

H.R. 6124

The “Food, Conservation, and Energy Act of 2008”

Sec. 4304 - The Fresh Fruit and Vegetable Program

SEC. 4304. FRESH FRUIT AND VEGETABLE PROGRAM.

(a) PROGRAM.—

(1) IN GENERAL.—The Richard B. Russell National School Lunch Act is amended by inserting after section 18 (42 U.S.C. 1769) the following:

“SEC. 19. FRESH FRUIT AND VEGETABLE PROGRAM.

“(a) IN GENERAL.—For the school year beginning July 2008 and each subsequent school year, the Secretary shall provide grants to States to carry out a program to make free fresh fruits and vegetables available in elementary schools (referred to in this section as the ‘program’).

“(b) PROGRAM.—A school participating in the program shall make free fresh fruits and vegetables available to students throughout the school day (or at such other times as are considered appropriate by the Secretary) in 1 or more areas designated by the school.

“(c) FUNDING TO STATES.—

“(1) MINIMUM GRANT.—Except as provided in subsection (i)(2), the Secretary shall provide to each of the 50 States and the District of Columbia an annual grant in an amount equal to 1 percent of the funds made available for a year to carry out the program.

“(2) ADDITIONAL FUNDING.—Of the funds remaining after grants are made under paragraph (1), the Secretary shall allocate additional funds to each State that is operating a school lunch program under section 4 based on the proportion that—

“(A) the population of the State; bears to

“(B) the population of the United States.

“(d) SELECTION OF SCHOOLS.—

“(1) IN GENERAL.—Except as provided in paragraph (2) of this subsection and section 4304(a)(2) of the Food, Conservation, and Energy Act of 2008, each year, in selecting schools to participate in the program, each State shall—

“(A) ensure that each school chosen to participate in the program is a school—

“(i) in which not less than 50 percent of the students are eligible for free or reduced price meals under this Act; and

“(ii) that submits an application in accordance with subparagraph (D);

“(B) to the maximum extent practicable, give the highest priority to schools with the highest proportion of children who are eligible for free or reduced price meals under this Act;

“(C) ensure that each school selected is an elementary school (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801));

“(D) solicit applications from interested schools that include—

“(i) information pertaining to the percentage of students enrolled in the school submitting the application who are eligible for free or reduced price school lunches under this Act;

“(ii) a certification of support for participation in the program signed by the school food manager, the school principal, and the district superintendent (or equivalent positions, as determined by the school);

“(iii) a plan for implementation of the program, including efforts to integrate activities carried out under this section with other efforts to promote sound health and nutrition, reduce overweight and obesity, or promote physical activity; and

“(iv) such other information as may be requested by the Secretary; and

“(E) encourage applicants to submit a plan for implementation of the program that includes a partnership with 1 or more entities that will provide non-Federal resources (including entities representing the fruit and vegetable industry).

“(2) EXCEPTION.—Clause (i) of paragraph (1)(A) shall not apply to a State if all schools that meet the requirements of that clause have been selected and the State does not have a sufficient number of additional schools that meet the requirement of that clause.

“(3) OUTREACH TO LOW-INCOME SCHOOLS.—

“(A) IN GENERAL.—Prior to making decisions regarding school participation in the program, a State agency shall inform the schools within the State with the highest proportion of free and reduced price meal eligibility, including Native American schools, of the eligibility of the schools for the program with respect to priority granted to schools with the highest proportion of free and reduced price eligibility under paragraph (1)(B).

“(B) REQUIREMENT.—In providing information to schools in accordance with subparagraph (A), a State agency shall inform the schools that would likely be chosen to participate in the program under paragraph (1)(B).

“(e) NOTICE OF AVAILABILITY.—If selected to participate in the program, a school shall widely publicize within the school the availability of free fresh fruits and vegetables under the program.

“(f) PER-STUDENT GRANT.—The per-student grant provided to a school under this section shall be—

“(1) determined by a State agency; and

“(2) not less than \$50, nor more than \$75.

