

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

## ASSEMBLY, No. 2368

with committee amendments

# STATE OF NEW JERSEY

DATED: JUNE 27, 2022

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Assembly Bill No. 2368 (1R).

As amended, this bill requires certain schools in the State to serve school breakfast and lunch, free of charge, to students from working class, middle-income families. “Middle-income family” is defined by the bill to include any family with an annual household income amounting to not less than 186 percent, and not more than 199 percent, of the federal poverty level (FPL).

Under existing State and federal law, a student is eligible to receive free or reduced price school lunch or breakfast under the National School Lunch Program or the federal School Breakfast Program only if the student is determined to be categorically eligible for such benefits (i.e., is determined to be a homeless child, a migrant child, a runaway child, a foster child, or a Head Start Child, or is a participant in certain public benefits programs) or can demonstrate that the student lives in a low-income household (i.e., a household with an annual household income that is equal to or less than 185 percent of the FPL). State law requires school lunch programs to be offered by those schools at which at least five percent of the students are federally eligible for free or reduced price meals, and school breakfast programs to be offered by those schools at which at least 20 percent of the students are federally eligible for free or reduced price meals. All schools participating in the federal School Breakfast Program are encouraged, by existing law, to increase the percentage of students receiving breakfast at the school through the implementation of a “breakfast after the bell” program, in which breakfast is served during the first few minutes of school each day, and each school at which at least 70 percent of the students are federally eligible for free or reduced price school meals is required to implement a breakfast after the bell program for these purposes.

This bill alters the existing school breakfast law to expand the number of schools that provide breakfast to students in the State. Specifically, the bill provides for a school breakfast program to be

offered by any school at which at least 10 percent of the students are federally eligible for free or reduced price meals. A school, or a school district acting on behalf of a school in the district, would be authorized to obtain a waiver of these breakfast program requirements if the Department of Agriculture (DOA) determines that the provision of a breakfast program at the school will result in financial hardship for either the school or the school district. The DOA would be authorized to rescind a previously issued waiver if, based on a review of updated financial and demographic information requested and provided not more often than biennially, it determines that a change in circumstances has eliminated the financial hardship that previously warranted continuation of the waiver.

The bill further requires each school that operates a school breakfast or lunch program to provide free school breakfasts or lunches, as the case may be, to all middle-income students enrolled at the school (not just to low-income students, as provided by federal law), including when such meals are offered to students through a breakfast after the bell program or an emergency meals distribution program (which is activated during a period of school closure resulting from COVID-19). Each school district, and the DOA, would be required, by the bill, to publicize, to parents and students, the fact that free meals are being made available to middle-income students under these school meals programs, pursuant to the bill's provisions.

In order to avoid establishing an unfunded mandate, the bill requires the State to provide funding to each school district, as may be necessary to reimburse the costs associated with the district's provision of free meals to middle-income students who are federally ineligible for such meals under the National School Lunch Program or federal School Breakfast Program. These reimbursement provisions are similar to current law, at section 1 of P.L.2019, c.445 (C.18A:33-21.1), which provides that a student who is federally eligible for reduced price meals is not required to pay any cost for those meals, and that the State will reimburse schools for the difference between the federal allocation for reduced price meals and the total cost of the meals served to such students.

Existing law requires a school district, at the beginning of each school year, or upon initial enrollment, in the case of a student who enrolls during the school year, to provide each student's parent or guardian with:

(1) information on the National School Lunch Program and the federal School Breakfast Program, as well the rights that are available to students and their families under those programs; and

(2) a school meals application and instructions for completing the application.

The bill supplements these existing notice requirements to clarify that the information provided to parents and guardians is to include, but not be limited to: information on the availability of free or reduced

price school meals for eligible students, as well as information on the school meals application and determination processes that are used to certify students for subsidized school meals. The bill further clarifies that a school district will be required to assist parents or guardians in completing the school meals application.

The bill additionally clarifies that a school meals application that is submitted by a parent or guardian is to be treated as confidential, and may not be used or shared by the school district, or by the student's school, except as may be necessary to:

(1) determine whether the student is eligible for free or reduced price meals;

(2) determine whether the school is required, by existing law, to establish a breakfast after the bell program, or to participate as a sponsor or site in the federal Summer Meals Service Program;

(3) ensure that the school receives appropriate reimbursement, from the State and federal governments, for meals provided to eligible students, free of charge, through a school lunch program, a school breakfast program, a breakfast after the bell program, a summer meals program, or an emergency meals distribution program; and

(4) facilitate school aid determinations under the "School Funding Reform Act of 2008," P.L.2007, c.260 (C.18A:7F-43 et seq.).

