

**BILL ANALYSIS**

Senate Research Center  
78R5144 BDH-F

S.B. 474  
By: Lucio et al.  
Education  
3/3/2003  
As Filed

**DIGEST AND PURPOSE**

Under current Texas law, no entity exists for the express purpose of strengthening and improving programs aimed at promoting the nutritional health of Texas schoolchildren. In addition, current law does not provide specific guidelines regarding the provision of foods to schoolchildren by parties outside of the regular meal provision programs of a school district. As proposed, S.B. 474 creates the Nutrition and Health Advisory Council and Fund and charges it with the responsibility to expand meal-provision programs and upgrade nutritional standards for meals and foods served in Texas public schools, including standards regarding nutrition and physical education. In addition, S.B. 474 places additional restrictions on the provision of food by parties other than the school district in those districts that participate in the school breakfast programs. Finally, the bill prohibits undue contact between a school district employee or trustee and a food vendor seeking to provide food to students in that district.

**RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commissioner of education in SECTION 1 (Sections 35.108 and 35.153, Education Code), and in SECTION 5 of this bill.

**SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 2F, Education Code, by adding Chapter 35, as follows:

CHAPTER 35. NUTRITION AND HEALTH  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 35.001. DEFINITIONS. Defines “account” and “council.”

Sec. 35.002. BREAKFAST PROGRAMS. (a) Requires the governing body of a school district or open-enrollment charter school to provide the benefits of the national school breakfast program under the Child Nutrition Act of 1966 to all eligible students, if at least 10 percent of the students in one or more schools in the district or open-enrollment charter school are eligible for free or reduced-price breakfasts under that Act.

(b) Prohibits state money used to implement this section from exceeding the amount available for that purpose in the account, subject to legislative appropriation.

[Reserves sections 35.003-35.050 for expansion]

SUBCHAPTER B. SCHOOLCHILDREN’S NUTRITION AND HEALTH ADVISORY  
COUNCIL

Sec. 35.051. APPOINTMENT OF COUNCIL; TERMS OF MEMBERS. (a) Specifies the composition of the 12-member council.

(b) Provides that public members of the council serve staggered six-year terms with the terms of one-third of the members expiring February 1 of each odd-numbered year.

Sec. 35.052. COMPENSATION; REIMBURSEMENT. (a) Prohibits a member of the council from receiving compensation for service on the council and receiving reimbursement for travel expenses except as provided by Subsection (b).

(b) Authorizes the commissioner to allow reimbursement of travel expenses incurred by a member while conducting the business of the council if the commissioner finds on application of the member that travel for council business imposes a financial hardship on the member.

Sec. 35.053. OPERATION OF COUNCIL. Requires council members to elect a member to serve as presiding officer each year. Requires the council to meet at least quarterly. Authorizes the council to appoint consultants and advisory committees. Provides that the council is administratively attached to the Texas Education Agency (TEA), and requires TEA to provide the council with the necessary staff and facilities.

Sec. 35.054. GIFTS, GRANTS, DONATIONS. Requires the council to seek gifts, grants, and donations from appropriate entities. Authorizes the council to accept such gifts, grants, or donations to carry out the purposes of this subchapter. Requires all such monetary acquisitions to be deposited to the credit of the account.

Sec. 35.055. REPORTS. Requires the council to report to certain officials by November 15 of each year on the activities of the council during the preceding fiscal year. Requires the council to report to certain other officials by January 15 of each odd-numbered year on the activities of the council during the preceding two calendar years.

Sec. 35.056. GENERAL POWERS AND DUTIES. (a) Requires the council to develop a plan to improve the nutritional health of schoolchildren. Requires the plan to include certain recommendations aimed at reducing certain diet-related health problems among schoolchildren.

(b) Sets forth the duties and activities of the council.

(c) Authorizes the council to contract to provide a grant to a public or private entity to carry out the purposes of this subchapter, if funds are available for that purpose. Requires such a contract to make certain specifications.

Sec. 35.057. COLLECTION AND ANALYSIS OF HEALTH INFORMATION. Requires the council to obtain information related to schoolchildren's nutritional health from various sources, and analyze the information, including certain topics.

Sec. 35.058. INFORMATION RECEIVED FROM STATE AGENCY; CONFIDENTIALITY. Authorizes the council to request information from a state agency in order to perform its duties under this chapter. Provides that information thus provided is subject to any restriction on disclosure or use of information that is imposed by law on the agency providing the information. In addition, provides that information in possession of the council that identifies an individual or is otherwise confidential is excepted from required public disclosure under Chapter 552, Government Code, and may not be disclosed for any purpose.

[Reserves sections 35.059-35.100 for expansion]

#### SUBCHAPTER C. SCHOOL FOOD REQUIREMENTS

Sec. 35.101. DEFINITIONS. Defines "competitive food," "meal service period," and

“participating school district.”

