

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 623 School Food Service Programs

SPONSOR(S): Kendrick and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1458

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on K-12</u>	<u>10 Y, 0 N</u>	<u>Gillespie</u>	<u>Ahearn</u>
2) <u>Schools & Learning Council</u>	<u> </u>	<u> </u>	<u> </u>
3) <u>Policy & Budget Council</u>	<u> </u>	<u> </u>	<u> </u>
4) <u> </u>	<u> </u>	<u> </u>	<u> </u>
5) <u> </u>	<u> </u>	<u> </u>	<u> </u>

SUMMARY ANALYSIS

House Bill 623 requires each district school board, beginning with the 2010-2011 school year, to expand the School Breakfast Program (currently required in elementary schools) to all middle and high schools. The bill requires the school districts to provide universal-free school breakfast, to the extent funded in the General Appropriations Act, for all students in elementary, middle, and high schools in which 80 percent or more students are eligible for free or reduced-price meals. The bill also authorizes the Department of Education (DOE) to develop an incentive program for school districts to expand participation in their School Breakfast Programs. The bill creates a negative fiscal impact to school district food service programs. However, the Committee on K-12 adopted a remove-everything amendment that:

- Retains provisions in the bill which expand the School Breakfast Program for middle and high schools;
- Directs school districts to set prices for breakfast which cover the costs of breakfast, except if the district school board sets lower prices;
- Encourages universal-free school breakfast, in lieu of the bill’s provisions requiring school districts to provide universal-free school breakfast, and requires district school boards to consider a policy for providing universal-free school breakfast for all students in schools in which 80 percent or more of the students are eligible for free or reduced-price meals;
- Requires each school to serve meals at alternative sites (e.g., “Breakfast in the Classroom,” “Grab ‘n’ Go Breakfast,” and “Breakfast on the Bus”), to the maximum extent practicable, in lieu of the bill’s provisions requiring 10 percent of meals to be served at alternative sites;
- Removes provisions from the bill which grant authority to DOE to develop an incentive program and allocate incentive funding for expanding participation in School Breakfast Programs; and
- Directs OPPAGA to issue a report that estimates the costs of universal-free school breakfast, examines the efficiency and effectiveness of school district food service programs, identifies best practices and strategies for reducing food service costs, evaluates the state reporting of food service revenues and costs, and assesses the methodology used for allocating state funds for food service programs.

The amendment appears to remove the bill’s fiscal impact to school district food service programs.

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

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

In 1975, the U.S. Congress permanently authorized the federal School Breakfast Program.¹ Under the program, the Secretary of the U.S. Department of Agriculture (USDA) provides grant funding to the states for free and reduced-price breakfast meals for students in elementary and secondary schools.²

In 1989, the Legislature required school districts in Florida, by the beginning of the 1991-1992 school year, to implement a school breakfast program that makes breakfast available for all students in an elementary school that includes a student eligible for free and reduced price lunch meals, to the extent specifically funded in the General Appropriations Act.³ This requirement applies to all students in kindergarten through grade 5. If an elementary school includes grade 6, the requirement for breakfast applies also to students in grade 6.⁴

Each breakfast meal must provide one-fourth, when averaged over a school week, of the Recommended Dietary Allowances (RDA) for protein, calcium, iron, vitamin A, and vitamin C.⁵ Breakfast meals must meet certain limits on total calories, limit total fat to 30 percent of total calories, and limit saturated fat to 10 percent of total calories.⁶ The breakfast meals must also provide a variety of foods, be low in sodium and cholesterol, and contain dietary fiber (e.g., grains, vegetables, and fruits).⁷

Students eligible for free meals are those whose family income does not exceed 130 percent of the federal poverty level.⁸ Students eligible for reduced-price meals are those whose family income does not exceed 185 percent of the federal poverty level.⁹ For fiscal year 2007-2008, for a family with a household size of four members, the maximum family income for free meals is \$26,845 per year and the maximum family income for reduced-price meals is \$38,203 per year.¹⁰

¹ Section 2, Pub. L. 94-105 (1975) (codified at 42 U.S.C. § 1773).

