

By: Capelo

H.B. No. 1093

A BILL TO BE ENTITLED

AN ACT

relating to nutrition and health programs for public school children.

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

SECTION 1. Subtitle F, Title 2, Education Code, is amended by adding Chapter 35 to read as follows:

CHAPTER 35. NUTRITION AND HEALTH

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 35.001. DEFINITIONS. In this chapter:

(1) "Account" means the schoolchildren's nutrition and health account described by Subchapter D.

(2) "Council" means the Schoolchildren's Nutrition and Health Advisory Council described by Subchapter B.

Sec. 35.002. BREAKFAST PROGRAMS. (a) If at least 10 percent of the students enrolled in one or more schools in a school district or enrolled in an open-enrollment charter school are eligible for free or reduced-price breakfasts under the national school breakfast program provided for by the Child Nutrition Act of 1966 (42 U.S.C. Section 1773) and its subsequent amendments, the governing body of the district or the open-enrollment charter school shall participate in the program and make the benefits of the program available to all eligible students in the schools or school.

(b) Subject to legislative appropriation, state money used

1 to implement this section may not exceed the amount available for
2 that purpose in the account.

3 [Sections 35.003-35.050 reserved for expansion]

4 SUBCHAPTER B. SCHOOLCHILDREN'S NUTRITION AND HEALTH ADVISORY
5 COUNCIL

6 Sec. 35.051. APPOINTMENT OF COUNCIL; TERMS OF MEMBERS. (a)

7 The Schoolchildren's Nutrition and Health Advisory Council is
8 composed of the following 12 members:

9 (1) the commissioner of education, or the
10 commissioner's designee;

11 (2) the commissioner of public health, or the
12 commissioner's designee;

13 (3) the commissioner of agriculture, or the
14 commissioner's designee;

15 (4) the following public members appointed by the
16 governor:

17 (A) a school nurse;

18 (B) a licensed or registered dietitian employed
19 by a school district; and

20 (C) a parent or guardian of a public school
21 student attending a school that participates in the national school
22 breakfast, school lunch, or after-school snack program;

23 (5) the following public members appointed by the
24 lieutenant governor:

25 (A) a physician;

26 (B) a person with expertise in the development of
27 health education programs in public schools; and

1 (C) a licensed or registered dietitian engaged in
2 the clinical practice of dietetics or in the teaching of dietetics
3 or nutrition at an institution of higher education in this state;
4 and

5 (6) the following public members appointed by the
6 commissioner of education from a list provided by the speaker of the
7 house of representatives:

8 (A) a school food service director;

9 (B) a school superintendent or principal; and

10 (C) a representative of a statewide, voluntary
11 membership organization representing school district boards of
12 trustees.

13 (b) Public members of the council serve staggered six-year
14 terms, with the terms of one-third of the members expiring February
15 1 of each odd-numbered year.

16 Sec. 35.052. COMPENSATION; REIMBURSEMENT. (a) A member of
17 the council may not receive compensation for service on the council
18 and, except as provided by Subsection (b), may not be reimbursed for
19 travel expenses incurred while conducting the business of the
20 council.

21 (b) The commissioner may authorize reimbursement of the
22 travel expenses incurred by a member while conducting the business
23 of the council, as provided in the General Appropriations Act, if
24 the commissioner finds on application of the member that travel for
25 council business imposes a financial hardship on the member.

26 Sec. 35.053. OPERATION OF COUNCIL. (a) The members of the
27 council shall annually elect a member to serve as presiding

1 officer.

2 (b) The council shall meet at least quarterly.

3 (c) The council may appoint:

4 (1) consultants to the council; and

5 (2) advisory committees under Chapter 2110,
6 Government Code.

7 (d) The council is administratively attached to the agency.

8 The agency shall provide the necessary staff and facilities to
9 assist the council in performing its duties.

10 Sec. 35.054. GIFTS, GRANTS, DONATIONS. (a) The council
11 shall seek and may accept gifts, grants, and donations from
12 appropriate nonprofit foundations, governmental entities, and
13 other sources.