Sec. 35.102. ACCESS TO COMPETITIVE FOODS RESTRICTED. Provides that this section only applies to a school campus that participates in the national school breakfast, lunch, or after-school snack program. Prohibits an elementary school from serving or providing access to a competitive food at any time. Authorizes a middle or junior high school campus to serve or provide access to a competitive food only after the end of the regular school day. Authorizes a high school campus to serve or provide access to a competitive food only after the final meal service period of the day. Prohibits a middle, junior high, or high school from serving or providing access to a competitive food that does not meet certain nutritional standards. Prohibits a middle, junior high, or high school to provide student access to a competitive food using a vending machine unless the vending machine is rendered inoperative during the appropriate periods.

Sec. 35.103. SCHOOL MEAL NUTRITION STANDARDS POLICY. (a) Requires each participating school district to adopt a written policy that prohibits the availability or service of certain foods and encourages the adoption of menus recommended by TEA.

(b) Exempts a student from a policy adopted under this section if a licensed health care practitioner provides written notice to the school district or campus that the policy is detrimental to the student’s health.

(c) Requires each participating school district to adopt the written policy required by Subsection (a) after a public hearing held by the district’s board of trustees. Requires the district to provide public notice of the hearing at least 10 days before the hearing date.

(d) Provides that a policy adopted under this section is public information under Chapter 552, Government Code, and is required to be available to the public at the offices of each participating school district and each appropriate campus.

Sec. 35.104. CONSULTATION AND TECHNICAL ASSISTANCE. Authorizes a participating school district to contract with certain individuals or entities for technical assistance or consultation regarding compliance with federal or state standards governing school meals.

Sec. 35.105. CONFLICTS OF INTEREST PROHIBITED. Prohibits an employee or member of the board of trustees of a participating school district from having a pecuniary interest in an agreement to which the district or campus is a party if the agreement relates to a food product that is purchased by the district or campus or served or accessible to students in the district.

Sec. 35.106. GENERAL POWERS AND DUTIES OF PARTICIPATING SCHOOL DISTRICT. (a) Requires each participating school district to: adopt a written policy governing various aspects of programs providing food to the districts students; prepare an annual written evaluation of the meals served by campuses in the district detailing the level of compliance with this chapter; and prepare an annual report that details certain information regarding the sale of competitive foods in the district or its campuses.

(b) Requires each participating school district to adopt the written policy required by Subsection (a)(1) following a public hearing held by the board of trustees of the district. Requires the district to provide notice of the hearing at least ten days before the hearing date.

(c) Provides that a policy adopted under this section is public information under Chapter 552, Government Code, and is required to be available to the public at the

offices of each participating school district and each appropriate campus.

Sec. 35.107. GENERAL POWERS AND DUTIES OF AGENCY. Requires TEA, with the assistance of the council, to adopt certain standards and develop certain tools and programs pertaining to schoolchildren's nutrition and the provision of meals.

Sec. 35.108. ADOPTION OF RULES AND RECOMMENDATIONS. Authorizes the commissioner of education (commissioner) to adopt rules necessary to implement this subchapter. Requires the commissioner to consult with the council before adopting any rule or recommendation under this subchapter that relates to nutrition.

[Reserves sections 35.109-35.150 for expansion]

#### SUBCHAPTER D. SCHOOLCHILDREN'S NUTRITION AND HEALTH ACCOUNT

Sec. 35.151. COMPOSITION OF ACCOUNT. Provides that the schoolchildren's nutrition and health account exists as a separate account in the general revenue fund. Specifies that the account consists of money from certain sources. Requires money deposited to the account to be used only for the purposes described by Section 35.152.

Sec. 35.152. USE OF ACCOUNT. (a) Requires the account and any federal matching funds to be used only to expand, support, and maintain participation in the national school breakfast program, except as otherwise provided by this section or legislative appropriation.

(b) Authorizes gifts, grants, and donations deposited to the credit of the account to be used to pay the costs of administering the council, including certain travel reimbursement costs.

(c) Requires any annual account balance remaining after meeting the requirements of Subsections (a) and (b) to be used to fund schoolchildren's nutrition and health activities as specified.

(d) Authorizes the council to make recommendations concerning the allocation of money in the account to any governmental entity.

Sec. 35.153. RULES. Authorizes the commissioner to adopt any reasonable and necessary rules to carry out the purposes of this subchapter.

SECTION 2. Repealer: Section 33.901 (Breakfast Programs), Education Code.

SECTION 3. Specifies the terms of the initial members of the council, to be appointed by the governor, lieutenant governor, and commissioner.

SECTION 4. Requires a school district with at least one campus that participates in the national school breakfast, lunch, or after-school snack programs to adopt the policy required by Section 35.106, Education Code, by March 1, 2004.

SECTION 5. Requires the commissioner to adopt any rules necessary to implement this act as soon as practicable after September 1, 2003. Requires a state or local government entity to request a waiver or authorization from a federal agency upon determining that such a waiver is necessary to implement a provision of this Act, and authorizes the entity to delay the implementation of that provision until the waiver or authorization is granted.

SECTION 6. Effective date: September 1, 2003.