Any information or application that is provided to a parent or guardian in association with a school meals program is to be communicated in a language that the parent or guardian understands, and is to specify the limited purposes for which collected personal data may be used, as specified in the bill.

The bill requires a school district to take steps to maximize the use of federal resources and to minimize the debt that is incurred by families for school meals, in accordance with a protocol developed by the DOA, in consultation with the Department of Education (DOE), the School Nutrition Association of New Jersey, and all relevant stakeholders. The protocol is to: (1) promote the increased certification of students from low-income families and middle-income families for free and reduced price school meals, in accordance with the bill's provisions; and (2) identify best practices to maximize the receipt and use of federal resources by the district's schools. The bill additionally requires the DOA and DOE, in cooperation with each other, to consult with, and provide direct assistance to, school districts to help them improve, simplify, and expedite the free and reduced price meal certification process and otherwise reduce the administrative burden on schools and school districts that results from that process.

Under the bill's provisions, any school that serves lunch or breakfast and is eligible for the Community Eligibility Provision (a special assistance alternative federal reimbursement method that authorizes reimbursement for free school meals provided by eligible, high-poverty local educational agencies and schools participating in

both the National School Lunch Program and the federal School Breakfast Program) would be required, to the greatest extent practicable, to participate in, and maximize the receipt of federal resources available under, that reimbursement alternative.

The bill requires the DOA, in consultation with the DOE, to annually prepare and submit, to the Governor and Legislature, a written report that identifies, for each school and school district in the State: (1) the methods being used by each school or school district to facilitate the prompt identification and subsidized meal certification of students who are categorically eligible or income-eligible for free or reduced price school meals; (2) the number and percentage of income-eligible students from low-income families and from middle-income families, respectively, that are receiving free or reduced price school meals; and (3) for school breakfast programs, the format in which breakfast is being offered, including an indication as to whether breakfast is being provided through a breakfast after the bell program.

Existing law, at section 3 of P.L.2003, c.4 (C.18A:33-11) requires a school district to publicize the availability of school breakfasts and make every effort to ensure that non-paying, income-eligible students participating in the school breakfast program are not recognized in any manner that is different from the students who pay for school meals. This law also requires school districts to encourage students who are not income-eligible for free or reduced price meals to, nonetheless, participate in the school breakfast program. The bill would amend this law to:

(1) clarify that its requirements are intended to apply both to individual schools and to school districts;

(2) clarify that the same requirements are to be applied, under this section of law, not only with respect to the implementation of a school breakfast program, but also with respect to the implementation of a school lunch program and a breakfast after the bell program;

(3) modify the applicable publicity requirements, for school lunch and breakfast programs, in order to clarify that a school and school district will be required to publicize, to parents and guardians, the various ways in which a student may qualify to receive subsidized meals under those programs, including through categorical eligibility, federal income eligibility, or the new State-level income eligibility established by the bill; and

(4) require schools and school districts to make every effort to: facilitate the prompt and accurate identification of categorically eligible students; encourage students and their families, whenever an application is required to establish subsidized meals eligibility, to complete a school meals application for that purpose; facilitate and expedite, to the greatest extent practicable, the subsidized school meals application and income-eligibility determination processes, which are used, by the school or district, to certify a student for subsidized meals on the basis of income; assist parents and guardians in completing the

school meals application; and encourage students who are neither categorically eligible nor income-eligible for free or reduced price school meals to nonetheless participate, on a paid and unsubsidized basis, in the school's lunch and breakfast programs.

The bill additionally amends section 1 of P.L.2015, c.15 (C.18A:33-21), which pertains to school meal arrearages and prohibits the undertaking of certain discriminatory treatment against students in arrears. Specifically, the bill would amend this law to: clarify that the rights included therein apply to unsubsidized students who cannot pay for their school meals; clarify that the prohibitions on discriminatory treatment, appearing therein, apply to both school districts and individual schools; and expand the existing list of prohibited discriminatory treatment to include: (1) the act of prohibiting an unsubsidized student, or a sibling thereof, from attending or participating in non-fee-based extracurricular activities, field trips, or school events, from receiving grades, official transcripts, or report cards, or from graduating or attending graduation events, solely because of the student's unresolved meal debt; and (2) the act of requiring the parent or guardian of an unsubsidized student to pay fees or costs in excess of the actual amounts owed for meals previously served to the student. The bill additionally specifies that an unsubsidized student may not be denied access to a school meal, regardless of the student's ability to pay or the status of the student's meal arrearages, during any period of time in which the school is making a determination as to whether such student is eligible for free or reduced price meals.