14 (b) The agency may accept gifts, grants, or donations from
15 any source to carry out the purposes of this subchapter.

16 (c) All gifts, grants, and donations of money accepted under
17 this section shall be deposited to the credit of the account.

18 Sec. 35.055. REPORTS. (a) Not later than November 15 of
19 each year, the council shall report to the commissioner of
20 education, the commissioner of agriculture, and the commissioner of
21 public health on the activities of the council during the preceding
22 fiscal year.

23 (b) Not later than January 15 of each odd-numbered year, the
24 council shall report to the lieutenant governor and the speaker of
25 the house of representatives on the activities of the council
26 during the preceding two calendar years.

27 Sec. 35.056. GENERAL POWERS AND DUTIES. (a) The council

1 shall develop a resource-efficient plan designed to improve the
2 nutritional health of schoolchildren. The plan must include
3 recommendations for activities and programs designed to reduce:

4 (1) the morbidity, mortality, and economic burden of
5 childhood obesity;

6 (2) the incidence of diabetes; and

7 (3) the incidence of cardiovascular disease.

8 (b) The council shall:

9 (1) make recommendations to the agency, the Texas
10 Department of Health, the Department of Agriculture, and other
11 appropriate state and local governmental entities regarding
12 implementation of the plan adopted under Subsection (a) and any
13 other children's nutrition plan in this state;

14 (2) promote participation in the national school
15 breakfast and school lunch programs;

16 (3) review current standards governing the
17 nutritional content of meals served under the national school
18 breakfast and school lunch programs and recommend appropriate
19 changes in meal content standards and other related standards and
20 practices, including recommendations related to meal service
21 schedules and meal content designed to aid in the prevention of
22 childhood obesity, Type II diabetes, cardiovascular disease, and
23 related long-term health problems;

24 (4) develop program and curriculum changes designed to
25 improve nutrition education in public schools in coordination with
26 the national school breakfast and school lunch programs and other
27 child health education and promotion programs offered by state and

1 local entities, including programs offered by the Texas Department
2 of Health, with special emphasis on the prevention of childhood
3 obesity, Type II diabetes, cardiovascular disease, and related
4 long-term health problems;

5 (5) develop the nutrition services component of
6 coordinated health programs for elementary students under Section
7 38.014;

8 (6) develop programs designed to expand the use of
9 Texas agricultural products in school breakfast and school lunch
10 program meals to:

11 (A) improve the quality, nutritional content,
12 and cost-efficiency of the meals; and

13 (B) promote Texas agriculture, with special
14 emphasis on fresh Texas-grown fruits and vegetables;

15 (7) coordinate activities with other governmental
16 entities of this state that are involved in the nutritional health
17 of children, including the Texas Diabetes Council, the Council on
18 Cardiovascular Disease and Stroke, and the Texas Cancer Council;

19 (8) identify for health care providers, employers,
20 schools, community health centers, and other groups the benefits of
21 encouraging healthy nutrition practices and comprehensive
22 nutrition education for children and the community;

23 (9) recognize innovative and effective programs
24 designed to prevent childhood obesity, Type II diabetes,
25 cardiovascular disease, and related long-term health problems;

26 (10) assist the agency, school districts, the Texas
27 Department of Health, public health districts, and health

1 authorities in promoting a public school curriculum that includes
2 physical, nutrition, and health education relating to the
3 prevention of childhood obesity, Type II diabetes, cardiovascular
4 disease, and related long-term health problems; and

5 (11) evaluate and enhance the implementation,
6 cost-efficiency, and effectiveness of the programs and
7 recommendations developed under this subchapter.

8 (c) To the extent that funds are available for the purpose,
9 the council may by contract provide a grant to a public or private
10 entity to carry out the purposes of this subchapter. A contract
11 under this subsection must specify:

12 (1) the methods to be used in the program funded by the
13 grant to improve schoolchildren's nutritional health;

14 (2) a method of accounting for all grant funds
15 received by the entity; and

16 (3) any inspections and reports the council determines
17 necessary to evaluate the success of the program.

