food through an agreement with the DACS. Section 1006.06, F.S., requires Florida public school districts to offer the breakfast program in all elementary public schools. Reimbursement is based on student income eligibility.

The After School Snack Program provides a snack to students who are served in an afterschool educational or enrichment program that is provided at the end of the school day. The school district must operate the NSLP before the After School Snack Program can be offered.

Special Milk Program – \$31,295 in Reimbursements

The Special Milk Program 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 School Breakfast Program may also participate in the Special Milk Program to provide milk to

¹ The National School Lunch Act, as amended (42 U.S.C. 1751-1769), and the Child Nutrition Act of 1966, as amended (42 U.S.C. 1773) and s. 1006.06, F.S.

² Letter from the U.S. Department of Agriculture (USDA) to the Commissioner of Education dated March 4, 2011. On file with the committee.

children in half-day pre-kindergarten and kindergarten programs through which children do not have access to the school meal programs.

Summer Food Service Program – \$22.7 Million in Reimbursements

The Summer Food Service Program provides reimbursement for sponsors to serve free meals to low-income children at participating sites during the summer months when schools are normally closed. The reimbursement rates for the Summer Food Service Program are slightly higher than the National School Lunch Program. Children who are 18 years of age or younger, or over 18 when determined to be mentally or physically handicapped, are eligible for the program. Sponsors of this program include school districts, community-based organizations, and county governments.

Seamless Summer Option – \$1.8 Million in Reimbursements

School districts participating in the NSLP or School Breakfast Program are eligible to apply for the Seamless Summer Option to serve free meals to low-income children, 18 years old and under. This option reduces paperwork and administrative burdens, and reimbursement rates are the same as with NSLP and School Breakfast Program. Sponsors of this program are school districts.

Fresh Fruit and Vegetable Program – \$2.7 Million in Reimbursements

The Fresh Fruit and Vegetable Program (FFVP) provides all children in participating schools with a variety of free fresh fruits and vegetables outside of the breakfast and lunch service. The FFVP currently operates in 26 districts and 133 schools throughout Florida.³ The allocation for each school is between \$50 and \$75 per student. National allocations have not yet been released; however, Florida anticipates receiving approximately \$6 million for the 2011-2012 FFVP. Unlike the other child nutrition programs, which are reimbursed by meals served, FFVP sponsors are reimbursed for operating and administrative costs in addition to the funds received for the purchase of fruits and vegetables.

DOE Administration of Child Nutrition Programs

The DOE employs 45 staff with an administrative budget of \$6.5 million for the 2010-2011 fiscal year, 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 Summer Food Service Program and Seamless Summer Option sponsors;
- 18 Special Milk Program sponsors; and
- 133 elementary schools participating in the 2010-2011 FFVP.

Administrative services provided by the DOE include:

³ *Id.*

- Maintaining a web-based computer application to process \$745 million of claims reimbursements, sponsor applications, administrative program reviews, and federal reports;
- Providing sponsor training and technical assistance in child nutrition, food safety, and administrative services for all sponsors;
- Conducting on-site monitoring and administrative reviews of program administration and meal services for all sponsors;
- Evaluating and providing nutrient analysis of breakfast and lunch menus for all sponsors; and
- Providing outreach in the state to attract potential sponsors for the Summer Food Service Program and increase participation in the breakfast program.

To provide the services listed above effectively, DOE works with Florida Atlantic University to administer two grants as follows.

- \$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.
- \$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 taking the steps necessary to achieve and maintain regulatory compliance related to Provision 2;⁴ and provide the maintenance and technical support of the DOE's financial software, used to measure critical indicators of the financial effectiveness of a sponsor's child nutrition program.

Other DOE Initiatives

The DOE established the Farm to School (F2S) Alliance to combat childhood obesity and meet the Healthier US School Challenge criteria, which is a statewide training initiative for school food service professionals on how to prepare and serve meals that comply with the 2005 Dietary Guidelines for Americans. The DOE provides outreach and information to approximately 800 small farmers, their families, and the communities they serve, on how to participate in child nutrition programs and form business relationships with schools. In addition, the DOE provides guidance and training to Florida school food service directors, their staff, and parent-teacher organizations regarding the benefits of using locally grown products, procurement of local produce, and the use of local products in the NSLP to meet the Healthier US School Challenge menu criteria.

