

**Introduced by Senator Torlakson**December 4, 2006

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An act to amend Sections 41350, 49430, and 49531 of, to add Section 49537 to, and to repeal and add Sections 49430.5 and 49536 of, the Education Code, relating to pupil nutrition, and declaring the urgency thereof, to take effect immediately.

## LEGISLATIVE COUNSEL'S DIGEST

SB 20, as introduced, Torlakson. Pupil nutrition: free and reduced-price meals: reimbursement.

(1) The Pupil Nutrition, Health and Achievement Act of 2001 requires a school to be reimbursed \$0.21 for free and reduced-price meals sold or served to pupils. To qualify for this reimbursement a school is required to follow the Enhanced Food Based Meal Pattern, Nutrient Standard Meal Planning, or Traditional Meal Pattern developed by the United States Department of Agriculture or the California's Shaping Health as Partners in Education (SHAPE) Menu Patterns developed by the state.

This bill would increase the reimbursement rate to \$0.30 for schools and child development programs and would change the eligibility requirements, as specified. The requirements would be phased in. During the phase-in period, a school or program that does not meet those requirements for the increased reimbursement rate would receive the reimbursement rate specified under the Child Nutrition Act of 1974.

(2) The Child Nutrition Act of 1974 authorizes a child nutrition entity, as defined, to apply to the State Department of Education for all available federal and state funds so that a nutritionally adequate breakfast or lunch, or both, may be provided to pupils and requires the department before July 1 each year to prescribe an adjustment in the established

state meal contribution rates based on a specified cost-of-living adjustment.

This bill would require the reimbursement rate established for this program to be \$0.21 commencing with the 2006-07 fiscal year and adjusted annually for increases in the cost of living, as prescribed.

(3) This bill would require the department to create an annual notification process that allows a school district, charter school, county office of education, or child development program to indicate its intent to comply with the meal standards under the \$0.30 reimbursement rate or the lower rate and to conduct audits of meal programs receiving state reimbursement at least twice every five years. The bill would require the department to provide technical assistance to a school district, charter school, county office of education, or child development program that indicates an intent to receive the higher reimbursement but does not comply with the required nutrition standards.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 41350 of the Education Code is amended  
 2 to read:  
 3 41350. The Superintendent of ~~Public Instruction~~ shall make  
 4 allowances for child nutrition as follows:  
 5 (a) Reimbursement of child nutrition entities, as defined by  
 6 Section 49530.5, for all free and ~~reduced-priced~~ *reduced-price*  
 7 meals, pursuant to ~~Section Sections~~ *Sections 49430.5 and 49536*.  
 8 (b) Reimbursement of school districts *and county*  
 9 *superintendents of schools* for the difference between the current  
 10 fiscal year average statewide lunch or breakfast cost for all free  
 11 and reduced-price meals required by Section 49550 as determined  
 12 by the Superintendent of ~~Public Instruction~~ and the combined total  
 13 income per meal derived from pupil charges, federal funds, and  
 14 state funds as provided in Article 11 (commencing with Section  
 15 49550) of Chapter 9 of Part 27.  
 16 (c) ~~Reimbursement of county superintendents of schools for the~~  
 17 ~~difference between the current fiscal year average statewide lunch~~  
 18 ~~or breakfast cost for all free and reduced-price meals as determined~~

1 by the Superintendent of Public Instruction and the combined total  
2 income per meal derived from pupil charges, federal funds, and  
3 state funds as provided in Article 11 (commencing with Section  
4 49550) of Chapter 9 of Part 27.

5 The

6 (c) *The* combined state and federal reimbursements shall not  
7 exceed the current fiscal year average statewide lunch or breakfast  
8 cost. If the combined pupil charges, state reimbursements, and  
9 federal reimbursements exceed the current average statewide lunch  
10 or breakfast costs, the federal funds shall be expended prior to the  
11 expenditure of any state funds.

12 SEC. 2. Section 49430 of the Education Code is amended to  
13 read:

14 49430. As used in this article, the following terms have the  
15 following meanings:

16 (a) “Elementary school” means a public school that maintains  
17 any grade from kindergarten to grade 6, inclusive, but no grade  
18 higher than grade 6.