18 Sec. 35.057. COLLECTION AND ANALYSIS OF HEALTH
19 INFORMATION. The council shall obtain from state and federal
20 agencies and private and public organizations information related
21 to schoolchildren's nutritional health, obesity, Type II diabetes,
22 cardiovascular disease, and related long-term health problems at
23 the state and regional level and, to the extent practicable, at the
24 local level. The council shall analyze information obtained under
25 this section, including any information related to behavioral risk
26 factors, morbidity and mortality rates, and community indicators
27 related to the health care conditions and diseases.

1 Sec. 35.058. INFORMATION RECEIVED FROM STATE AGENCY;
2 CONFIDENTIALITY. (a) To perform its duties under this chapter,
3 the council may request and receive information in the possession
4 of a state agency. In addition to the restriction imposed by
5 Subsection (b), information provided to the council under this
6 subsection is subject to any restriction on disclosure or use of the
7 information that is imposed by law on the agency that provides the
8 information.

9 (b) Information in the possession of the council that
10 identifies an individual or that is otherwise confidential under
11 state or federal law is confidential, is excepted from required
12 public disclosure under Chapter 552, Government Code, and may not
13 be disclosed for any purpose.

14 [Sections 35.059–35.100 reserved for expansion]

15 SUBCHAPTER C. SCHOOL FOOD REQUIREMENTS

16 Sec. 35.101. DEFINITIONS. In this subchapter:

17 (1) "Competitive food" means a food or beverage
18 provided or made available to students in a participating school
19 other than that provided or made available by the school's food
20 service department, including a food or beverage provided or made
21 available under the national school breakfast, school lunch, or
22 after-school snack program.

23 (2) "Meal service period" means the time designated
24 for serving and eating a meal on a school campus.

25 (3) "Participating school district" means a school
26 district in which at least one school campus participates in the
27 national school breakfast, school lunch, or after-school snack

1 program.

2 Sec. 35.102. ACCESS TO COMPETITIVE FOODS RESTRICTED. (a)
3 This section applies only to a school campus that participates in
4 the national school breakfast, school lunch, or after-school snack
5 program.

6 (b) An elementary school campus may not serve or provide
7 access to a competitive food at any time.

8 (c) A middle school or junior high school campus may serve
9 or provide access to a competitive food only after the end of the
10 regular school day.

11 (d) A high school campus may serve or provide access to a
12 competitive food only after the final meal service period of the
13 day.

14 (e) A middle school, junior high school, or high school
15 campus may not serve or provide access to a competitive food unless
16 the food meets the nutrition standards described by this subchapter
17 and rules adopted by the commissioner under this subchapter.

18 (f) A middle school, junior high school, or high school
19 campus may provide students access to a competitive food using a
20 vending machine or similar automated machine only if the machine is
21 rendered inoperative by a timing device or other method during the
22 periods in which access to the food is prohibited under this
23 section.

24 Sec. 35.103. SCHOOL MEAL NUTRITION STANDARDS POLICY. (a)
25 In addition to the nutrient content standards required by federal
26 law, each participating school district shall adopt a written
27 policy that:

1 (1) prohibits the service or availability to students
2 of:

3 (A) whole milk, except that a school district or
4 campus may provide whole milk for use by children not older than two
5 years of age;

6 (B) food products containing excessive amounts
7 of fat per serving, as determined by the commissioner; and

8 (C) other food products prohibited by rules
9 adopted by the commissioner; and

10 (2) encourages the adoption of menus recommended by
11 the agency that:

12 (A) increase the weekly servings of fresh fruit
13 and vegetables;

14 (B) increase the weekly servings of whole grain
15 foods; and

16 (C) satisfy other specific meal standards, as
17 determined by the commissioner.

18 (b) A policy adopted under this section does not apply to a
19 student if a physician or other health care practitioner licensed
20 by this state provides written notice to the participating school
21 district or campus that the policy is detrimental to the student's
22 health.