The DOE works to facilitate interagency coordination between the USDA, Florida Department of Health, Florida Department of Children and Families, Florida Coordinated School Health Partnership, Coordinated School Health Initiatives, the Florida Food and Nutrition Advisory Council, and various other entities.

⁴Provision 2 is a program in schools with a high proportion of students who are eligible for free and reduced-price meals that allows all students to receive free meals.

Integration into the Curriculum and Classroom

Nutrition education is provided through collaboration with the Office of Healthy Schools (OHS) within the DOE. The DOE's school food and nutrition programs partner with the OHS to assess and respond to the nutrition education and resource needs of school districts across the state. The OHS is partially funded with DOE school food and child nutrition administrative expense funds and employs a program director and nutrition coordinator. Through this partnership, the DOE integrates nutrition education into core subject areas like language arts and science. Examples of initiatives from this collaboration include:

- **Participation in Celebrate Literacy Week:** The OHS works in partnership with the Just Read, Florida! Office to promote literacy throughout the state by raising awareness of the nutrition-related programs and projects offered by the DOE, including the importance of school breakfast and school gardens. In January 2011, volunteers across 28 school districts and 1,100 classrooms read "Our Super Garden: Learning the Power of Healthy Eating by Eating What We Grow" by Anne Nagro.
- **Seed Folks kits:** In February 2011, the OHS, in partnership with the DOE's Language Arts Coordinator, Just Read, Florida!, and the Florida Department of Health's Comprehensive Cancer Control Program, provided Seed Folks kits, containing lesson plans and activities challenging language arts benchmarks, to middle school students.
- **Gardening for Grades Regional Trainings:** Through a partnership with the DOE's Science Coordinator, the OHS has collaborated with the Florida Agriculture in the Classroom Program to serve science teachers through nine regional Gardening for Grades training sessions in the spring of 2011. Gardening for Grades is a program funded by specialty crop grants, awarded by the DACS.
- **Foods of the Month Kits:** In March 2011, the OHS provided approximately 550 nutrition education resources specifically designed for the school cafeteria through the Foods of the Month (FOM) kits. FOM kits help schools enhance the nutrition education programming and improve dietary offerings in school meals by using the cafeteria as a learning laboratory.
- **Healthy School District Trainings:** Five regional Healthy School District Trainings will be conducted in March 2011, using the Coordinated School Health approach to provide district teams with the tools necessary to improve the health and wellness of their district's students and staff through Wellness Policy Committees and School Health Advisory Committees (SHACs).

The Department of Agriculture and Consumer Services

The DACS administers the commodity program portion of the National School Lunch Program and the Summer Food Service Program. Section 6(e) of the Richard B. Russell National School Lunch Act (NSLA), requires that no less than twelve percent of the federal support received by schools pursuant to the NSLA each year must be in the form of USDA food (commodities). Every year, the DACS receives an allocation from the USDA based on 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. During the 2010-2011 school year, the DACS provided over 69

million pounds of USDA food, valued at approximately \$55.5 million, to about 193 participating schools (public school districts, private schools, residential child care institutions, etc.) throughout the state. An additional \$4.4 million in fresh fruits and vegetables was also provided. During the 2011-2012 school year, the DACS will provide over 75 million pounds of USDA food, valued at over \$66 million, in addition to another \$3.1 million 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 determine each other's needs and how to best meet them. As a founding member of the Farm to School Alliance, the DACS participates and provides input at F2S meetings. For the past 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 conferences.

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 U.S. Department of Defense, is an exhibitor at the conference, promoting the consumption of fresh produce in schools and Florida fresh fruits and vegetables in particular.

Research suggests that taste preferences and eating habits are fully developed by the time a child is three years old. In keeping with the DACS' mission of providing healthy nutrition to children at an early stage, the DACS has developed the Fresh From Florida Kids Program. The program is designated to help parents develop healthy eating habits in their children who are just beginning to eat solid food and beyond.

The DACS also introduces children to good nutrition through the Xtreme Cuisine Program. Xtreme Cuisine Cooking School teaches children about nutrition and introduces them to the variety of fresh, nutritious foods available in Florida.

Office of Program Policy and Government Accountability (OPPAGA), Report No. 09-03⁵

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.