“(g) LIMITATION.—To the maximum extent practicable, each State agency shall ensure that in making the fruits and vegetables provided under this section available to students, schools offer the fruits and vegetables separately from meals otherwise provided at the school under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

“(h) EVALUATION AND REPORTS.—

“(1) IN GENERAL.—The Secretary shall conduct an evaluation of the program, including a determination as to whether children experienced, as a result of participating in the program—

“(A) increased consumption of fruits and vegetables;

“(B) other dietary changes, such as decreased consumption of less nutritious foods; and

“(C) such other outcomes as are considered appropriate by the Secretary.

“(2) REPORT.—Not later than September 30, 2011, the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that describes the results of the evaluation under paragraph (1).

“(i) FUNDING.—

“(1) IN GENERAL.—Out of the funds made available under subsection (b)(2)(A) of section 14222 of the Food, Conservation,

and Energy Act of 2008, the Secretary shall use the following amounts to carry out this section:

“(A) On October 1, 2008, \$40,000,000.

“(B) On July 1, 2009, \$65,000,000.

“(C) On July 1, 2010, \$101,000,000.

“(D) On July 1, 2011, \$150,000,000.

“(E) On July 1, 2012, and each July 1 thereafter, the amount made available for the preceding fiscal year, as adjusted to reflect changes for the 12-month period ending the preceding April 30 in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor, for items other than food.

“(2) MAINTENANCE OF EXISTING FUNDING.—In allocating funding made available under paragraph (1) among the States in accordance with subsection (c), the Secretary shall ensure that each State that received funding under section 18(f) on the day before the date of enactment of the Food, Conservation, and Energy Act of 2008 shall continue to receive sufficient funding under this section to maintain the caseload level of the State under that section as in effect on that date.

“(3) EVALUATION FUNDING.—On October 1, 2008, out of any funds made available under subsection (b)(2)(A) of section 14222 of the Food, Conservation, and Energy Act of 2008, the Secretary shall use to carry out the evaluation required under subsection (h), \$3,000,000, to remain available for obligation until September 30, 2010.

“(4) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this section any funds transferred for that purpose, without further appropriation.

“(5) AUTHORIZATION OF APPROPRIATIONS.—In addition to any other amounts made available to carry out this section, there are authorized to be appropriated such sums as are necessary to expand the program established under this section.

“(6) ADMINISTRATIVE COSTS.—

“(A) IN GENERAL.—Of funds made available to carry out this section for a fiscal year, the Secretary may use not more than \$500,000 for the administrative costs of carrying out the program.

“(B) RESERVATION OF FUNDS.—The Secretary shall allow each State to reserve such funding as the Secretary determines to be necessary to administer the program in the State (with adjustments for the size of the State and the grant amount), but not to exceed the amount required to pay the costs of 1 full-time coordinator for the program in the State.

“(7) REALLOCATION.—

“(A) AMONG STATES.—The Secretary may reallocate any amounts made available to carry out this section that are not obligated or expended by a date determined by the Secretary.

“(B) WITHIN STATES.—A State that receives a grant under this section may reallocate any amounts made available under the grant that are not obligated or expended by a date determined by the Secretary.”.

(2) TRANSITION OF EXISTING SCHOOLS.—

(A) EXISTING SECONDARY SCHOOLS.—Section 19(d)(1)(C) of the Richard B. Russell National School Lunch Act (as amended by paragraph (1)) may be waived by a State until July 1, 2010, for each secondary school in the State that has been awarded funding under section 18(f) of that Act (42 U.S.C. 1769(f)) for the school year beginning July 1, 2008.

(B) SCHOOL YEAR BEGINNING JULY 1, 2008.—To facilitate transition from the program authorized under section 18(f) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769(f)) (as in effect on the day before the date of enactment of this Act) to the program established under section 19 of that Act (as amended by paragraph (1))—

(i) for the school year beginning July 1, 2008, the Secretary may permit any school selected for participation under section 18(f) of that Act (42 U.S.C. 1769(f)) for that school year to continue to participate under section 19 of that Act until the end of that school year; and

(ii) funds made available under that Act for fiscal year 2009 may be used to support the participation of any schools selected to participate in the program authorized under section 18(f) of that Act (42 U.S.C. 1769(f)) (as in effect on the day before the date of enactment of this Act).

