

Legislative Bulletin.....December 1, 2010

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S. 3307 – Healthy, Hunger-Free Kids Act of 2010 Act

Key Conservative Concerns

Take-Away Points

- ***Budget Gimmick.*** While the bill is offset, the majority of the offset comes from food stamp benefits that had been increased (aka “borrowed”) in the “stimulus” bill earlier this year. That increase is being “cut” to be used for the child nutrition bill. Furthermore, according to the House Education and Labor Committee Republicans, we already invest approximately \$20 billion per year in child nutrition programs, in addition to funding from the stimulus, SCHIP, and health care which funded similar initiatives.
- ***Mandates on States.*** The bill is an explicit violation of the 10th Amendment. It federalizes nutrition standards, creates new “School Wellness” reporting requirements which require schools to create a local school wellness policy with goals for nutrition promotion, physical activity and other activities that promote student wellness. All these mandates on states will force school districts to increase their own spending, which many of them cannot afford to do.
- ***Governors and State Administrators Have Serious Concerns.*** The [National Governors Association](#) sent a letter to Congress in May stating its concerns with the bill. Among other things, the letter states the following: “The bill would set arbitrary federal benchmarks for state direct certification, ultimately requiring states to directly certify 95% of eligible students by 2013. Governors are deeply concerned with the arbitrary federal levels mandated in the bill... The bill would establish a Federal mandate for every paid meal in every school in the country for the first time ever. Governors join with the school community to strongly oppose this federal mandate. The provision will dramatically destabilize fair market pricing of school meals.” Additionally, [the American Association of School Administrators, the Council of the Great City Schools, and the National School Boards Association all signed a letter](#) opposing the bill. “*I look at this bill as death by a thousand cuts.*” - Lucy Gettman, federal programs director for the National School Boards Association.
- ***New Programs, New Spending.*** The bill creates or expands 17 programs and costs approximately \$4.6 billion at a time when we are dealing with a national debt of approximately \$14 trillion, and American families are struggling to make ends meet. They simply cannot afford to foot the bill for an “organic food pilot program.”

- **Programs are Constitutionally Questionable.** Many conservatives might believe that the federal government should extricate itself from providing school meals all together because it is the duty of individual states, which know the need better than the federal government. The states are the best way to achieve results in helping feed needy children, while preventing waste, fraud, and abuse of the system.
- **No Input from the House.** Some conservatives might be concerned that the House is being required to take up a bill that was not thoroughly vetted in the House, with no opportunity to amend in either Committee or on the floor.

S. 3307 —Healthy, Hunger-Free Kids Act of 2010 Act (Sen. Lincoln, D-AR)

Order of Business: The bill is scheduled to be considered on Wednesday, December 1, 2010 under a closed rule ([H.Res. 1742](#)).

Summary: S. 3307 would reauthorize and amend, through FY2015, the Richard B. Russell National School Lunch Act and the Child Nutrition Act.

Among other things, the bill increases the federal reimbursement rate by 6 cents for school lunch and breakfast programs, increases access to free meals by expanding automatic certification for those who are eligible, establishes new national nutrition standards on all foods sold in a school, and requires school districts to implement local school wellness policies that include nutrition guidelines for all foods at school and goals for increased physical activity. The bill also includes many new programs and expansions such as an “organic food pilot program.”

**Please see the conservative concerns section below the summary section.*

Some of the Key Provisions of S. 3307 include the following:

Title I – A Path to End Childhood Hunger

National School Lunch Program

- **Direct Certification for Free School Meals.** Establishes a demonstration project that expands direct certification to children who receive Medicaid benefits. The project will directly certify children from households with gross incomes at or below 133% of the poverty level. Currently, only those children who are receiving benefits under the SNAP program receive free schools meals. Local educational agencies may also conduct direct certification based on cash assistance levels under the Temporary Assistance for Needy Families (TANF). This section also requires the Secretary to estimate the cost of Medicaid direct certification, and to submit a report by October 1, 2014, on the results of the project.
- **Foster Children.** Foster children are eligible under this bill for free school meals.

