88R11036 AMF-D

By:  King of Hemphill H.B. No. 3589

A BILL TO BE ENTITLED

AN ACT

relating to the transfer of the administration of school nutrition programs from the Texas Department of Agriculture to the Texas Education Agency.

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

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

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

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

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

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

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

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

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

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

[~~(8) the school breakfast program under 42 U.S.C. Section 1773~~].

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

SUBCHAPTER H. SCHOOL NUTRITION PROGRAMS

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

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

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

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

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

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

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

(b)  The task force is composed of:

(1)  a representative of:

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

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

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

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

(A)  fruit and vegetable producer organizations;

(B)  school food service organizations;

(C)  food distribution businesses;

(D)  child nutrition and advocacy organizations;

(E)  parent organizations;

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

(G)  health nutrition educators who serve school districts.

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

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

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

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

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

(h)  The task force shall:

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

(2)  expand food-focused experiential education programs;

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

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

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

(A)  crop production;

(B)  marketing of crops;

(C)  postharvest handling of crops;

(D)  food safety;

(E)  business management;

(F)  liability and risk management; and

(G)  other topics deemed appropriate by the task force;

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

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

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

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

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

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

SECTION 4.  Section 12.041, Agriculture Code, is transferred to Subchapter H, Chapter 38, Education Code, as added by this Act, redesignated as Section 38.403, Education Code, and amended to read as follows:

Sec. 38.403  [~~12.041~~]. SCHOOL BREAKFAST AND LUNCH PROGRAM. (a) The agency [~~department~~], the Department of Agriculture [~~Texas Education Agency~~], and the Health and Human Services Commission shall ensure that applicable information maintained by each entity is used on at least a quarterly basis to identify children who are categorically eligible for free meals under the national free or reduced-price breakfast and lunch program. In complying with this subsection, the agency, department, [~~agency,~~] and commission shall use information that corresponds to the months of the year in which enrollment in the food stamp program is customarily higher than average.

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

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

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

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

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

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

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

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

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

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

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

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

(1)  the district:

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

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

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

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

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

(B)  has worked with the field offices to identify another possible provider for the program in the district; or

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 38.405  [~~12.0028~~]. LIMITATION ON SANCTIONS IMPOSED ON SCHOOL DISTRICTS FOR SALE OF FOODS OF MINIMAL NUTRITIONAL VALUE. (a) The commissioner shall adopt rules determining the minimal nutritional value of meals under this section [~~In this section, "food of minimal nutritional value" has the meaning assigned by 7 C.F.R. Section 210.11(a)(2)~~].

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

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

(2)  for the purpose of raising money for a student organization or activity sponsored or sanctioned by the school or the school district in which the school is located.

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

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

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

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

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

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

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