

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a "no" above, please explain:

By requiring school districts to provide summer food programs, the bill increases government. However, the cost of these programs may be borne by federal monies.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

The Summer Food Service Program (SFSP) for children is a federally funded program operated nationally by the United States Department of Agriculture (USDA). In Florida, the Food and Nutrition Management Office of the Department of Education (DOE) administers the program. The SFSP is intended to "provide food service to children from needy areas during periods when area schools are closed for vacation."¹ Needy areas, or areas in which poor economic conditions exist, mean areas where at least 50 percent of the children are eligible for free or reduced price lunches.²

Sponsors of a summer food program sign an agreement with the DOE and are reimbursed for serving meals that meet federal nutritional guidelines to children in needy areas.³ Sponsors receive payments from the USDA, through the DOE, for both administrative and operational costs based on the number of meals served.⁴ As the state agency charged with administering the program, the DOE is also reimbursed for administrative costs associated with the program.⁵

It is estimated that over 1.1 million children in Florida are eligible for free or reduced price lunches.⁶ In the summer of 2003, the average daily attendance in Florida for the Summer Food Service Program was 115,535.⁷ This number represents the fourth consecutive decrease in the average number of lunches served. In 1999, 197,140 meals were served per day.⁸

The DOE attributed at least some of the decrease to the reduction in the number of summer school programs being offered at Florida schools. In response the department is attempting to provide information to other non public school potential sponsors, including faith-based providers. Instituting summer food sites at those schools offering summer reading camps is another option that may be explored to increase the number of sponsors.⁹

¹ 7 CFR § 225.1 (2003).

² 42 U.S.C. 1761.

³ Sponsors may be public or nonprofit private schools, public or nonprofit private summer camps, governmental units, public or nonprofit private colleges or universities, or private nonprofit organizations. 7 CFR § 225.14(b) (2003).

⁴ The 2004 expected reimbursement amounts for lunches or suppers is \$2.41 in operating costs with between \$.21 and \$.25 per meal for administrative costs depending on the method of food preparation and location of the sponsor's facility.

⁵ 7 CFR § 225.5 (2003).

⁶ Florida Department of Education's Needy School Printout, February 2003.

⁷ Food and Nutrition Service of the United States Department of Agriculture.

⁸ Food and Nutrition Service of the United States Department of Agriculture.

⁹ Telephone conference with Department of Education staff on March 18, 2004.

Children's Summer Nutrition Act

HB 1115 creates the Children's Summer Nutrition Act. The Act requires DOE to develop a plan to ensure that, by the summer of 2005, a summer food program may operate in each district for a minimum of 40 days and be located within 5 miles of an elementary school in a needy area. By the summer of 2006, the plan may require each school district to establish a summer food site within 10 miles of **every** elementary school that is in a needy area.¹⁰ In 2006, the plan developed by the DOE, and not the Legislature, appears to be the sole factor in determining whether school districts are required to implement a summer food program.

The DOE is required to designate a staff person to coordinate the implementation of the 2005 requirements. The fiscal impact of this is discussed in the FISCAL IMPACT ON STATE GOVERNMENT section of the analysis.

The DOE shall notify each superintendent of schools by November 30 of each year what schools are in needy areas. By February 15 of each year, the DOE must provide each district a list of local organizations that have filed letters of intent to participate in the SFSP as sponsors. Any nonprofit organization may serve as a program site or sponsor. The superintendent of schools in each school district, by May 15, shall implement a plan to provide access to the SFSP and report the district's summer food sites to the DOE.

Overall, the Act would give a larger number of children access to summer food programs. To the extent children in needy areas may have less access to transportation, there is some question as to how many children will be able to utilize the program when the nearest summer food sites may be up to ten miles away from the student's school.

C. SECTION DIRECTORY:

Section 1: Creates a new section of law; requires the department to develop a plan to ensure that a summer food program may operate in each school district; requires the department to provide administrative staff; requires school districts to institute a summer food program if required by the department's plan within a certain distance of schools with at least 50 percent of students receiving free or reduced price lunches; requires the department to identify and notify districts of schools where at least 50 percent of students receive free or reduced price lunches; requires superintendents to implement a plan to ensure access to the Summer Food Service Program and report to the department the district's summer food sites; instructs the department to provide each school district with local organizations who intend to participate in the program.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill has an indeterminate fiscal impact on state revenues. The federal regulations provide that the state agency administering the program shall receive funds for administrative expenses.¹¹ The funding is based upon a percentage of the program funds payable to sponsors. This bill would increase the number of summer food sites and number of lunches served which would increase the amount the DOE would receive for administering the program.