² 42 U.S.C. § 1773(a); 7 C.F.R. § 220.2(u).

³ Section 1, ch. 89-221, L.O.F. (1989); former § 228.195, F.S. (current § 1006.06(5), F.S.).

⁴ *Id.*

⁵ 7 C.F.R. § 220.8(a)(1).

⁶ 7 C.F.R. § 220.8(a)(2)-(4), (b), (c), (e)(1) & (h).

⁷ 7 C.F.R. § 220.8(a)(3) & (4).

⁸ Rule 6A-7.0421(2)(a), F.A.C.; 72 Fed. Reg. 8687 (Feb. 27, 2007).

⁹ Rule 6A-7.0421(2)(b), F.A.C.; 72 Fed. Reg. 8687 (Feb. 27, 2007).

¹⁰ 72 Fed. Reg. 8687 (Feb. 27, 2007).

For fiscal year 2007-1008, the reimbursement rates for the federal School Breakfast Program are as follows:¹¹

Breakfast Rates	Non-Severe Need	Severe Need
Paid	\$0.24 per meal	\$0.24 per meal
Reduced Price	\$1.05 per meal	\$1.31 per meal
Free	\$1.35 per meal	\$1.61 per meal

As the table shows, schools in severe need are paid a higher reimbursement rate. In Florida, the schools in severe need which receive the higher reimbursement rate are those schools in which at least 40 percent of the lunches served to students [under the National School Lunch Program] in the second preceding school year were free or reduced-price meals.¹²

Schools are prohibited from charging an eligible student or the student's family for a free breakfast¹³ or from charging an eligible student or the student's family more than 30 cents for a reduced-price breakfast.¹⁴

USDA publishes various information resources for schools and school districts participating in the School Breakfast Program. These resources include various strategies for schools to serve breakfast meals, including:

- Traditional Breakfast.—Traditional plated breakfast served cafeteria-style before school and eaten in the cafeteria;
- Breakfast in the Classroom.—Individually wrapped or prepackaged breakfast served during morning announcements or break time and eaten in the classroom;
- Grab 'n' Go Breakfast.—Individually wrapped or prepackaged breakfast served at the school entrance or in the school's high-traffic areas and eaten before school or during morning break or first period;
- Breakfast After First Period.—Individually wrapped or prepackaged breakfast served at a centrally located area in the school or where students are changing classes and eaten between first and second class periods; and
- Breakfast on the Bus.—Individually wrapped or prepackaged breakfast of easy-to-eat, hand-held foods served and eaten while students are riding the bus to school.¹⁵

General Research on Breakfast:

There is an entire body of literature that suggests there are positive nutrition and cognitive benefits to eating breakfast.¹⁶ According to the Food Research and Action Center (FRAC):¹⁷

¹¹ 72 Fed. Reg. 37510 (July 10, 2007)

¹² 7 C.F.R. § 220.9(d); Florida Department of Education, Memorandum from Diane Santoro, Administrator, Food and Nutrition Management, to Sponsors of the School Breakfast Programs, Technical Assistance Note, No. 2006-13 (Jan. 31, 2006), available at http://info.fldoe.org/docushare/dsweb/Get/Document-3504/tan_06_13.pdf (last visited Mar. 19, 2008).

¹³ 7 C.F.R. § 220.2(j).

¹⁴ 42 U.S.C. § 1773(b)(1)(C); 7 C.F.R. § 220.2(s); rule 6A-7.0421(4), F.A.C.

¹⁵ U.S. Department of Agriculture, Food and Nutrition Service, *There's More Than One Way to Serve Breakfast* (2003), available at <http://www.fns.usda.gov/cnd/breakfast/toolkit/theres.pdf> (last visited Mar. 19, 2008).

¹⁶ McLaughlin, *infra* note 19, at 5.