19 (b) “Middle school” means any public school that maintains  
20 grade 7 or 8, 7 to 9, inclusive, or 7 to 10, inclusive.

21 (c) “High school” means any public school maintaining any of  
22 grades 10 to 12, inclusive.

23 (d) “Full meal” means any combination of food items that meet  
24 USDA-approved School Breakfast Program or National School  
25 Lunch Program meal pattern requirements.

26 (e) “Added sweetener” means any additive other than 100  
27 percent fruit juice that enhances the sweetness of a beverage.

28 (f) “Sold” means the exchange of food for money, coupons, or  
29 vouchers.

30 (g) “Entrée” means a food that is generally regarded as being  
31 the primary food in a meal, and shall include, but not be limited  
32 to, sandwiches, burritos, pasta, and pizza.

33 (h) “Snack” means a food that is generally regarded as  
34 supplementing a meal, including, but not limited to, chips, crackers,  
35 onion rings, nachos, ~~French~~ french fries, donuts, cookies, pastries,  
36 cinnamon rolls, and candy.

37 (i) “Deep fried” means the food being described is cooked by  
38 total submersion in oil or fat.

39 SEC. 3. Section 49430.5 of the Education Code is repealed.

1 49430.5.—(a) The reimbursement a school receives for free and  
2 reduced-price meals sold or served to pupils in elementary, middle,  
3 or high schools included within a school district, charter school,  
4 or county office of education shall be twenty-one cents (\$0.21).

5 (b) To qualify for the reimbursement for free and reduced-price  
6 meals provided to pupils in elementary, middle, or high schools,  
7 a school shall follow the Enhanced Food-Based Meal Pattern,  
8 Nutrient Standard Meal Planning, or Traditional Meal Pattern  
9 developed by the United States Department of Agriculture or the  
10 SHAPE Menu Patterns developed by the state.

11 (c) The reimbursement rates set forth in this section shall be  
12 adjusted annually for increases in cost of living in the same manner  
13 set forth in Section 42238.1.

14 SEC. 4. Section 49430.5 is added to the Education Code, to  
15 read:

16 49430.5. (a) (1) Beginning with the 2007–08 fiscal year, the  
17 reimbursement rate shall be thirty cents (\$0.30) for a school or  
18 child development program that sold or served free and  
19 reduced-price meals and meets the requirements of subdivision  
20 (b) or (c), as applicable, and subdivision (d).

21 (2) The requirements of this section shall be phased in as  
22 follows:

23 (A) During the 2007–08 fiscal year, compliance with the  
24 requirements of this section is at the discretion of the school district  
25 or child development program, which shall receive the  
26 reimbursement rate provided pursuant to Section 49536 if it  
27 chooses not to meet the requirements of subdivision (b) or (c), as  
28 applicable, and subdivision (d).

29 (B) Beginning with the 2008–09 fiscal year, an elementary  
30 school or child development program that sold or served free and  
31 reduced-price meals shall meet the requirements of subdivision  
32 (b) or (c), as applicable, and subdivision (d) and is no longer  
33 eligible to choose to receive the reimbursement rate provided  
34 pursuant to Section 49536 if it does not meet those requirements.

35 (C) Beginning with the 2010–11 fiscal year, a middle or high  
36 school that sold or served free and reduced-price meals shall meet  
37 the requirements of subdivisions (b) and (d) and is no longer  
38 eligible to choose to receive the reimbursement rate provided  
39 pursuant to Section 49536 if it does not meet those requirements.

1 (3) For purposes of this section, “school” includes a charter  
2 school and schools operated and maintained by school districts or  
3 county offices of education, and “school district” includes charter  
4 schools and county offices of education.

5 (4) For purposes of this section, “child development program”  
6 means a program operated pursuant to Chapter 2 (commencing  
7 with Section 8200) of Part 6 of Division 1 of Title 1.