⁵ <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=09-03>

School Nutrition Program Transfers Experienced in Other States

Federal regulations implementing the Richard B. Russell National School Lunch Act (7 C.F.R. § 210.3(b)) provide for the NSLP to be administered by a state's educational agency. This is the case in all but two of the 50 states. In Texas and New Jersey, it was the desire to seek alternate agencies to administer the program. In 34 states, the commodity food program, which makes agricultural commodities available to sponsors, is administered by the education agency. The administration of the NSLP by an agency other than the state education agency requires a waiver by the Secretary of the USDA. USDA staff has been contacted for information regarding a potential waiver. At this time, it is unknown if a waiver would be approved or if a transfer could be accomplished by the bill's effective date of July 1, 2011.⁶

Officials in Texas and New Jersey indicate that consolidating the federal programs into their agriculture departments had two primary benefits. First, it improved coordination between the various programs. Second, it increased program visibility and administrative support by functioning within a smaller agency, rather than as a no-curriculum program within the larger state education agency.⁷ Texas and New Jersey officials also indicate that the primary disadvantage of consolidation was that it created transitional issues during the transfer. For example, when consolidation was being discussed, several education department staff became concerned about the future of their positions. Another challenge to consolidation is that it could create either data sharing or duplicate data reporting issues.⁸

III. Effect of Proposed Changes:

The bill transfers the administration of the National School Lunch Program and related food and nutrition programs from the Department of Education (DOE) to the Department of Agriculture and Consumer Services (DACS).

The bill makes conforming changes to other sections of law to reflect the administration of these food and nutrition programs by the DACS. In particular, the DACS is required to administer all school food and nutrition programs, to cooperate with the federal government and its agencies and instrumentalities to receive the benefit of federal financial allotments, and to act as an agent of or contract with the federal government, another state agency, or any county or municipal government for the administration of the school food and nutrition programs.

The bill also requires the DACs to provide on its website a link to the nutritional content of foods and beverages. The bill requires the DOE, in consultation with the DACS, to develop and submit a request for a waiver to the USDA, to transfer administration of the school food service and nutrition programs from the DOE to the DACS. The request for a waiver must be submitted to the USDA within 30 days of the bill becoming law. The bill requires the DOE to immediately provide written notification to the Governor, the President of the Senate, and the Speaker of the House of Representatives, regarding the decision of the USDA. The notification must include a copy of the approval or denial of the request.

⁶ Department of Education legislative bill analysis, March 1, 2011, on file with the committee.

⁷ Letter from the United States Department of Agriculture (USDA) to the Commissioner of Education dated March 4, 2011. On file with the committee.

⁸ *Id.*

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

The bill provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill transfers 45 full-time equivalent positions and approximately \$810 million in federal funds to the DACS from the DOE for the administration of the school and child nutrition programs. In addition, the DACS will receive an estimated \$16.8 million in general revenue for the School Lunch Program state match. These funds will be included in the type two transfer from the DOE.

Department of Education

The DOE will no longer receive indirect funds derived from assessments on federal grants based on the current cost rate agreement with the U.S. Department of Education. Indirect earnings are used to support management activities throughout the department, including purchasing, accounting, human resources, grants management, and legal services. Per the DOE, \$631,410 was attributed to indirect earnings from the school food and nutrition programs in Fiscal Year 2009-2010.

Department of Agriculture and Consumer Services⁹

The DACS estimates costs of nonrecurring expenditures in the amount of \$108,400 for data circuit requirements and telephone and network wiring in order to implement the provisions in this bill. The DACS will absorb these costs through existing resources.

