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## SENATE COMMITTEE ON HUMAN SERVICES

Senator Hurtado, Chair  
2021 - 2022 Regular

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**Bill No:** SB 364  
**Author:** Skinner  
**Version:** April 14, 2021  
**Urgency:** No  
**Consultant:** Taryn Smith  
**Hearing Date:** April 20, 2021  
**Fiscal:** Yes

**Subject:** Pupil meals: Free School Meals For All Act of 2021

### SUMMARY

This bill, among other things, requires school districts, county offices of education, and charter schools to provide two free nutritiously adequate school meals each school day, regardless of the pupil's eligibility for free or reduced-price meals. This bill also requires the California Department of Education (CDE) to: administer a noncompetitive grant to local educational agencies (LEAs) to cover costs incurred by those agencies in purchasing food produced or grown in California; and, award grants of up to \$30,000 per schoolsite every year on a competitive basis to school districts, county superintendents of schools, or entities approved by the CDE for nonrecurring expenses incurred, in order to increase the number of meals that can be prepared freshly and served to pupils. Furthermore, this bill establishes the Better Out of School Time (BOOST) Nutrition EBT Program to prevent child hunger during regularly scheduled school breaks or any school campus closure caused by a declared state of emergency.

### ABSTRACT

#### Existing Law:

- 1) Authorizes a universal meal service option known as the Community Eligibility Provision (CEP), which allows a LEA that directly certifies for free meals for at least 40 percent of the students in either the district overall, a group of schools within the district, or an individual school, to receive meal reimbursement based on a formula that equate to 1.6x the free reimbursement rate for students directly certified for free or reduced-price meals, plus the standard reimbursement rate for paid meals. (*42 USC 1759a(a)(1)(F)*; *7 CFR 245.9(f)*)
- 2) Authorizes an additional universal meal service option know as Provision 2 that allows an LEA to certify children for free and reduced-price meals for up to 4 consecutive school years in the schools that serve meals at no charge to all enrolled children. (*42 USC 1759a(a)(1)(C)*; *7 CFR 245.9(b)*)
- 3) Requires each district or county superintendent of schools maintaining any kindergarten or any of grades 1 to 12, inclusive, to provide for each needy pupil one nutritionally

adequate free or reduced-price meal during each school day, and defines needy children as those who meet federal eligibility criteria for free and reduced-price meals. (*Education Code (EDC) 49550 and 49552*)

- 4) Provides that a nutritionally adequate meal for this purpose is a breakfast or lunch meeting specified requirements that qualifies for reimbursement under the federal child nutrition program regulations. (*EDC 49553*)
- 5) Authorizes a school district or county office of education to use funds made available through any federal or state program the purpose of which includes the provision of meals to a pupil, including the federal School Breakfast Program, the federal National School Lunch Program (NSLP), the federal Summer Food Service Program, the federal Seamless Summer Option, or the state meal program, or may do so at its own expense. (*EDC 49550*)
- 6) Allows the Governor to proclaim a state of emergency, as specified, when he finds that the necessary circumstances exist and/or when he is requested to do so by a local government official, as specified, or finds that the local authority is inadequate to cope with the emergency. (*Government Code 8625*)
- 7) Defines “State of emergency” to mean the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions such as air pollution, fire, flood, storm, epidemic, riot, drought, cyberterrorism, sudden and severe energy shortage, plant or animal infestation or disease, the Governor’s warning of an earthquake or volcanic prediction, or an earthquake, or other conditions, other than conditions resulting from a labor controversy or conditions causing a “state of war emergency,” which, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the California Public Utilities Commission. (*GOV 8558(b)*)
- 8) Creates Pandemic Electronic Benefit Transfer (P-EBT), through which eligible school children receive temporary emergency nutrition benefits loaded onto EBT cards that are used to purchase food. (*Public Law 116–127 and 116-159*)

**This Bill:**

- 1) Provides for changes in the schools meals program, which are discussed in the Senate Education Committee analysis of this bill as it was heard on April 7, 2021.
- 2) Requires CDSS to seek all available funding for the P-EBT program established under the federal law, as specified.
- 3) Establishes the Better Out of School Time (BOOST) Nutrition EBT Program to prevent child hunger during regularly scheduled school breaks or any school campus closure

caused by a condition for which a state of emergency has been proclaimed by the Governor that lasts five or more schooldays.

- 4) Establishes pupil eligibility for benefits under the BOOST Nutrition EBT Program if they are enrolled in a public school that participates in the NSLP and they meet one of the following criteria:
  - a) They receive benefits under the Medi-Cal program;
  - b) They receive benefits under the CalFresh program;
  - c) They are a homeless youth, as defined by specified federal law;
  - d) They are in foster care; or
  - e) They have applied for BOOST Nutrition EBT benefits pursuant to this chapter, and it has been determined that their family income is below 185 percent of the federal poverty level.
- 5) Requires CDSS to issue BOOST Nutrition EBT benefits to eligible pupils, in the amount specified by CDSS at the beginning of each school year, as specified, for each day during which a school campus is closed due to either of the following circumstances:
  - a) A regularly scheduled school break that lasts five or more schooldays, or
  - b) A closure of a school campus as a result a condition for which a state of emergency has been proclaimed by the Governor that lasts five or more schooldays.
- 6) Requires CDSS to issue BOOST Nutrition EBT benefits to eligible pupils no later than seven business days prior to regularly scheduled breaks, when applicable.
- 7) Requires CDSS to submit a report to the Legislature describing how the department can ensure timely BOOST Nutrition EBT benefits issuance to pupils during a school campus closure caused by a state of emergency, as provided, and the cost of issuing these benefits timely on or before March 1, 2022.
- 8) Requires CDSS to set the amount of the daily BOOST Nutrition EBT benefit at the beginning of each school year in an amount that equals the reimbursement rate of a free breakfast under the federal School Breakfast Program and a free lunch under the NSLP
- 9) Requires CDSS to also issue BOOST Nutrition EBT benefits to any child or pupil who was eligible to receive benefits under the P-EBT program and the state plan approved by the Secretary of Agriculture of the United States, as of July 1, 2021, for the five-month period following the end of the P-EBT program.
- 10) Requires CDSS to use the same eligibility, issuance, and other procedures as used under the P-EBT program for the issuance of BOOST Nutrition EBT benefits.