8 (b) In order to qualify to receive the reimbursement increase  
9 pursuant to subdivision (a), a school shall satisfy all of the  
10 following requirements:

11 (1) Follow the United States Department of Agriculture (USDA)  
12 nutritional guidelines through the use of California’s Shaping  
13 Health as Partners in Education (SHAPE) menu patterns, as  
14 approved by the State Department of Education.

15 (2) Not sell or serve any food item that is deep fried.

16 (3) Not sell or serve any food item that contains partially  
17 hydrogenated or hydrogenated vegetable oils.

18 (4) Offer whole grain products for at least 25 percent of grain  
19 and bread offerings weekly.

20 (5) Offer only milk and whole dairy products that are nonfat,  
21 one-percent milk fat, or two-percent milk fat.

22 (6) Participate in the California Fresh Start Program and meet  
23 the requirements of Article 11.5 (commencing with Section 49565).

24 (c) In order to qualify to receive the reimbursement increase  
25 pursuant to subdivision (a), a child development program shall  
26 satisfy all of the following requirements:

27 (1) Meet developmentally and programmatically appropriate  
28 meal pattern or meal planning requirements developed by the  
29 USDA.

30 (2) Not sell or serve any food item that is deep fried.

31 (3) Not sell or serve any food item that contains partially  
32 hydrogenated or hydrogenated vegetable oils.

33 (4) Offer whole grain products for at least 25 percent of grain  
34 and bread offerings weekly.

35 (5) Offer only milk and whole dairy products that are nonfat,  
36 one-percent milk fat, or two-percent milk fat.

37 (6) Offer at least one cup of fresh fruits and vegetables for lunch  
38 meals weekly and at least one-half cup of fresh fruits and  
39 vegetables for breakfast meals weekly.

1 (d) (1) In order to qualify to receive the reimbursement increase  
2 pursuant to subdivision (a), a school district shall satisfy both of  
3 the following:

4 (A) Hold a public hearing on or before July 1, 2008, to discuss  
5 each of the following:

6 (i) An open campus policy that allows pupils to purchase or eat  
7 the lunch meal outside of the school campus.

8 (ii) The capacity of each high school campus and the food  
9 service program to serve a lunch meal to each high school pupil  
10 during the lunch period.

11 (B) On or before January 1, 2009, amend the Local School  
12 Wellness Policy as required by Section 204 of the federal Child  
13 Nutrition and Women, Infants, and Children (WIC) Reauthorization  
14 Act of 2004 to include each of the following:

15 (i) A policy on encouraging pupils to purchase or eat the lunch  
16 meal on the school campus.

17 (ii) The assignment of administrative oversight at the school  
18 district level to ensure compliance with this article.

19 (2) A child development program shall comply with the  
20 requirements of this subdivision to the extent applicable.

21 (e) Beginning July 1, 2007, in order to be eligible to receive the  
22 reimbursement specified in subdivision (a), a school district or  
23 child development program shall provide the State Department of  
24 Education a self-certification of compliance with subdivision (b)  
25 or (c), as applicable, as part of the annual renewal process of the  
26 department.

27 (f) The reimbursement rates set forth in this section shall be  
28 adjusted annually for increases in cost of living in the same manner  
29 set forth in Section 42238.1.

30 (g) A school district or child development program may apply  
31 for the reimbursement provided by this section and any other  
32 reimbursements provided by this code.

33 SEC. 5. Section 49531 of the Education Code is amended to  
34 read:

35 49531. (a) Any child nutrition entity or an educational entity  
36 specified in Section 49430.5 may apply to the ~~State Department~~  
37 ~~of Education~~ department for all available and applicable federal  
38 and state funds so that a nutritionally adequate breakfast or lunch,  
39 or both, may be provided to pupils each schoolday at each school  
40 in the districts or maintained by the county superintendents of

1 schools, or at private schools and parochial schools and to children  
 2 receiving child development services. The State Board of Education  
 3 shall adopt rules and regulations for the operation of lunch and  
 4 breakfast programs in school districts. A child nutrition entity  
 5 ~~which that~~ receives state funds pursuant to this article, shall provide  
 6 breakfasts and lunches in accordance with state and federal  
 7 guidelines.

