

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE DRS75077-LD-56A (02/23)

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

Sponsors: Senators East, Rouzer, and Apodaca (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO TRANSFER THE CHILD NUTRITION PROGRAM AND CHILD  
3 NUTRITION SERVICES OF THE DIVISION OF SCHOOL SUPPORT OF THE  
4 DEPARTMENT OF PUBLIC INSTRUCTION TO THE DEPARTMENT OF  
5 AGRICULTURE AND CONSUMER SERVICES AND TO MAKE CONFORMING  
6 CHANGES.

7 The General Assembly of North Carolina enacts:

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

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

14 **"§ 143A-65.2. Child Nutrition Program; transfer.**

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

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

21 "Part 2. Food Service.

22 **"§ 115C-263. Required provision of services.**

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

29 **"§ 115C-264. Operation.**

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 agency, the Department of Public Instruction, to another State agency, the  
2 Department of Agriculture and Consumer Services.
- 3 (2) The Department of Public Instruction shall cooperate in the transfer to the  
4 Department of Agriculture and Consumer Services of any financial software  
5 and computer equipment that is necessary to effectuate the transfer of federal  
6 funds from the State department administering the federal Child Nutrition  
7 Program to the school administrative units and child nutrition programs of  
8 the school administrative units.
- 9 (3) The Department of Public Instruction and the Department of Agriculture and  
10 Consumer Services shall cooperatively manage the transition of the direct  
11 certification process. Accordingly, the Department of Public Instruction shall  
12 share with the Department of Agriculture and Consumer Services the  
13 information made available to the Department of Health and Human  
14 Services under the federal Supplemental Nutrition Assistance Program  
15 identifying which students are from households that receive benefits under  
16 this federal Program. Further, the Department of Public Instruction shall  
17 transfer to the Department of Agriculture and Consumer Services the  
18 capability of the Department of Public Instruction to convey this information  
19 to the school administrative units so that these identified students may  
20 continue to receive free school meals without interruption and without the  
21 need for an application to be submitted by the student's head of household.
- 22 (4) The Department of Public Instruction and the Department of Agriculture and  
23 Consumer Services shall work cooperatively to manage and maintain the  
24 confidentiality of confidential student information, including the information  
25 that relates to eligibility for free lunches and lunches at a reduced price.
- 26 (5) Any current procurement alliance or partnership of local boards of education  
27 to procure food and school supplies for the alliance or partnership shall  
28 continue in order to obtain more competitive pricing than would be available  
29 to an individual local board of education. Accordingly, any duties and  
30 functions of the Department of Public Instruction regarding any such  
31 alliance or partnership as such duties and functions pertain to the  
32 procurement of food or supplies for the Child Nutrition Program or Child  
33 Nutrition Services shall be transferred to the Department of Agriculture and  
34 Consumer Services.

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

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