The bill repeals the following sections of law, which are no longer necessary:

(1) Section 4 of P.L.2003, c.4 (C.18A:33-12). This section authorizes a school to obtain a one-year initial waiver of the breakfast program requirements that were established pursuant to existing law at section 2 of P.L.2003, c.4 (C.18A:33-10). Because section 2 of P.L.2003, c.4 (C.18A:33-10) will be superseded by the bill's provisions establishing new breakfast program requirements and requiring all schools to submit new breakfast program plans, and because the bill, as amended, includes a new waiver provision that authorizes ongoing waivers of the bill's new breakfast program requirements in appropriate cases, section 2 of P.L.2003, c.4 (C.18A:33-12) is no longer necessary and is being repealed.

(2) Section 3 of P.L.2018, c.25 (C.18A:33-11.4). This section provides that the implementation of a breakfast after the bell program will be subject to the applicable requirements of section 3 of P.L.2003, c.4 (C.18A:33-11) and section 1 of P.L.2014, c.66 (C.18A:33-11.1), as well as any rules or regulations adopted pursuant thereto. Because the bill is amending section 3 of P.L.2003, c.4 (C.18A:33-11), referenced in this provision, to include specific reference to breakfast after the bell programs, and because section 1 of P.L.2014, c.66 (C.18A:33-

11.1) does not actually provide any requirements for the implementation of breakfast after the bell programs (and instead, merely encourages schools to participate in such programs), this section is no longer necessary, and is being repealed.

(3) Section 3 of P.L.2020, c.29 (C.18A:33-21b). This section requires a school district to provide a student's parent or guardian with information on the National School Lunch Program and federal School Breakfast Program, as well as an application to apply for free and reduced meals under these programs, and information on the rights that apply to students and families participating in these school meals programs. Because this section, as currently drafted, is not conducive to amendment, as would be necessary to incorporate the clarifying changes provided by this bill, the section is being replaced with, and its existing notice and application provisions are being incorporated into, a new section of law appearing at section 16 of the bill.

In addition to the repealers described above, this bill would also clarify and reorganize the provisions of sections 1 and 2 of P.L.2018, c.28 (C.18A:33-24 and C.18A:33-25), in order to make it clear that section 1 applies to school districts that are required to become a sponsor or site under the Summer Food Service Program, while section 2 applies to school districts that elect to become a sponsor or site under the Summer Food Service Program, despite not being required to do so.

Finally, the bill adds a new central definitions section that incorporates all definitions relevant to the provision of school meals in the State. This definitions section would be applicable to the bill's new sections, as well as to the remaining (un-repealed) provisions of Chapter 33 of Title 18A of the New Jersey Statutes, which is the chapter of law that addresses the provision of school meals in the State, and in which chapter the provisions of this bill will be codified.

As amended and reported by the committee, Assembly Bill No. 2368 (2R) is identical to Senate Bill No. 1677 (1R), as amended and reported by the committee on this date.

#### COMMITTEE AMENDMENTS:

The committee amended the bill to revise the bill's effective date, so as to provide for the bill to take effect on September 1, 2023, while authorizing the Commissioner of Agriculture and the Commissioner of Education to take anticipatory administrative action, in advance of the effective date, as may be necessary to implement the bill's provisions. The committee additionally amended the bill to extend, for one year, the deadlines applicable, under the bill, to the submission and implementation of new school breakfast plans, in order to ensure that those plans will be submitted and implemented after the bill's revised effective date. The committee further amended the bill to include new provisions authorizing the ongoing waiver of the bill's new breakfast program requirements in cases of financial hardship, and authorizing

the DOA to rescind a previously issued waiver if, based on a review of updated financial and demographic information requested and provided not more often than biennially, it determines that a change in circumstances has eliminated the financial hardship that warranted continuation of the waiver. Finally, the committee amendments repeal section 4 of P.L.2003, c.4 (C.18A:33-12), which authorizes one-year initial waivers of the law's existing breakfast program requirements, and they make technical changes to correct citations.

FISCAL IMPACT:

Fiscal information for this bill is currently unavailable.