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AB-3043 Pupil nutrition: breakfast and lunch programs. (2017-2018)

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Assembly Bill No. 3043

CHAPTER 593

An act to amend Sections 38100, 38101, 49531, 49531.1, 49550.3, and 49590 of, and to add Section 49550.5 to, the Education Code, relating to pupil nutrition.

[Approved by Governor September 20, 2018. Filed with Secretary of State September 20, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3043, Berman. Pupil nutrition: breakfast and lunch programs.

Existing law requires a school district or county superintendent of schools maintaining a kindergarten or any of grades 1 to 12, inclusive, to provide a needy pupil, as defined, one nutritionally adequate free or reduced-price meal during each schoolday, and authorizes the school district or county superintendent of schools to use funds available from any federal program, including the federal School Breakfast Program, or state program to comply with that requirement, as provided.

This bill would authorize a school district, county office of education, private nonprofit school, charter school, or residential child care institution, as defined, that participates in the federal School Breakfast Program, commencing with the 2019–20 school year, after submitting certain documentation to the State Department of Education for approval, to provide universal breakfast, to the maximum extent practicable. The bill would define “universal breakfast” to mean a nutritionally adequate breakfast that complies with, and qualifies for reimbursement under, the federal School Breakfast Program and that is provided to every pupil at no charge.

Existing law imposes various requirements relating to the nutritional quality of meals and other food and drinks provided to pupils, including breakfasts and lunches provided to pupils using state funds and all food and drinks sold on public school campuses, as provided. Existing law requires the department to ensure that the nutrition levels of meals served to schoolage children pursuant to the federal National School Lunch Act be of the highest quality and greatest nutritional value possible.

This bill would revise those nutritional quality requirements to require that those breakfasts and lunches qualify for reimbursement under, and other food and drinks sold on public school campuses are consistent with the requirements for, the most current meal pattern for the federal School Breakfast Program or the federal School Lunch Program, as specified. The bill would revise the requirement on the department to instead require the department to monitor schools participating in the federal National School Lunch Program or federal School Breakfast Program to ensure that the nutrition levels of meals qualify those meals for reimbursement under those same federal laws.

Existing law authorizes the governing board of any school district to establish cafeterias in the schools under its jurisdiction, and authorizes the moneys received for the sale of food or for any services performed by the cafeterias to be paid into the county treasury to the credit of the cafeteria fund of the particular school district. Existing law requires the cafeteria fund to be used only for those expenditures authorized by the governing board of the school district that are defined in the California School Accounting Manual.

This bill would authorize the governing board of a school district to authorize expenditures from the cafeteria fund or cafeteria account to provide universal breakfast. The bill would provide that the cost of purchasing a mobile food facility may be a charge against the cafeteria fund, upon prior approval by the department. The bill would require a local educational agency that uses federal reimbursements from any of the federal child nutrition programs to purchase a mobile food facility to use the mobile food facility only to support the administration of those federal child nutrition programs, and would require that a mobile food facility used for any purposes other than to support the administration of federal child nutrition programs be purchased entirely from funding sources other than the cafeteria fund.

Existing law authorizes the department to award grants of up to \$15,000 per schoolsite on a competitive basis to school districts, county superintendents of schools, or entities approved by the department, limited to an amount subject to budget appropriations each fiscal year, for nonrecurring expenses incurred in initiating or expanding specified school breakfast programs and summer food service programs.

This bill would specify that the grants may be expended for a federal summer meals program, instead of a summer food service program.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 38100 of the Education Code is amended to read:

38100. (a) The cost of providing adequate housing for cafeterias, including, but not limited to, permanent kitchen facilities, is a charge against the funds of the school district. The cost of the lease or purchase of cafeteria equipment and of vending machines and their installation and housing shall be a charge against cafeteria funds, in accordance with Section 38091. However, when the governing board of a school district deems it necessary, the governing board of a school district may make the cost of the lease or purchase of cafeteria equipment for a kitchen or central food processing plant, and vending machines and their installation and housing, a charge against the funds of the school district. If school district funds are expended for the lease or purchase of kitchen equipment or for the lease, purchase, installation, or housing of vending machines, the governing board of the school district may at any time during the same fiscal year after the expenditure reimburse school district funds from cafeteria funds. The governing board of a school district shall only approve reimbursement for vending machines if one, or both, of the following apply:

(1) The vending machines are owned and operated by the school food services department, sell meals that qualify for federal meal program reimbursement, and are equipped with appropriate point of service meal counting software.

(2) The vending machines sell only food, or only beverages, or both that comply with state and federal competitive food laws and regulations.

(b) The governing board of a school district may by resolution make the cost of maintenance of the kitchen facilities, the cost of replacement or maintenance of kitchen equipment, and costs of telephone charges, water, drinking water in the cafeteria, electricity, gas, coal, wood, fuel, oil, and garbage disposal related to food service and delivery a charge against cafeteria funds, provided that the school district complies with all applicable state and federal laws and regulations.