¹⁰ DOE raised the possibility that requiring a summer food site within a specific number of miles of all schools located in needy areas may place an added burden on rural districts.

¹¹ 7 CFR § 225.5 (2003).

2. Expenditures:

The bill has an indeterminate fiscal impact on state expenditures. The bill requires the DOE to designate a staff person to coordinate implementation of the bill. This would incur an expense if extra staff is required. In addition, there would be some additional costs associated with monitoring and establishing new sponsors of summer food sites. There has not been an indication from the DOE as to whether the allocation available for administrative expenses under the federal regulations would be sufficient to cover the expenses associated with administering the provisions of this bill. If the funds proved insufficient, some state expenditures could be required.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill has an indeterminate fiscal impact on local government revenues. School districts that operate a summer food site are reimbursed for both operating and administrative costs based upon the number of meals served.

2. Expenditures:

The bill has an indeterminate fiscal impact on local government expenditures. School districts may be required to establish summer food sites within a specific distance of elementary schools that have a majority of students receiving free or reduced price lunches. The amount of school district expenditures will be determined in part by the number and locations of private organizations that choose to become sponsors. The DOE raised the possibility that a summer food site within a specific number of miles of all schools located in needy areas may place an added burden on rural districts if the number of children (meals served) for which the district can be reimbursed is less than the cost of operating the program. If the school district operates the program, the revenue for operating the program could offset the expenses if the food service is provided efficiently.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Parents of children that attend a summer food site would benefit to the extent some of their children's meals are provided through the SFSP.

Private organizations that choose to become sponsors under the SFSP would receive reimbursements for both operating and administrative costs based upon the number of meals served. Depending on the efficiency of the food service provided, participation could result in a net gain or net loss.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds.

2. Other:

By allowing the Department of Education to determine whether the law applies, i.e. allowing it to develop a plan that *may* require school districts to ensure that there are specific food sites by summer of 2006, the bill delegates to the executive branch a legislative power, violating Article II, Section 3 of the State Constitution.

Where the Legislature makes a policy decision and allows another body the task of implementing the policy decision, with adequate safeguards, there is no violation of the delegation of powers doctrine. See Askew v. Cross Key Waterways, 372 So.2d 913 (Fla. 1978). However, in the present case, the bill specifically allows DOE to decide whether the policy will be implemented, not how it is to be implemented.

This problem may be resolved by removing any language giving DOE decision-making authority and by using language such as “school districts are encouraged” to provide the specific food sites in order to meet with the sponsor’s stated intent of making the bill discretionary rather than mandatory.

B. RULE-MAKING AUTHORITY:

This bill does not grant additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The change of the word “shall” to “may” on line 20 creates a situation that is somewhat unclear. The DOE is required to develop a plan to ensure a summer food program may operate. Under current law, summer food programs already may operate. It is possible that the presence of a plan would facilitate or encourage the operation of summer food programs.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Committee on Education K-20 adopted one amendment to the bill on March 24, 2004.

The amendment changed the words “shall” to “may” in two separate places. The first occurrence now requires the DOE to develop a plan to ensure a summer food program may operate. The effect is somewhat unclear and is discussed in the DRAFTING ISSUES OR OTHER COMMENTS section of the analysis. The second occurrence states the DOE plan may require school districts to establish summer food programs that meet certain guidelines. This is discussed in the CONSTITUTIONAL ISSUES section of the analysis.

On April 2, 2004, the Subcommittee on Education Appropriations favorably recommended HB1115 with a strike-all amendment. The strike-all amendment:

- Names the act “Ms. Willie Ann Glenn Act;”
- Requires each school district to develop a plan to sponsor one summer nutrition program for at least 40 consecutive days; to the extent possible, such program should be located within 5 miles of an elementary school at which 50% or more of the students are eligible for free and reduced lunch;
- Allows for the school board to exempt themselves from the required sponsorship of a summer nutrition program contingent upon formal action occurring by vote at a publicly noticed school board meeting; requires notice to the Commission of Education of such exemption within 10 days; requires the exemption decision to be reconsidered and reported annually; allows school boards that have exempted themselves to encourage a not-for-profit sponsor to offer the summer nutrition program; provides a hold-harmless to the school board, school district and the Department of Education if the not-for-profit fails to perform;
- Allows for collaboration between schools, local governments and nonprofits; requires an annual report on each district’s summer food sites; and
- Requires the Department of Education to annually provide each school district with a list of local organizations that have filed letters of intent to participate in the summer nutrition program.