23 (c) Each participating school district shall adopt the
24 written policy required by Subsection (a) following a public
25 hearing held by the board of trustees of the district. The district
26 shall provide notice of the hearing to the public not later than the
27 10th day before the date of the hearing.

1 (d) A policy adopted under this section is public
2 information under Chapter 552, Government Code, and shall be made
3 readily available to the public at the offices of each
4 participating school district and each appropriate campus in the
5 district.

6 Sec. 35.104. CONSULTATION AND TECHNICAL ASSISTANCE. A
7 participating school district may contract with a licensed or
8 registered dietitian or a regional education service center for
9 technical assistance or consultation regarding compliance with
10 federal or state standards governing school meals.

11 Sec. 35.105. CONFLICT OF INTEREST PROHIBITED. An employee
12 of or a member of the board of trustees of a participating school
13 district may not have a pecuniary interest in an agreement to which
14 the district or a campus in the district is a party if the agreement
15 relates to a food product:

16 (1) purchased by the district or campus; or

17 (2) served or accessible to students in the district.

18 Sec. 35.106. GENERAL POWERS AND DUTIES OF PARTICIPATING
19 SCHOOL DISTRICT. (a) Each participating school district shall:

20 (1) adopt a written policy governing:

21 (A) the advertising or marketing of food products
22 on the campuses, on the property, and in the facilities of the
23 district;

24 (B) the nutritional content and quality of the
25 meals served in the district under a school meal program, provided
26 that the policy must be consistent with the policy required by
27 Section 35.103;

1 (C) the duration and scheduling of school meal
2 service periods;

3 (D) the coordination of school meal programs with
4 the school nutrition and physical education curricula and programs;
5 and

6 (E) any programs and procedures designed to
7 assure compliance with school meal policies and applicable federal
8 and state standards;

9 (2) at least annually, prepare a written evaluation of
10 the meals served by school campuses in the district, detailing the
11 level of compliance with this chapter; and

12 (3) prepare an annual report that includes the
13 following details of each agreement between the district or a
14 school campus in the district and a person engaged in the sale of
15 competitive foods in the district or on the campus:

16 (A) the parties to the agreement;

17 (B) the terms of the agreement;

18 (C) the specific use contemplated by the
19 agreement for any revenue or other money received by the district or
20 campus under the agreement;

21 (D) the district or campus official responsible
22 for the receipt and disbursement of revenue or other money received
23 by the district or campus under the agreement;

24 (E) an accounting of all revenue and other money
25 received and disbursed by the district or campus under the
26 agreement during the school year preceding the report; and

27 (F) a cumulative accounting of all revenue and

1 other money received and disbursed by the district or campus under
2 the agreement after the effective date of the agreement.

3 (b) Each participating school district shall adopt the
4 written policy required by Subsection (a)(1) following a public
5 hearing held by the board of trustees of the district. The district
6 shall provide notice of the hearing to the public not later than the
7 10th day before the date of the hearing.

8 (c) Each policy and report of a participating school
9 district under this section is public information under Chapter
10 552, Government Code, and shall be made readily available to the
11 public at the offices of the district and appropriate school
12 campuses in the district.

13 Sec. 35.107. GENERAL POWERS AND DUTIES OF AGENCY. The
14 agency, with the assistance of the council, shall:

15 (1) subject to Section 35.102, adopt standards
16 governing the competitive foods that may be served or made
17 accessible to students during the school day, including any
18 competitive food that positively contributes to a student's
19 recommended nutrient intake or satisfies recommended limits on the
20 total number of grams of fat per serving of food;

21 (2) develop a practice-based nutrition evaluation
22 tool designed to assist each participating school district in
23 meeting the requirements of Section 35.106;

24 (3) develop a program of basic nutrition education as
25 a curriculum component at the elementary, middle school, junior
26 high, and high school levels; and

27 (4) develop a program for the recognition of

1 excellence in the performance of participating school districts and
2 campuses in establishing and achieving goals related to compliance
3 with:

4 (A) mandatory and recommended school meal
5 standards;

6 (B) nutrition education programs; and

7 (C) other policies and programs that contribute
8 to the improved nutritional health of schoolchildren, including
9 establishment of closed campuses at the middle school or junior
10 high school level that prohibit students from leaving the school
11 campus during meal service periods.