- **Eliminating Individual Applications for High-Poverty Areas.** Establishes new ways for schools with high levels of low-income students to received reimbursement without collecting paper applications from households. Under this provision, the school may use data from direction certification or the census to estimate the number of children that are eligible fore free meals. No later than December 13, 2013, the Secretary of Education must publish a report on the program.
- **Expanded School Breakfast Program.** Establishes a program under which the Secretary shall provide grants to state educational agencies to provide subgrants to local educational agencies (LEAs) for qualifying schools to establish, maintain, or expand the school breakfast program. The bill states that the money may be used for expansion, extensions, etc, but also for “other appropriate purposes, as determined by the Secretary.” The grants could be used for things such as staff training or advertising of the program.

Summer Food Service Program

- **Alignment of Eligibility Rules for Public and Private Sponsors.** Allows certain private nonprofit organizations to be eligible for the program under the same terms and conditions as other service institutions.
- **Outreach to Eligible Families.** Requires each state agency that administers the school lunch program to ensure school food authorities cooperate with participating service institutions to distribute materials to inform families of the availability and location of summer food service programs.
- **Summer Food Service Support Grants.** Creates a grant program for state agencies to provide eligible service institutions technical assistance; assistance with site improvement costs; or other innovative activities that improve and encourage sponsor retention. \$20 million is authorized to be appropriated for this grant program from FY2011-FY2015.

Child and Adult Care Food Program

- **Expansion of At-Risk afterschool Meals Program.** Currently, most states receive reimbursement for after schools snacks, but not after schools meals (13 states and the District of Columbia do). This provision would expand reimbursement to *all* states to provide after school meals. *This would mean that some children will receive all three meals before, during, or after school through government programs.*

Special Supplemental Nutrition Program for Women, Infants, and Children

- **Certification Periods.** Authorizes WIC providers to certify participant children for up to one year of benefits. Currently, children ages 1-4 must be certified every six months.

Miscellaneous

- **Childhood Hunger Research.** Requires the Secretary to research causes of childhood hunger and food insecurity, the characteristics of households with childhood hunger and food insecurity; and the consequences of childhood hunger and food insecurity. The Secretary may enter into competitive contracts or provides grants to states or public or

private agencies or organizations to carry out the research. The section also establishes demonstration projects to test strategies to end childhood hunger. These projects will be funded by new grant programs at least one of which must be carried out “on an Indian reservation in a rural area with a service population with a prevalence of diabetes that exceeds 15 percent.”

- **State Childhood Hunger Challenge Grants.** Creates a grant program for Governors to enter into cooperative agreements to carry out comprehensive and innovative strategies to end childhood hunger. Projects under this section may include, among others, initiatives that enhance benefits provided under the supplemental nutrition assistance program for eligible households with children, or those that enhance outreach to increase access and participation in federal nutrition assistance programs. The program is authorized at “such sums as are necessary for each of fiscal years 2011 through 2014.”
- **Review of Local Policies on Meal Charges.** Requires the Secretary to examine current policies of states and LEAs on school meal prices. Requires the Secretary to prepare a report on the feasibility of establishing national standards for meal charges.

Title II: Reducing Childhood Obesity and Improving the Diets of Children

National School Lunch Program

- **Performance-based Reimbursement Rate Increases.** No later than 18 months after enactment, the provision requires the Secretary to promulgate new regulations to update the meal patterns and nutrition standards for the school lunch program. *The section also increases the reimbursement rate for each lunch served by 6 cents.*
- **Fluid Milk Requirements.** Requires that fluid milk that is offered in schools is consistent with the most recent Dietary Guidelines for Americans.
- **Water.** The bill requires that all schools participating in the school lunch program must make water available to children free of charge.
- **Local School Wellness.** *Requires each LEA to establish a local school wellness policy for all schools.* The Secretary shall promulgate regulations that provide the framework for LEAs to establish local school wellness policies including, at a minimum, the following:
 - Goals for nutrition promotion and education, physical activity, and other activities that promote student wellness;
 - *Nutrition guidelines for all foods available on each school campus.*
 - A requirement that the LEA permits parents, students, school administrators, teachers of physical education, et al to participate in the development, implementation, and review and update of the local school wellness policy.
 - A requirement that the LEA inform and update the public about the content and implementation of the local school wellness policy.
 - A requirement that the LEA periodically measure the local school wellness policy and *designate officials to ensure each school complies with the local wellness policy.*