(b) CONFORMING AMENDMENTS.—Section 18 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769) is amended—

(1) by striking subsection (f); and

(2) by redesignating subsections (g) through (j) as subsections (f) through (i), respectively.

(53) Expansion of Fresh Fruit and Vegetable Program

The House bill amends section 18(f) of the Richard B. Russell National School Lunch Act (NSLA) by expanding the fresh fruit and vegetable program in elementary and secondary schools. Mandatory funding is increased from \$9,000,000 to \$70,000,000 a year, and the program is to be available nationwide in: (A) 35 elementary and secondary schools in each State; and (B) additional elementary and secondary schools in each State in proportion to the student population of the State.

The Senate amendment replaces the current fresh fruit and vegetable program, beginning with the 2008-2009 school year. The new program would provide mandatory funding (\$225 million in the first year, indexed for inflation in later years) and authorize additional appropriations for a program to make free fresh fruits and vegetables available in participating elementary schools nationwide.

Participating elementary schools would be selected by States with priority generally given to schools with the highest proportion of children eligible for free or reduced-price school meals, those that partner with entities that provide non-federal resources, and those that evidence efforts to integrate the program with other efforts to promote sound health and nutrition, reduce overweight and obesity, or promote physical activity.

Funding would be allocated among States under a formula distributing roughly half of the funds equally among States and apportioning the remainder based on State population. At least 100 schools chosen to participate must be operated on Indian reservations. Per-student grants would be determined by the State but could not be less than \$50, or more than \$75, annually.

An evaluation is required and provided funding of \$3 million to remain available until expended.

The Senate amendment changes the final report's due date to December 31, 2012.

The Secretary is authorized, in selecting schools to participate in the program, to encourage plans for implementation that include locally grown foods.

The Secretary is required to establish requirements to be followed by States in administering the Fresh Fruit and Vegetable Program—the initial set of requirements must be established not later than 1 year after the enactment.

The Secretary is allowed to reserve up to 1% of program funding for administrative expenses related to the program. States may use up to 5% of program funding for administrative expenses. (Section 4904)

The Conference substitute adopts the Senate provision with several amendments. The substitute deletes Senate language allowing a consortia of schools to apply for

funding. The substitute includes a new requirement that state agencies administering the program initiate special outreach to schools with significant numbers of children eligible for free or reduced price meals informing them of their eligibility for the program. The substitute includes a new provision to ensure that states currently receiving funding under the program do not see a reduction in their funding as the program is phased in over time. The substitute includes an amendment which allows states to reserve funding for program administration, in accordance with regulations promulgated by the Secretary. And the substitute includes several provisions intended to aid the Secretary as the program transitions from the existing requirements of section 18(f) to the new requirements established by this section. Mandatory funding is provided through section 32 of the Act of August 24, 1935 in the amounts of \$40,000,000 on October 1, 2008; \$65,000,000 on July 1, 2009; \$101,000,000 on July 1, 2010; \$150,000,000 on July 1, 2011; \$150,000,000 indexed for inflation according to the CPI-U on July 1, 2012. (Section 4304)

It is the intent of the Managers to specifically target available program funding to schools with the highest proportion of children who are eligible for free and reduced price meals, in accordance with (d)(1)(B). Accordingly, the Managers expect that, provided the rest of a school's application is acceptable, that a school with a higher proportion of children eligible for free and reduced-price meals will be selected to participate rather than a school with a lower proportion of children eligible for free and reduced-price meals.

As the name of the program makes clear, it is the intent of the program to provide children with free fresh fruits and vegetables. It is not the intent of the Managers to allow this program to provide other products, such as nuts, either on their own or comingled with other foods, such as in a trail mix. The Managers support the inclusion of all fruits and vegetables in the federal nutrition programs where supported by science and will continue to work with the Department on promoting access to all fruits and vegetables.