¹⁷ The Food Research and Action Center (FRAC) describes itself as "the leading national nonprofit organization working to improve public policies and public-private partnerships to eradicate hunger and undernutrition in the United States." FRAC, *All About FRAC*, at http://www.frac.org/html/all_about_frac/about_index.html (last visited Mar. 19, 2008).

- Children who skip breakfast are less able to distinguish among similar images, show increased errors, and have slower memory recall;
- Children experiencing hunger have lower math scores and are more likely to have to repeat a grade;
- Behavioral, emotional, and academic problems are more prevalent among children with hunger;
- Children experiencing hunger are more likely to be hyperactive, absent, and tardy, in addition to having behavioral and attention problems more often than other children;
- Children who are undernourished score lower on cognitive tests when they miss breakfast;
- Teens experiencing hunger are more likely to have been suspended from school, have difficulty getting along with other children, and have no friends;
- Children with hunger are more likely to have repeated a grade, received special education services, or received mental health counseling, than low-income children who do not experience hunger;
- Children who eat a complete breakfast, versus a partial one, make fewer mistakes and work faster in mathematics tests;
- Children who eat breakfast at school—closer to class and test-taking time—perform better on standardized tests than those who skip breakfast or eat breakfast at home;
- Providing breakfast to mildly undernourished students at school improves their speed and memory in cognitive tests;
- Children who eat breakfast show improved cognitive function, attention, and memory;
- Participating in school breakfast is associated with improved mathematics grades, attendance, and punctuality;
- Children perform better on tests of vocabulary after eating breakfast;
- Consuming breakfast improves children’s performance on demanding mental tasks and reaction to frustration;
- Children who eat breakfast tend to have more adequate nutrient intakes than children who do not;
- By eating breakfast, students also consume more important nutrients, vitamins, and minerals, including calcium, dietary fiber, and protein;
- A higher percentage of children who skip breakfast do not meet two-thirds of the Recommended Dietary Allowances (RDA) for vitamins A, E, D, and B6;
- Breakfast may reduce obesity risk;
- Adolescents who eat breakfast tend to have a lower body mass index (BMI) (higher BMIs can indicate overweight and obesity);
- Girls who eat breakfast are more likely to have a lower BMI than girls who skip breakfast;
- Adolescents with one or two obese parents who eat breakfast every day are more likely to have BMIs within a healthy range than those who tend to skip breakfast; and
- Low-income elementary school girls who participate in the School Breakfast, School Lunch, or Food Stamp Programs, or any combination of these programs, have significantly less risk of being overweight.¹⁸

Research on Universal-Free School Breakfast:

During 2000-2003, USDA conducted a study of elementary school food service programs in six school districts in Alabama, Arizona, California, Kansas, Idaho, and Mississippi to determine the impact of the availability of universal-free school breakfast on breakfast participation, student nutrition, health, academic performance, and behavior. In its 2004 report on the study, USDA reported that the provision of universal-free school breakfast (compared to a control group of schools offering paid, reduced-price, and free breakfasts under the federal School Breakfast Program) had the following results:

- Breakfast participation increased in schools offering universal-free school breakfast from 19 percent to 36 percent (increasing from 8 percent to 31 percent for paid-eligible students and increasing from 25 percent to 48 percent for free and reduced price-eligible students);

¹⁸ Food Research and Action Center, *Breakfast for Learning: Child Nutrition Fact Sheet 1-2* (2006), available at <http://www.frac.org/pdf/breakfastforlearning.PDF> (last visited Mar. 19, 2008).