- **New Reporting Requirements.** Creates a new “unified accountability system” to ensure that schools are meeting the nutritional requirements established by the Secretary.
- **New Standards for All Food Sold in Schools.** *Creates new nutrition standards for all foods sold in schools.* The bill requires the Secretary to promulgate regulations that “establish science-based nutrition standards for foods sold in schools...” The standards must be consistent with the most recent Dietary Guidelines for Americans.
- **Organic Food Pilot Program.** *Establishes an organic food pilot grant program that “increases the quantity of organic foods provided to schoolchildren under the school lunch program.” The bill authorizes \$10 million per year for five years for the program.*

Child and Adult Care Food Program

- **Nutrition and Wellness Goals.** Establishes nutrition standards based on the Dietary Guidelines for Americans, and that promote the health of the population served by the program. Includes a provision stating that the *Secretary shall encourage participating child care centers and family or group day care homes to provide to all children age-appropriate physical activity.* Also creates a new requirement that the Secretary recognize high performing states and institutions that take a comprehensive approach to promote nutrition and wellness in child care program with non-monetary rewards.
- **Interagency Coordination to Promote Health and Wellness in Child Care Licensing.** Encourages state licensing agencies to include nutrition and wellness standards that ensure that licensed child care centers and family or group day care homes provide physical activity and promote child nutrition and wellness. *This could be of concern because it has the potential to increase the cost of child care/day care, which is already very expensive.*
- **Study on Nutrition and Wellness Quality of Child Care Settings.** Requires the Secretary to do a national study on the nutritional quality of foods provided in child care settings as compared to the Dietary Guidelines for Americans. It must also include an assessment of the amount of time spent by children in child care settings in sedentary activities, and the amount of time spent doing physical activity.

Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)

- **Breastfeeding.** The Secretary shall annually compile and publish breastfeeding performance measurements based on program participant data in clinics and states. The section also requires the Secretary to recognize high performing states and local agencies with bonus payments.

Miscellaneous

- **Nutrition Education and Obesity Prevention Grant Program.** Creates a grant program for state agencies to implement a nutrition education and obesity prevention programs that promote healthy food choices consistent with the most recent Dietary Guidelines for Americans.
- **Farm to School Program.** Requires the Secretary to carry out a program to assist schools, state and local agencies, Indian tribal organizations, agricultural producers, and

more through grants and technical assistance to implement farm to school programs that improve access to local foods in school. The grants (2-year grants of \$100,000) may be used for training, school gardens, planning, etc.

Title III – Improving the Management and Integrity of Child Nutrition Programs

National School Lunch Program

- **Food Safety Requirements.** Expands food safety requirements to any facility or part of a facility in which food is stored, prepared, or served.
- **Fines for Violating Program Requirements.** Requires the Secretary to establish the criteria for fines on school food authorities and state agencies that violate the requirements of the school nutrition programs.
- **Professional Standards for School Food Service.** Requires the Secretary to establish a program of required education, training, and certification for all school food service directors responsible for the management of a school food authority.
- **Indirect Cost Study.** The Secretary must conduct a study to assess the extent to which school food authorities involved in the school meal programs pay indirect costs.

Summer Food Service Program

- **Permanent Operating Agreements.** Establishes that any participant in the program does not have to resubmit paperwork very year.