The administration of the NSLP by an agency other than the state education agency requires a waiver by the secretary of the USDA. If the state does not receive a waiver from the USDA, the USDA will not recognize the state law.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DOE has raised concerns with the transfer, as follows:¹⁰

- Loss of funding will affect the integration of nutrition education into the classroom. Reading child nutrition books in the classroom, Seed Folks kits containing lesson plans, gardening training sessions, and using the cafeteria as a training laboratory would be severely curtailed or eliminated.
- As with any change, there will be a disruption in services that DOE currently provides. For example, the distribution of monthly direct certification information of students who are eligible for free or reduced price meals because of eligibility for the Supplemental Nutrition Assistance Program through the Department of Children and Families will require changes in multiple agencies. All memorandums of understanding and grants will need to be revised and updated to reflect the transfer. The Dietetic Internship Program will require a recertification by the Commission on Accreditation for Dietetics Education and amended contracts with the various entities that provide instruction to the interns. The coordination with the Florida School Choice Program to increase the number of charter schools sponsoring NSLP would be affected.
- Transfer of these programs will create a financial cost to the State Administrative Fund for program operation to physically move the program from DOE to DACS. A physical program move could result in additional facilities renovation expenses to provide needed offices and technical support for the program. A relocation would likely result in short-term disruptions in services to school districts and additional workload relative to the moving process. Millions of dollars of program reimbursements could be delayed, causing fiscal concerns to sponsors. It is possible the program could remain housed in the Turlington Building, which would seem to negate any fiscal or policy benefit to transferring the program.
- Indirect earnings revenue is derived from assessments on federal grants based on the DOE's current approved Indirect Cost Rate Agreement with the United States Department of Education, dated May 5, 2010, for the period July 1, 2010, through June 30, 2013. The assessment is a percentage of total direct expenditures excluding capital expenditures, flow-through appropriations, and unallowable costs. Indirect earnings are used to support

⁹ Department of Agriculture Fiscal Note, March 10, 2011, on file with the committee.

¹⁰ Department of Education legislative bill analysis, March 1, 2011, on file with the committee.

management activities that are department-wide in nature and include activities such as purchasing, accounting, human resources, grants management, and legal services. The DOE will lose \$631,410 attributed to indirect earnings from school and child nutrition programs in the 2009-2010 fiscal year.

- The federal government has not approved regulations implementing the Richard B. Russell National School Lunch Act (7 C.F.R. § 210.3(b) providing for the NSLP to be administered by the state educational agency. This is the case in all but two of the 50 states. Texas and New Jersey sought and received alternative administration. In 34 states, the commodity food program, which makes agricultural commodities available to sponsors, is administered by the education agency. The administration of the NSLP by an agency other than the state education agency requires a waiver by the Secretary of the USDA. USDA staff has been contacted for information regarding a potential waiver. At this time, it is unknown if a waiver would be approved or if a transfer could be accomplished by the bill's effective date of July 1, 2011.
- On October 1, 1997, the Child and Adult Care Food Program (CACFP) was split and transferred from DOE. Chapter 97-260, Laws of Florida, transferred the Child Care Food Program (CCFP) from DOE to the Department of Health (DOH). The Adult Care Food Program (ACFP) was transferred from FDOE to the Department Elder Affairs (DOEA) as a result of a type two transfer under s. 20.06(2) F.S. As a result of the transfer of ACFP to DOEA, it was realized that ACFP, when separated from the Child Care Food Program, could not earn sufficient state agency expenditure funds to administer the program. Therefore, on July 23, 1998, a cooperative agreement was established between DOE and DOEA to transfer funds from DOE to DOEA in the amount determined to be needed by DOEA to operate the State Administrative Expense Plan in excess of the amount determined by formula to operate ACFP. This agreement was established as temporary assistance until ACFP program generated sufficient funding to independently administer the program. The ACFP was not able to generate sufficient USDA funding. Therefore, it has obtained \$200,000 in recurring general revenue to subsidize the administrative cost to operate ACFP. Currently, all states with the exception of Illinois and Florida operate ACFP and CCFP within the same agency, which is predominately the education agency.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Budget on April 15, 2011:

The committee substitute requires the Department of Education, in consultation with the Department of Agriculture and Consumer Services, to develop and submit a request for a waiver to the U.S. Department of Agriculture, to transfer administration of the school food service and nutrition programs from the DOE to the DACS. The request must be submitted to the USDA within 30 days of the bill becoming law. The bill requires the DOE to immediately provide written notification to the Governor, the President of the Senate, and the Speaker of the House of Representatives, regarding the decision of the USDA. The notification must include a copy of the approval or denial of the requested waiver.

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

CS by the Agriculture Committee on March 28, 2011:

The Committee Substitute adds a section to create the Healthy Schools for Healthy Living Council within the Department of Agriculture and Consumer Services.

B. Amendments:

None.