(c) For purposes of this section, "cafeteria fund" means the nonprofit school food service account, as defined in Section 210.2 of Title 7 of the Code of Federal Regulations.

SEC. 2. Section 38101 of the Education Code is amended to read:

38101. (a) (1) The governing board of a school district may authorize expenditures from the cafeteria fund or cafeteria account for those charges from that fund or account that are defined in the California School Accounting Manual, and as specified in paragraphs (2) and (3).

(2) The governing board of a school district may authorize expenditures from the cafeteria fund or cafeteria account to provide meals pursuant to Section 49550.5.

(3) (A) Upon prior approval by the department, the cost of purchasing a mobile food facility, as defined in Section 113831 of the Health and Safety Code, may be a charge against the cafeteria fund.

(B) A local educational agency that uses federal reimbursements from any of the federal child nutrition programs to purchase a mobile food facility shall use the mobile food facility only to support the administration of those federal child nutrition programs. A mobile food facility used for any purposes other than to support the administration of federal child nutrition programs shall be purchased entirely from funding sources other than the cafeteria fund.

(b) A food service program shall not be charged more than once for expenditures for the same service. If a food service program is being charged for a service as a direct cost, the school district shall not also allocate that cost as a direct support cost or indirect cost.

(c) For purposes of this section, an "indirect cost" shall be limited to the lesser of the school district's prior year indirect cost rate as approved by the department or the statewide average approved indirect cost for the second prior fiscal year.

(d) Charges to, or transfers from, a food service program shall indicate when the charge or transfer was made and shall be accompanied by a written explanation of the purpose of, and basis for, the expenditure.

(e) This section does not authorize a school district to charge a food service program any charges prohibited by state or federal law or regulation.

(f) If the department and the Department of Finance concur that a school district has violated this section, the Superintendent shall direct that school district to transfer double the amount improperly transferred to the general fund of the school district from that fund to the cafeteria fund of the school district or cafeteria account for the subsequent fiscal year which is then to be used for the improvement of the food service program of the school district. If the school district fails to make that transfer as directed, the Superintendent shall reduce the regular apportionment of the school district determined pursuant to Section 42238 and increase the child nutrition allowance of the school district determined pursuant to Section 41350 by double the amount improperly transferred to the general fund of the school district and that amount is then to be used for improvement of the food service program.

(g) It is the intent of the Legislature in enacting this section that responsible school district officials be held fully accountable for the accounting and reporting of food service programs and that minor and inadvertent instances of noncompliance be resolved in a fair and equitable manner to the satisfaction of the Superintendent and the Department of Finance.

(h) The Superintendent, with the approval of the Department of Finance, may waive up to the full transfer amount in subdivision (f) if he or she determines that the noncompliance involved is minor or inadvertent, or both.

(i) For purposes of this section, "cafeteria fund" means the nonprofit school food service account, as defined in Section 210.2 of Title 7 of the Code of Federal Regulations.

SEC. 3. Section 49531 of the Education Code is amended to read:

49531. (a) Any child nutrition entity may apply to the department for all available federal and state funds so that a nutritionally adequate breakfast or lunch, or both, may be provided to pupils each schoolday at each school in the districts or maintained by the county superintendents of schools, or at private schools and parochial schools and to children receiving child development services. The state board shall adopt rules and regulations for the operation of lunch and breakfast programs in school districts. A child nutrition entity that receives state funds pursuant to this article, shall provide breakfasts and lunches in accordance with state and federal guidelines.

(b) A nutritionally adequate breakfast, for the purposes of this article, is one that qualifies for reimbursement under the most current meal pattern for the federal School Breakfast Program as defined in Section 220.8 of Title 7 of the Code of Federal Regulations. A nutritionally adequate lunch for purposes of this article is one that qualifies for reimbursement under the most current meal pattern for the federal National School Lunch Program, as defined in Section 210.10 of Title 7 of the Code of Federal Regulations.

(c) State reimbursement for meals provided pursuant to this article shall be limited to meals provided to pupils who are within the relevant definitions and criteria in federal statutes and regulations that prescribe eligibility for free and reduced-price meals.

SEC. 4. Section 49531.1 of the Education Code is amended to read:

49531.1. (a) The department shall develop and maintain nutrition guidelines for school lunches and breakfasts, and for all food and beverages sold on public school campuses.

(b) The nutrition guidelines for school lunches and breakfasts, pursuant to subdivision (a), shall be consistent with the requirements for nutritionally adequate breakfasts and nutritionally adequate lunches, as defined in subdivision (b) of Section 49531.