- Students attending universal-free breakfast schools were more likely to consume a nutritionally substantive breakfast than students in control-group schools (80 percent versus 76 percent);
- Average food and nutrient intakes for students attending universal-free breakfast schools were essentially the same as the average intakes for students attending control-group schools;
- Availability of universal-free school breakfast seems to have shifted the source of breakfast from home or elsewhere to school; and
- Universal-free school breakfast had no impact on student academic achievement scores, rates of student disciplinary incidents, or the number of daily student visits to the school nurse.¹⁹

Governor's Council on Physical Fitness:

On March 26, 2007, Governor Charlie Crist signed an executive order creating the Governor's Council on Physical Fitness.²⁰ The executive order charged the council, among other duties, with developing a state plan of action to promote physical fitness and sound nutrition and to reduce the rate of obesity and chronic disease in Florida's children, adults, and senior citizens. On December 1, 2007, the Governor's council issued its recommendations for a state plan of action on physical fitness.²¹ Among its recommendations, the Governor's council recommended that the School Breakfast Program be expanded to include all children in elementary through high school by 2010-2011.²²

Proposed Changes:

The bill requires each district school board, beginning with the 2010-2011 school year, to:

- Expand its School Breakfast Program (currently required for elementary schools) to make breakfast available to all middle and high school students (not contingent on funding in the General Appropriations Act);
- Provide universal-free school breakfast for all students in elementary, middle, and high schools in which 80 percent or more students are eligible for free or reduced-price meals, to the extent specifically funded in the General Appropriations Act;²³
- In schools required to provide universal-free school breakfast, serve at least 10 percent of breakfast meals at alternative sites (e.g., "Breakfast in the Classroom," "Grab 'n' Go Breakfast," and "Breakfast on the Bus");²⁴
- Grant permission to all elementary, middle, and high school students to visit a breakfast point-of-sale, receive a "Grab 'n' Go Breakfast," and, if a student's school bus arrives late, allow the student to eat breakfast in the classroom for at least 15 minutes after the first bell rings (or if a student's school bus arrives after the first bell has rung, allow the student to eat breakfast in the classroom for a "reasonable period"); and
- Annually provide all elementary, middle, and high school students with information prepared by the district's food service administration concerning the School Breakfast Program, including school announcements and written notice sent to all parents.

¹⁹ Joan E. McLaughlin et al., *Evaluation of the School Breakfast Program Pilot Project: Summary of Findings from the Final Report*, ii-iii (U.S. Department of Agriculture, Food and Nutrition Service, Dec. 2004), available at <http://www.fns.usda.gov/oane/MENU/Published/CNP/FILES/SBPPSummary.pdf> (last visited Mar. 19, 2008).

²⁰ The Honorable Charlie Crist, Executive Order 07-52 (Mar. 26, 2007), available at <http://www.flgov.com/pdfs/orders/07-52-fitness.pdf> (last visited Mar. 19, 2008).

²¹ Governor's Council on Physical Fitness, *Recommendations for a State Plan of Action* (Dec. 1, 2007), available at <http://www.doh.state.fl.us/AlternateSites/HealthyFloridians/documents/CouncilStatePlanofAction.pdf> (last visited Mar. 19, 2008).

²² *Id.* at vi & 8-9.

²³ According to the Department of Education, as of February 17, 2008, there were 516 schools in the state in which at least 80 percent of students are eligible for free or reduced-price meals. The total student enrollment at these schools was 252,497. See Florida Department of Education, *infra* note 25, at 3.

²⁴ See U.S. Department of Agriculture, *supra* text accompanying note 15.

The bill also authorizes DOE to develop an incentive program for school districts to expand participation in their School Breakfast Programs through “innovative means.” The bill specifically authorizes DOE’s incentive program to reward schools that significantly increase breakfast participation and maintain a 75-percent participation rate. If funds are specifically provided in the General Appropriations Act for the incentive program, the bill requires the funds to be allocated among school districts according to the percentage of students they serve.

The bill provides an effective date of July 1, 2008.

C. SECTION DIRECTORY:

Section 1. Amends section 1006.06, F.S., expanding the School Breakfast Program.