Child and Adult Care Food Program

- **Renewal of Application Materials and Permanent Operating Agreements.** Establishes that any participant in the program does not have to resubmit paperwork very year. Requires the Secretary to develop a policy under which each sponsoring organization and state agency participating in the program must conduct unannounced site visits to child and adult care centers. The Secretary may also develop a policy to detect false claims for reimbursement.

Special Supplemental Nutrition Program for WIC

- **WIC Program Management.** Requires state agencies to report rebate payments received from the manufacturers in the month that the payment was received. Requires each state agency shall be required to implement electronic benefit transfer systems throughout the state and report on it to the Secretary.

Title IV – Miscellaneous

- **Reauthorization of Expiring Provisions.** Reauthorizes provisions of the Richard B. Russell National School Lunch Act that are set to expire such as the requirement that states submit food safety audits and reports, and the authorization of the summer food service program for children. Reauthorizes provisions of the Child Nutrition Act of 1966

such as the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

Additional Background: The last reauthorization for child nutrition programs and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) was in 2004. Certain provisions of these programs were set to expire on September 30, 2010. The FY2011 Continuing Resolution, however, funded the program until December 3, 2010. S. 3307 passed the Senate by unanimous consent on August 5, 2010.

The Senate bill, which costs approximately \$4.5 billion over 10 years, has offsets found in four primary areas, including a reduction in spending for the Supplemental Nutrition Assistance Program (SNAP, which used to be the Food Stamp program). For more information on the cost of the bill, see the conservative concerns section. Below is a description of the programs addressed in this bill.

National School Lunch Program: According to Senate Report [111-178](#), the largest child nutrition program is the National School Lunch Program, which provides lunch to more than 31 million school children daily. Schools that participate in this program receive cash reimbursement and a commodity entitlement for USDA purchased foods. During FY 2009, this program provided approximately 5.18 billion lunches at a cost of \$9 billion. Of the students served under this program, 62.5% received their meal at a free or reduced rate.

- **Additional Information:** According to the United States Department of Agriculture (USDA), in 2009, [19.5 million students](#) received their lunch at a free or reduced rate, which is 35.49% of *all* K-12 students enrolled in [public](#) and [private](#) elementary and secondary schools. Also according to the USDA, of all lunches served by schools during 2009, 62.5% of all students that *order a lunch* were served free or at a reduced cost. These calculations also do not take into account the number of students were eligible to participate in these programs; it only calculates data of those who did participate.

School Breakfast Program: According to Senate Report [111-178](#), schools that participate in this program receive a cash reimbursement for every meal that meets the program's nutritional guidelines. During FY 2009, this program served 11 million students approximately 1.86 billion breakfasts, at a cost of \$2.6 billion. Of the students served under in the program, 82% received their meal at a free or reduced rate.

Child and Adult Care Food Program: According to Senate Report [111-178](#), the Child and Adult Care Food Program serves meals to young children in preschool settings (child care centers, home-based day care), and after-school programs. During FY 2009, this program served 3.3 million children and adults with approximately 1.9 billion meals, at a cost of \$2.5 billion. Of the individuals served under in the program, 80% received their meal at a free or reduced rate.

This program is different in that adults may also receive meals under this program, as well as children. Certain nonprofit adult day care centers that provide services to adults who are functionally impaired, or are age 60 or older, are allowed to participate in the program. Certain

for-profit centers are allowed to participate if at least 25% of the individuals they serve receive benefits under Medicaid, or Title XX.

Summer Food Service Program: According to Senate Report [111-178](#), the Summer Food Service Program serves children in low-income areas meals and snacks during the summer months, and over vacation periods during the school year. Schools, local government agencies, residential and non-residential camps, and private nonprofit organizations participate in this program. They receive cash reimbursement for up to two meals per day that are served to children 18 and under. During FY 2009, there were more than 34,000 sites participating in this program, which served 133.1 million meals to over 2.2 million children, at a cost of \$356 million. All meals through this program are served free of charge.