12 Sec. 35.108. ADOPTION OF RULES AND RECOMMENDATIONS. (a)
13 Subject to Subsection (b), the commissioner may adopt rules
14 necessary to implement this subchapter.

15 (b) The commissioner must consult with the council before
16 adopting any rule or recommendation under this subchapter that
17 relates to nutrition.

18 [Sections 35.109–35.150 reserved for expansion]

19 SUBCHAPTER D. SCHOOLCHILDREN'S NUTRITION AND HEALTH ACCOUNT

20 Sec. 35.151. COMPOSITION OF ACCOUNT. (a) The
21 schoolchildren's nutrition and health account is a separate account
22 in the general revenue fund.

23 (b) The account consists of:

24 (1) revenues deposited to the credit of the account
25 from any tax or other revenue source, if the revenues from the tax
26 or other revenue source are allocated to the account by other law;

27 (2) money received under Section 35.054 as gifts,

1 grants, or donations; and

2 (3) interest and other earnings arising from money in
3 the account.

4 (c) Money deposited to the credit of the account remains the
5 property of the account and may be used only for the purposes
6 described by Section 35.152.

7 Sec. 35.152. USE OF ACCOUNT. (a) Except as otherwise
8 provided by this section or legislative appropriation, the account,
9 together with any federal matching money, shall be used only to
10 expand, support, and maintain participation in the national school
11 breakfast program.

12 (b) Gifts, grants, and donations deposited to the credit of
13 the account may be used to pay any costs of administering the
14 council, including any costs related to reimbursement of travel
15 expenses under Section 35.052.

16 (c) Any annual account balance remaining after meeting the
17 requirements of Subsections (a) and (b) must be used to fund
18 schoolchildren's nutrition and health activities and programs as
19 follows:

20 (1) not more than 50 percent of any annual account
21 balance may be used for awards to school districts recognized in
22 accordance with the program required by Section 35.107(4) for
23 demonstrating excellence in improving the nutritional health of
24 schoolchildren; and

25 (2) the remainder of any annual account balance may be
26 used to provide a grant under Section 35.056 to assist a public or
27 private entity in the implementation of a program designed to

1 improve schoolchildren's nutritional health.

2 (d) The council may make recommendations concerning the
3 allocation of money in the account to any governmental entity.

4 Sec. 35.153. RULES. The commissioner may adopt any
5 reasonable and necessary rules to carry out the purposes of this
6 subchapter.

7 SECTION 2. Section 33.901, Education Code, is repealed.

8 SECTION 3. In appointing the initial members of the
9 Schoolchildren's Nutrition and Health Advisory Council under
10 Subchapter B, Chapter 35, Education Code, as added by this Act, the
11 governor, lieutenant governor, and commissioner of education shall
12 each designate:

13 (1) one person to serve a term expiring February 1,
14 2005;

15 (2) one person to serve a term expiring February 1,
16 2007; and

17 (3) one person to serve a term expiring February 1,
18 2009.

19 SECTION 4. Not later than March 1, 2004, a school district
20 shall adopt the policy required by Section 35.106, Education Code,
21 as added by this Act, if at least one school campus in the district
22 participates in the national school breakfast, school lunch, or
23 after-school snack program.

24 SECTION 5. (a) As soon as practicable after September 1,
25 2003, the commissioner of education shall adopt any rules necessary
26 to implement this Act.

27 (b) If a state or local governmental entity determines that

1 a waiver or authorization from a federal agency is necessary to
2 implement a provision of this Act, the state or local governmental
3 entity shall request the waiver or authorization and may delay
4 implementing that provision until the waiver or authorization is
5 granted.

6 SECTION 6. This Act takes effect September 1, 2003.