Section 2. Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See D. FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to DOE, the bill’s requirements for universal-free school breakfast meals in each elementary, middle, and high school in which 80 percent or more of the students are eligible for free or reduced-price meals creates a negative statewide fiscal impact to school district food service programs of approximately \$11.4 million per fiscal year.²⁵ DOE’s analysis is based on the following assumptions:

- One hundred percent of enrolled students will receive a universal-free school breakfast each school day (180 school days per school year);
- Each breakfast meal served in these schools will be reimbursed by the Federal Government at the current (2007-2008 fiscal year) rates for schools in severe need: \$1.61 per free breakfast, \$1.31 per reduced-price breakfast, and \$0.24 per paid breakfast; and

²⁵ Florida Department of Education, Government Relations, *2008 Agency Bill Analysis of HB 623*, at 3 (Jan. 29, 2008).

- The cost of each universal-free school breakfast served for each school is based on the respective school district's average cost per breakfast calculated from fiscal year 2006-2007 reports of food service program costs.

As previously discussed, in its 2004 report, USDA observed that 31 percent of paid-eligible students and 48 percent of free and reduced price-eligible students participated in universal-free school breakfast programs when offered. If DOE's estimate is reduced to a 31-percent participation rate for paid-eligible students and a 48-percent participate rate for free and reduced-price eligible students, the estimated fiscal impact is reduced to approximately \$5.2 million.

DOE reports that several school districts do not assess indirect costs to their food service programs, which may cause the average cost of breakfast meals to be underreported in some districts. In addition, the 2004 USDA report observed that higher rates of participation in schools implementing universal-free breakfast made it possible for them to achieve "substantial economies in their use of cafeteria labor."²⁶ The average labor cost per breakfast in schools implementing universal-free school breakfast was 71 percent of the average cost in a control group of schools offering paid, reduced-price, and free breakfasts under the federal School Breakfast Program.²⁷ In its report, USDA found:

Total breakfast revenue was estimated to equal or exceed food and labor costs for 95 percent of all [schools implementing universal-free breakfast] compared to 80 percent in control schools. While this was a partial analysis limited to the two principal components of meal cost, food and labor, it is suggestive of the financial advantage enjoyed by [schools implementing universal-free breakfast] under terms of the study.²⁸

Underreporting of breakfast meal costs by school districts and increased economies of scale resulting from anticipated increased participation rates under a universal-free school breakfast program may have indeterminate effects on the bill's estimated fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

2. Other:

None.

²⁶ Lawrence S. Bernstein, et al., *Evaluation of the School Breakfast Program Pilot Project: Final Report*, Nutrition Assistance Program Report Series, No. CN-04-SBP, at 37 (U.S. Department of Agriculture, Food and Nutrition Service, Dec. 2004), available at <http://www.fns.usda.gov/oane/MENU/Published/CNP/FILES/SBPPFinal.pdf> (last visited Mar. 19, 2008).

²⁷ *Id.* at 37-38.

²⁸ *Id.* at 38.

B. RULE-MAKING AUTHORITY:

The Department of Education reports that the bill in effect requires modification of rules adopted by the State Board of Education concerning responsibilities for school food service programs.²⁹

C. DRAFTING ISSUES OR OTHER COMMENTS:

On line 75, the past tense “served” should be substituted for the present tense “serve.”

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 18, 2008, the Committee on K-12 adopted an amendment offered by Representative Kendrick (*remove everything after the enacting clause*). The amendment:

- Retains provisions in the bill which, beginning with the 2010-2011 school year, expand the School Breakfast Program (currently required in elementary schools) to all middle and high schools;
- Requires each school to serve meals at alternative sites (e.g., “Breakfast in the Classroom,” “Grab ‘n’ Go Breakfast,” and “Breakfast on the Bus”), to the maximum extent practicable, in lieu of the bill’s provisions requiring 10 percent of meals to be served at alternative sites;
- Directs school districts to set prices for breakfast which cover the costs of breakfast, except if the district school board sets lower prices;
- Encourages universal-free school breakfast, in lieu of the bill’s provisions requiring school districts to provide universal-free school breakfast, and requires district school boards, before the 2010-2011 school year, to approve or disapprove a policy for providing universal-free school breakfast for all students in each elementary, middle, and high school in which 80 percent or more of the students are eligible for free or reduced-price meals. District school boards must conduct at least two public hearings on the proposed policy;
- Clarifies provisions in the bill which require each school, beginning with the 2009-2010 school year, to make available for a student a prepackaged breakfast (commonly known a “Grab ‘n’ Go Breakfast”), if the student arrives to school late on the school bus and to allow the student 15 minutes to eat the breakfast in the classroom. The amendment also specifies that this requirement does not apply when the school makes “Breakfast on the Bus” available to students;
- Retains provisions in the bill which require each school district to annually provide students and parents with information about the district’s School Breakfast Program;
- Removes provisions from the bill which grant authority to DOE to develop an incentive program and allocate incentive funding for expanding participation in School Breakfast Programs;
- Clarifies that DOE annually allocates each school district’s funding allocation from the school breakfast supplement³⁰ in the General Appropriations Act based on each district’s total number of free and reduced-price breakfasts served and deletes obsolete language requiring the appropriation of funds based on federal reimbursement rates for free and reduced-price breakfasts; and
- Directs the Office of Program Policy Analysis and Government Accountability (OPPAGA), by January 15, 2009, to submit a report to the Governor, Legislature, State Board of Education, and Commissioner of Education on school district food service programs.

²⁹ See rule 6A-7.0411, F.A.C.

³⁰ The statewide allocation for the school breakfast supplement for fiscal year 2007-2008 is \$7,590,912. See Florida Department of Education, Memorandum from Diane Santoro, Administrator, Food and Nutrition Management, to Public and Charter School Food Service Directors (Dec. 19, 2007), available at <http://info.fldoe.org/docushare/dsweb/Get/Document-4769/tanote08-06.pdf> (last visited Mar. 19, 2008); Florida Department of Education, *supra* note 25, at 3.

OPPAGA's report must:

- Estimate the district-by-district costs of implementing universal-free school breakfast, which must consider the experiences of Florida schools currently implementing universal-free school breakfast;
- Determine the extent that school district food service programs require financial support from other district operating funds;
- Examine at least a 5-year history of school meal prices;
- Identify best practices for efficient and effective school district food service programs;
- Identify strategies to reduce the costs of school district food service programs, including alternatives to the daily counting of meals at the point of service which are authorized by federal regulations;³¹
- Evaluate the forms³² and procedures used by school districts to report their food service revenues and costs to the Department of Education;
- Determine whether the forms accurately report the total operating costs of school district food service programs and whether the forms allow an equitable district-by-district comparison of costs; and
- Assess whether state funding provided to school district food service programs (e.g., school breakfast supplement) promote the fiscal efficiency of the food service programs.

The amendment also requires OPPAGA to consult with staff of the education committees of the Legislature, DOE, and the Auditor General on the research design for the report. The amendment appears to remove the bill's fiscal impact to school district food service programs.

³¹ The Food and Nutrition Service of the U.S. Department of Agriculture allows the states to authorize alternatives to point-of-service lunch counts, if the alternatives result in accurate, reliable counts of the number of free, reduced price, and paid lunches served for each serving day. 7 C.F.R. § 210.7(c)(2). One of the alternatives approved by the Food and Nutrition Service is known as "Provision 2." Under Provision 2, schools that serve meals to participating children at no charge (i.e., universal free) are permitted to simplify their meal counting and claiming procedures by allowing the schools to determine student eligibility for free and reduced-priced meals once every 4 years and receive federal meal reimbursement during the ensuing 4-year period by claiming the percentages of students eligible for free and reduced-price meals which were observed in the first year. Food and Nutrition Service, U.S. Department of Agriculture, *Provision 2 Guidance: National School Lunch and School Breakfast Programs* (2002), available at <http://www.fns.usda.gov/cnd/Governance/prov-1-2-3/Prov2Guidance.pdf> (last visited Mar. 19, 2008).

³² See, e.g., Florida Department of Education, *Form ESE 003 (Food Service Special Revenue Financial Report)* (rule 6A-1.0011(2), F.A.C.).