

By: King of Hemphill

H.B. No. 3589

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the transfer of the administration of school nutrition  
3 programs from the Texas Department of Agriculture to the Texas  
4 Education Agency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 12.0025, Agriculture Code, is amended to  
7 read as follows:

8 Sec. 12.0025. NUTRITION PROGRAMS. The department shall  
9 administer the following federal and state nutrition programs:

10 (1) the commodity supplemental food program under 7  
11 U.S.C. Section 612c;

12 (2) the food distribution program under 7 U.S.C.  
13 Section 612c;

14 (3) the emergency food assistance program under 7  
15 U.S.C. Section 7501 et seq.; and

16 (4) ~~[the school lunch program under 42 U.S.C. Section~~  
17 ~~1751 et seq.]~~

18 ~~[(5) the summer food service program under 42 U.S.C.~~  
19 ~~Section 1761]~~

20 ~~[(6)]~~ the child and adult care food program under 42  
21 U.S.C. Section 1766[~~]~~

22 ~~[(7) the special milk program under 42 U.S.C. Section~~  
23 ~~1772]~~ and

24 ~~[(8) the school breakfast program under 42 U.S.C.~~

1 ~~Section 1773~~].

2 SECTION 2. Chapter 38, Education Code, is amended by adding  
3 Subchapter H to read as follows:

4 SUBCHAPTER H. SCHOOL NUTRITION PROGRAMS

5 Sec. 38.401. SCHOOL NUTRITION PROGRAMS. The agency shall  
6 administer the following nutrition programs:

7 (1) the school lunch program under 42 U.S.C. Section  
8 1751 et seq.;

9 (2) the summer food service program under 42 U.S.C.  
10 Section 1761;

11 (3) the special milk program under 42 U.S.C. Section  
12 1772; and

13 (4) the school breakfast program under 42 U.S.C.  
14 Section 1773.

15 SECTION 3. Section 12.0026, Agriculture Code, is  
16 transferred to Subchapter H, Chapter 38, Education Code, as added  
17 by this Act, redesignated as Section 38.402, Education Code, and  
18 amended to read as follows:

19 Sec. 38.402 [~~12.0026~~]. INTERAGENCY FARM-TO-SCHOOL  
20 COORDINATION TASK FORCE. (a) To promote a healthy diet for  
21 schoolchildren and the business of small to mid-sized local farms  
22 and ranches, the interagency farm-to-school coordination task  
23 force shall develop and implement a plan to facilitate the  
24 availability of locally grown food products in public schools.

25 (b) The task force is composed of:

26 (1) a representative of:

27 (A) the agency [~~department~~], appointed by the

1 commissioner;

2 (B) the Texas Department of Agriculture [~~Texas~~  
3 ~~Education Agency~~], appointed by the commissioner of agriculture [~~of~~  
4 ~~education~~]; and

5 (C) the Department of State Health Services,  
6 appointed by the commissioner of state health services; and

7 (2) at least one representative of each of the  
8 following groups, appointed by the commissioner:

9 (A) fruit and vegetable producer organizations;

10 (B) school food service organizations;

11 (C) food distribution businesses;

12 (D) child nutrition and advocacy organizations;

13 (E) parent organizations;

14 (F) educational institutions that conduct  
15 research in the areas of agriculture and nutrition; and

16 (G) health nutrition educators who serve school  
17 districts.

18 (c) A member of the task force serves at the will of the  
19 official who appointed the member.

20 (d) The representative of the agency [~~department~~] serves as  
21 presiding officer. The task force may elect other necessary  
22 officers from its members.

23 (e) The task force shall meet at the call of the presiding  
24 officer.

25 (f) The agency whose commissioner appoints a member is  
26 responsible for the expenses of a member's service on the task  
27 force. A member of the task force is not entitled to additional

1 compensation for serving on the task force.

2 (g) Each appropriate agency or group represented on the task  
3 force shall provide the personnel and resources necessary to  
4 implement a task force measure under this section.

5 (h) The task force shall:

6 (1) design new education resources, or review or  
7 update existing resources, on nutrition and food education that may  
8 be used by schools and school districts;

9 (2) expand food-focused experiential education  
10 programs;

11 (3) offer assistance in identifying funding sources  
12 and grants that allow schools and school districts to recover the  
13 costs associated with purchasing locally grown food products;

14 (4) develop a database of available locally grown food  
15 products for use by school food service agencies that includes  
16 contact and purchasing information for the products;

17 (5) identify, design, or make available training  
18 programs to enable local farmers and ranchers to market their  
19 products to schools and school districts, including programs  
20 related to:

21 (A) crop production;

22 (B) marketing of crops;

23 (C) postharvest handling of crops;

24 (D) food safety;

25 (E) business management;

26 (F) liability and risk management; and

27 (G) other topics deemed appropriate by the task

1 force;

2 (6) advise schools and school districts on methods by  
3 which a school or school district may improve its facilities to  
4 allow for the use of minimally processed, fresh, and locally  
5 produced foods in school meals;

6 (7) provide technical assistance to school food  
7 service agencies to establish procedures, recipes, menu rotations,  
8 and other internal processes that accommodate the use of locally  
9 grown foods in public schools;

10 (8) offer advanced skills development training to  
11 school food service employees regarding the proper methods of  
12 handling, preparing, and serving locally grown foods; and

13 (9) conduct any other activity considered by the task  
14 force as necessary to achieve its goals under this section.