SEC. 5. Section 49550.3 of the Education Code is amended to read:

49550.3. (a) Because a hungry child cannot learn, the Legislature intends, as a state nutrition and health policy, that the federal School Breakfast Program be made available in all schools where it is needed to provide adequate nutrition for children in

attendance.

(b) The department, in cooperation with school districts and county superintendents of schools, shall provide information and limited financial assistance to encourage program startup and expansion into all qualified schools, as follows:

(1) Provide information to school districts and county superintendents of schools concerning the benefits and availability of the federal School Breakfast Program.

(2) Each year, provide additional information and financial assistance to schools in the state, in which 20 percent or more of the school enrollment consists of children who have applied and qualify for free and reduced-price meals.

(c) The department shall award grants of up to fifteen thousand dollars (\$15,000) per schoolsite on a competitive basis to school districts, county superintendents of schools, or entities approved by the department, limited to an amount subject to budget appropriations each fiscal year, for nonrecurring expenses incurred in initiating or expanding a school breakfast program under this section or a federal summer meals program, including the summer food service program pursuant to Article 10.7 (commencing with Section 49547) and the Seamless Summer Option component of the federal National School Lunch Program.

(d) Grants awarded under this section shall be used for nonrecurring costs of initiating or expanding a school breakfast program or a federal summer meals program, including the acquisition of equipment, training of staff in new capacities, outreach efforts to publicize new or expanded school breakfast programs or federal summer meals programs, minor alterations to accommodate new equipment, computer point-of-service systems for food service, and the purchase of vehicles for transporting food to schools. Funds may not be used for salaries and benefits of staff, food, computers, except computer point-of-service systems, or capital outlay.

(e) In making grant awards under this section in any fiscal year, the department shall give a preference to school districts and county superintendents of schools that do all of the following:

(1) Submit to the department a plan to start or expand school breakfast programs or federal summer meals programs in the school district or the county, including a description of the following:

(A) The manner in which the school district or county superintendent of schools will provide technical assistance and funding to schoolsites to expand those programs.

(B) Detailed information on the nonrecurring expenses needed to initiate a program.

(C) Public or private resources that have been assembled to carry out expansion of these programs during that year.

(2) Agree to operate the school breakfast program or the federal summer meals program for a period of not less than three years.

(3) Assure that the expenditure of funds from state and local resources for the maintenance of the school breakfast program or the federal summer meals program shall not be diminished as a result of grant awards received under this section.

(f) A grant awarded under this section may be used to implement a school breakfast program that serves breakfast after the start of the schoolday.

SEC. 6. Section 49550.5 is added to the Education Code, to read:

49550.5. (a) For purposes of this section, the following definitions apply:

(1) "Cafeteria fund" means the nonprofit school food service account, as defined in Section 210.2 of Title 7 of the Code of Federal Regulations.

(2) "Educational entity" means a school district, county office of education, private nonprofit school, charter school, or residential child care institution, as defined in Section 210.2 of Title 7 of the Code of Federal Regulations within the definition of "school."

(3) "Universal breakfast" means a nutritionally adequate breakfast that complies with, and qualifies for reimbursement under, the federal School Breakfast Program and that is provided to every pupil at no charge.

(b) (1) Commencing with the 2019–20 school year, an educational entity that participates in the federal School Breakfast Program may, to the maximum extent practicable, provide universal breakfast. Except as provided in paragraph (2), an educational entity that seeks to use the cafeteria fund to supplement meal costs for universal breakfast shall submit to the department for approval before implementing universal breakfast pursuant to this section, on or before July 1 of each year, an application, signed by the educational entity's governing board or governing body, certifying that the educational entity will provide breakfasts at no charge

to all pupils and cover with nonfederal funds any costs of providing those breakfasts to all pupils above the amount provided in federal reimbursement.

(2) The requirement to submit an application to the department in paragraph (1) does not apply to an educational entity that participates in a federally authorized provision pursuant to which the educational entity provides universal breakfast, including, but not limited to, Provision 1, 2, or 3, or the Community Eligibility Provision of the federal Richard B. Russell National School Lunch Act (42 U.S.C. Sec. 1751 et seq.).

(c) Contributions that are a direct support of universal breakfast may be used to offset operation costs. These contributions may include the following:

(1) Funds from the cafeteria fund.

(2) Funds provided to support universal breakfast by organizations, including, but not limited to, school-related and community groups or by the city, county, city and county, or state.

SEC. 7. Section 49590 of the Education Code is amended to read:

49590. The Legislature finds and declares that the State of California strives to serve food of the highest quality and greatest nutritional value possible. The department shall monitor schools participating in the federal National School Lunch Program or federal School Breakfast Program to ensure that the nutrition levels of meals served to schoolage children qualify those meals for reimbursement under the federal child nutrition program regulations as nutritionally adequate breakfasts and nutritionally adequate lunches, as defined in subdivision (b) of Section 49531.