8 **A**

9 (b) A nutritionally adequate breakfast, for the purposes of this  
 10 article, is one that qualifies for reimbursement under the federal  
 11 child nutrition program regulations, meets a minimum of one-fourth  
 12 of the current Recommended Dietary Allowance established by  
 13 the National Research Council, and incorporates the current United  
 14 States Dietary Guidelines for Americans. A nutritionally adequate  
 15 lunch is one that qualifies for reimbursement under the federal  
 16 child nutrition program regulations, meets one-third of the  
 17 Recommended Dietary Allowance established by the National  
 18 Research Council and incorporates the current United States  
 19 Dietary Guidelines for Americans.

20 **State**

21 (c) *State* reimbursement for *free and reduced-price* meals  
 22 provided pursuant to this article ~~or Section 49430.5~~ shall be limited  
 23 to meals provided to pupils who are within the relevant definitions  
 24 and criteria in federal statutes and regulations ~~which that~~ prescribe  
 25 eligibility for free and ~~reduced-price~~ *reduced-price* meals.

26 SEC. 6. Section 49536 of the Education Code is repealed.

27 ~~49536. The State Department of Education shall, prior to July~~  
 28 ~~1 of each year, prescribe an adjustment in the state meal~~  
 29 ~~contribution rates established pursuant to this section for the~~  
 30 ~~forthcoming fiscal year. The adjustments shall reflect the changes~~  
 31 ~~in the cost of operating a school breakfast and lunch program and~~  
 32 ~~shall be made commencing on July 1 of each year. The adjustment~~  
 33 ~~shall be the average of the separate indices of the "Food Away~~  
 34 ~~From Home Index" for Los Angeles and San Francisco as prepared~~  
 35 ~~by the United States Bureau of Labor Statistics.~~

36 ~~In giving effect to the cost-of-living provisions of this section,~~  
 37 ~~the Department of Education shall use the same month for~~  
 38 ~~computation of the percentage change in the cost of living after~~  
 39 ~~July 1, 1975. The same month shall be used annually thereafter.~~  
 40 ~~The product of any percentage increase or decrease in the average~~

1 ~~index and the per-meal reimbursement disbursement rate shall be~~  
2 ~~adjusted by the amount of any cost-of-living change currently in~~  
3 ~~effect pursuant to the provisions of this section.~~

4 ~~Commencing with the 1990-91 fiscal year, the cost-of-living~~  
5 ~~adjustment shall be equal to the percentage change determined~~  
6 ~~pursuant to subdivision (b) of Section 42238.1.~~

7 SEC. 7. Section 49536 is added to the Education Code, to read:

8 49536. (a) The department, before July 1 of each year, shall  
9 prescribe an adjustment in the state meal contribution rates  
10 established pursuant to this section for the forthcoming fiscal year.

11 (b) Commencing with the 2006-07 fiscal year, the  
12 reimbursement rates established pursuant to this section shall be  
13 twenty-one cents (\$0.21) for free and reduced-price meals provided  
14 pursuant to this article.

15 (c) The reimbursement rate set forth in this section shall be  
16 adjusted annually for increases in the cost of living in the same  
17 manner as set forth in Section 42238.1.

18 SEC. 8. Section 49537 is added to the Education Code, to read:

19 49537. (a) The department shall create an annual notification  
20 process that allows a school district, charter school, county office  
21 of education, or child development program to indicate its intent  
22 to comply with the meal standards and reimbursement rate under  
23 Section 49430.5 or 49536.

24 (b) The department shall conduct audits of meal programs  
25 funded pursuant to this article at least twice every five years.

26 (c) The department shall provide technical assistance to any  
27 school district, charter school, county office of education, or child  
28 development program that indicates an intent to receive  
29 reimbursement pursuant to Section 49430.5 but does not comply  
30 with the nutrition standards required by that section.

31 SEC. 9. This act is an urgency statute necessary for the  
32 immediate preservation of the public peace, health, or safety within  
33 the meaning of Article IV of the Constitution and shall go into  
34 immediate effect. The facts constituting the necessity are: In order  
35 to provide the increased reimbursement rate for school meals to  
36 schools in a timely manner, it is necessary that this act take effect  
37 immediately.