15 (i) The task force may solicit and accept gifts, grants, and  
16 donations from public and private entities to use for the purposes  
17 of this section.

18 (j) The task force may use any existing program or procedure  
19 that it determines to be useful in performing its duties under this  
20 section.

21 SECTION 4. Section [12.041](#), Agriculture Code, is transferred  
22 to Subchapter H, Chapter [38](#), Education Code, as added by this Act,  
23 redesignated as Section 38.403, Education Code, and amended to read  
24 as follows:

25 Sec. [38.403](#) [[12.041](#)]. SCHOOL BREAKFAST AND LUNCH PROGRAM.

26 (a) The agency [~~department~~], the Department of Agriculture [~~Texas~~  
27 ~~Education Agency~~], and the Health and Human Services Commission

1 shall ensure that applicable information maintained by each entity  
2 is used on at least a quarterly basis to identify children who are  
3 categorically eligible for free meals under the national free or  
4 reduced-price breakfast and lunch program. In complying with this  
5 subsection, the agency, department, [~~agency,~~] and commission shall  
6 use information that corresponds to the months of the year in which  
7 enrollment in the food stamp program is customarily higher than  
8 average.

9 (b) The agency [~~department~~] shall determine the feasibility  
10 of establishing a process under which school districts verify  
11 student eligibility for the national free or reduced-price  
12 breakfast and lunch program through a direct verification process  
13 that uses information maintained under the food stamp and Medicaid  
14 programs, as authorized by 42 U.S.C. Section 1758(b)(3), [~~as~~  
15 ~~amended by Section 105(a) of the Child Nutrition and WIC~~  
16 ~~Reauthorization Act of 2004 (Pub. L. No. 108-265),~~] and 7 C.F.R.  
17 Sections 245.6a(a)(1) and (3) and 245.6a(b)(3). If the agency  
18 [~~department~~] determines the process described by this subsection is  
19 feasible, the agency [~~department~~] may implement the process.

20 SECTION 5. Section 12.0029, Agriculture Code, is  
21 transferred to Subchapter H, Chapter 38, Education Code, as added  
22 by this Act, redesignated as Section 38.404, Education Code, and  
23 amended to read as follows:

24 Sec. 38.404 [12.0029]. SUMMER NUTRITION PROGRAMS. (a) In  
25 this section:

26 (1) "Field office" means a field office of a nutrition  
27 program administered by the agency [~~department~~].

1           (2) "Summer nutrition program" means the summer food  
2 service program under 42 U.S.C. Section 1761. The term includes the  
3 seamless summer option under 42 U.S.C. Section 1761(a)(8).

4           (b) Unless the agency [~~department~~] grants a school district  
5 a waiver under Subsection (f), a district in which 50 percent or  
6 more of the students are eligible to participate in the national  
7 free or reduced-price lunch program under 42 U.S.C. Section 1751 et  
8 seq. shall provide or arrange for the provision of a summer  
9 nutrition program for at least 30 days during the period in which  
10 district schools are recessed for the summer.

11           (c) Not later than October 31 of each year, the agency  
12 [~~department~~] shall notify each school district described by  
13 Subsection (b) of the district's responsibility concerning  
14 provision of a summer nutrition program during the next period in  
15 which school is recessed for the summer.

16           (d) Not later than November 30 of each year, the board of  
17 trustees of a school district that intends to request a waiver under  
18 Subsection (e)(2) must send written notice of the district's  
19 intention to the district's local school health advisory council.  
20 The notice must include an explanation of the district's reason for  
21 requesting a waiver of the requirement.

22           (e) Each school district that receives a notice under  
23 Subsection (c) shall, not later than January 31 of the year  
24 following the year in which the notice was received:

25           (1) inform the agency [~~department~~] in writing that the  
26 district intends to provide or arrange for the provision of a summer  
27 nutrition program during the next period in which district schools

1 are recessed for the summer; or

2 (2) request in writing that the agency [~~department~~]  
3 grant the district a waiver of the requirement to provide or arrange  
4 for the provision of a summer nutrition program.

5 (f) The agency [~~department~~] may grant a school district a  
6 waiver of the requirement to provide or arrange for the provision of  
7 a summer nutrition program only if:

8 (1) the district:

9 (A) provides documentation, verified by the  
10 agency [~~department~~], showing that:

11 (i) there are fewer than 100 children in the  
12 district currently eligible for the national free or reduced-price  
13 lunch program;

14 (ii) transportation to enable district  
15 students to participate in the program is an insurmountable  
16 obstacle to the district's ability to provide or arrange for the  
17 provision of the program despite consultation by the district with  
18 public transit providers;

19 (iii) the district is unable to provide or  
20 arrange for the provision of a program due to renovation or  
21 construction of district facilities and the unavailability of an  
22 appropriate alternate provider or site; or

23 (iv) the district is unable to provide or  
24 arrange for the provision of a program due to another specified  
25 extenuating circumstance and the unavailability of an appropriate  
26 alternate provider or site; and

27 (B) has worked with the field offices to identify



1 another possible provider for the program in the district; or

2 (2) the cost to the district to provide or arrange for  
3 provision of a program would be cost-prohibitive, as determined by  
4 the agency [~~department~~] using the criteria and methodology  
5 established under Subsection (g).