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): According to Senate Report [111-178](#), this program supplemental foods, nutrition education, breastfeeding support, and health and social services referrals to low-income pregnant, postpartum, or breastfeeding women, and infants and children less than 5 years old. Are services through this program are free of charge, and all household have incomes at or below 185% of the poverty level. During FY 2009, 9.1 million individuals participated in the program, at a cost of \$6.9 billion.

Potential Conservative Concerns:

- *Budget Gimmick.* While the bill is offset, the majority of the offset comes from food stamp benefits that had been increased (aka “borrowed”) in the “stimulus” bill earlier this year. That increase is being “cut” to be used for the child nutrition bill. Furthermore, according to the House Education and Labor Committee Republicans, we already invest approximately \$20 billion per year in child nutrition programs, in addition to funding from the stimulus, SCHIP, and health care which funded similar initiatives.
- *Mandates on States.* The bill is an explicit violation of the 10th Amendment. It federalizes nutrition standards, creates new “School Wellness” reporting requirements which require schools to create a local school wellness policy with goals for nutrition promotion, physical activity and other activities that promote student wellness. All these mandates on states will force school districts to increase their own spending, which many of them cannot afford to do.
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- *Programs are Constitutionally Questionable.* Many conservatives might believe that the federal government should extricate itself from providing school meals all together because it is the duty of individual states, which know the need better than the federal government. The states are the best way to achieve results in helping feed needy children, while preventing waste, fraud, and abuse of the system.
- *No Input from the House.* Some conservatives might be concerned that the House is being required to take up a bill that was not thoroughly vetted in the House, with no opportunity to amend in either Committee or on the floor.

Committee Action: S. 3307 was introduced on May 5, 2010 and was referred to the Senate Committee on Agriculture. See the [committee report here](#). The bill then passed the Senate by unanimous consent on August 5, 2010. The House version, H.R. 5504, was introduced on June 10, 2010 and was referred to the House Education and Labor Committee. The bill was marked up and reported out of Committee by a vote of 32-13 on July 15, 2010. No committee report was filed on H.R. 5504.

Administration Position: “The Administration strongly supports House passage of S. 3307, the Healthy, Hunger-Free Kids Act of 2010. This bill, which passed the Senate unanimously, would make significant improvements to nutrition programs that serve millions of children across our country each day. S. 3307 would help reduce hunger during the school day; improve the nutritional quality of school lunches, breakfasts, and all other food sold in schools; and achieve other important reforms to ensure efficient use of taxpayer dollars. Passage of this legislation also would help advance the Administration's goal of solving the problem of childhood obesity within a generation, which is at the heart of the First Lady's *Let's Move!* campaign. The Administration applauds the bipartisan efforts that led to Senate passage of S. 3307 and urges House passage of this legislation.”

Cost to Taxpayers: S. 3307 contains approximately \$4.6 billion in new spending over ten years and approximately \$4.6 billion in offsets. A [CBO score from April 20, 2010](#) on the bill that was reported out of the Senate Agriculture Committee indicates that the bill authorizes approximately \$38.9 billion from FY2010-FY2020. The bill, however, has changed since this report was released.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. The bill creates new programs and new national standards for all food served at schools. It also expands current programs.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: According to CBO’s analysis of the bill that was reported out of committee, “The bill would impose new requirements on states and schools that implement child nutrition programs. Those requirements would be intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). Beginning the first year that the mandates take effect, CBO

estimates that the aggregate costs of the mandates to states and schools would exceed the threshold established in UMRA for intergovernmental mandates.

The bill would impose a mandate, as defined in UMRA, on the private sector, by requiring entities selling food on a school campus or at any time during the school day to comply with science-based standards established by the Secretary of Agriculture. Because of uncertainties about the standards that the Secretary would establish under this bill, CBO cannot estimate whether the costs to the private sector would exceed the threshold established in UMRA.”

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: No House committee report is available and this requirement does not exist for Senate bills.

Constitutional Authority: Senate bills do not require statements of constitutional authority and there is no accompanying committee report to the House bill.

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