6 (g) The agency [~~department~~] by rule shall establish  
7 criteria and a methodology for determining whether the cost to a  
8 school district to provide or arrange for provision of a summer  
9 nutrition program would be cost-prohibitive for purposes of  
10 granting a waiver under Subsection (f)(2).

11 (h) A waiver granted under Subsection (f) is for a one-year  
12 period.

13 (i) If a school district has requested a waiver under  
14 Subsection (e)(2) and has been unable to provide to the agency  
15 [~~department~~] a list of possible providers for the summer nutrition  
16 program, the field offices shall continue to attempt to identify an  
17 alternate provider for the district's summer nutrition program.

18 (j) Not later than December 31 of each even-numbered year,  
19 the agency [~~department~~] shall provide to the legislature by e-mail  
20 a report that, for each year of the biennium:

21 (1) states the name of each school district that  
22 receives a notice under Subsection (c) and indicates whether the  
23 district:

24 (A) has provided or arranged for the provision of  
25 a summer nutrition program; or

26 (B) has not provided or arranged for the  
27 provision of a program and did not receive a waiver;

1           (2) identifies the funds, other than federal funds,  
2 used by school districts and the state in complying with this  
3 section; and

4           (3) identifies the total amount of any profit made or  
5 loss incurred through summer nutrition programs under this section.

6           (k) The agency [~~department~~] shall post and maintain on the  
7 agency's [~~department's~~] Internet website the most recent report  
8 required by Subsection (j).

9           SECTION 6. Section 12.0028, Agriculture Code, is  
10 transferred to Subchapter H, Chapter 38, Education Code, as added  
11 by this Act, redesignated as Section 38.405, Education Code, and  
12 amended to read as follows:

13           Sec. 38.405 [~~12.0028~~]. LIMITATION ON SANCTIONS IMPOSED ON  
14 SCHOOL DISTRICTS FOR SALE OF FOODS OF MINIMAL NUTRITIONAL VALUE.

15           (a) The commissioner shall adopt rules determining the minimal  
16 nutritional value of meals under this section [~~In this section,~~  
17 ~~"food of minimal nutritional value" has the meaning assigned by 7~~  
18 ~~C.F.R. Section 210.11(a)(2)].~~

19           (b) The agency [~~department~~] may not impose on a school  
20 district a sanction, including disallowing meal reimbursement,  
21 based on the sale to students at a high school of food of minimal  
22 nutritional value, if the sale is approved in advance by the school  
23 and is made:

24           (1) outside of a school area designated for food  
25 service or food consumption or during a period other than a school  
26 meal service period; and

27           (2) for the purpose of raising money for a student

1 organization or activity sponsored or sanctioned by the school or  
2 the school district in which the school is located.

3 SECTION 7. The change in law made by Section 38.402,  
4 Education Code, as transferred, redesignated, and amended by this  
5 Act, applies only to a member of the Interagency Farm-to-Market  
6 Coordination Task Force appointed on or after the effective date of  
7 this Act.

8 SECTION 8. All records, contracts, assets, personal  
9 property, and personnel of the Department of Agriculture associated  
10 with or engaged in the administration of a nutrition program  
11 transferred to the Texas Education Agency by this Act are  
12 transferred to the Texas Education Agency on the effective date of  
13 this Act.

14 SECTION 9. A rule or form adopted by the Department of  
15 Agriculture for the administration of a nutrition program  
16 transferred by this Act is a rule or form of the Texas Education  
17 Agency until changed by the Texas Education Agency.

18 SECTION 10. (a) The unobligated and unexpended balance of  
19 any appropriations made to the Department of Agriculture in  
20 connection with or relating to a nutrition program transferred  
21 under this Act, for the state fiscal biennium ending August 31,  
22 2025, is transferred to the Texas Education Agency for the purpose  
23 of implementing the powers, duties, and obligations transferred to  
24 that agency under this Act.

25 (b) The Department of Agriculture shall continue, as  
26 necessary, to perform the duties and functions being transferred to  
27 the Texas Education Agency until the transfer of department duties

1 and functions is complete.

2           SECTION 11. If, before implementing any provision of this  
3 Act, an agency of this state determines that a waiver or  
4 authorization from a federal agency is necessary for implementation  
5 of that provision, the agency affected by the provision shall  
6 request the waiver or authorization and may delay the  
7 implementation of that provision until the waiver or authorization  
8 is granted.

9           SECTION 12. This Act takes effect September 1, 2023.