- 11) Requires CDSS to annually report to the Legislature on outcomes of the BOOST Nutrition EBT Program, including, but not limited to, both of the following in each county, the number and percent of pupils receiving benefits, and the total benefits issued; and opportunities to improve program participation and program performance.
- 12) Requires that P-EBT reports must be submitted in compliance with specified law.
- 13) Provides that BOOST Nutrition EBT benefits are not subject to review via state hearings.
- 14) Provides that to the extent permitted by federal law, BOOST Nutrition EBT benefits issued shall not be considered as income or resources in determining other public benefits.

### FISCAL IMPACT

This bill has not yet been analyzed by fiscal committee.

### BACKGROUND AND DISCUSSION

#### **Purpose of the Bill:**

According to the author, “in California, every child has the right to a free education, regardless of their income and what they are able to pay. Yet, while we know that good nutrition supports classroom learning, our schools are required to implement out-of-date and bureaucratic applications to determine financial need before serving a child a meal. This not only undermines California’s ability to prevent hunger, experienced by 1 in every 5 children in our state, but also undermines our ability to focus on child learning and development in the school settings. SB 364 makes school meals available to every public school student without red-tape or paperwork. This bill will cut school administrative costs, improve learning, help families and support California farmers and food producers.”

#### *Hunger in California*

Although California is the greatest food-producing state in the country, about 10 million of California’s children and adults face food insecurity, according to the California Association of Food Banks.<sup>1</sup> They also report that, on average, one out of every four Californians does not know where their next meal will come from and Black and Latinx families with children experience greater levels of hunger.

Due to limited financial resources, those who are food insecure sometime use cost cutting measures to stretch budgets that are harmful to their health, such as: engaging in cost-related medication underuse or nonadherence; postponing or declining medical care; forgoing the foods needed for special medical diets; purchasing a low-cost diet that relies on energy-dense, but

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<sup>1</sup> <https://www.cafoodbanks.org/hunger-data/>

nutrient-poor, foods; diluting or rationing infant formula; and making trade-offs between food and other basic necessities, like housing, utilities, transportation.

Food insecurity can be harmful to individuals at any age, but it can be especially devastating to children. Inadequate nutrition can permanently alter children's brain architecture and stunt their intellectual capacity, affecting children's learning, social interactions, and productivity. Furthermore, children struggling with food insecurity may be at greater risk for stunted development, anxiety, anemia, asthma, oral health problems and even hospitalization. All of these impacts can lead to poor educational outcomes.

#### *Enhancing Availability of Free Meals in Schools*

The bill, as a whole, seeks to make healthy nutrition benefits more easily available to children. This bill proposes to make a number of changes to the school meals program, which are discussed in detail in the Senate Education Committee analysis of this bill. Specific to this committee's jurisdiction, the bill establishes a new food benefit, in the form of funds loaded onto EBT cards that would be provided to eligible families for each day during which a school campus is closed due to either of the following circumstances:

- A regularly scheduled school break that lasts five or more schooldays, or
- A closure of a school campus as a result of a condition for which a state of emergency has been proclaimed by the Governor that lasts five or more schooldays.

BOOST Nutrition EBT benefits would be set at an amount that equals the reimbursement rate of a free breakfast under the federal School Breakfast Program and a free lunch under the NSLP, which would amount to between five and six dollars per day. This benefit would be available during spring and winter break as well as through the summer, when the school is scheduled to be closed for five or more school days.

As to making the benefit available during a state of emergency that causes a school campus to close for five or more schooldays, in recent years, wildfires caused regional state of emergencies all across the state. During these periods many schools closed, for varying periods of time, and some were even burned down, delaying student's return to campus. As a result of the COVID-19 pandemic, California has been operating under a statewide state of emergency for over a year and schools have adjusted to distance learning and made free meals available to students while campuses are closed. As made clear during the initial, and ongoing, COVID-19 stay at home order, families that rely upon free and reduced meals for their schoolage children are strained when they are cut off from these meals during unplanned school closures.

Whether a planned or unplanned school closure, this benefit would be available only to students who qualify. The BOOST Nutrition EBT benefit would be available to students who are enrolled in a public school that participates in the NSLP and meet one of the following criteria:

- They receive benefits under the Medi-Cal program;
- They receive benefits under the CalFresh program;

- They are a homeless youth, as defined by specified federal law
- They are in foster care; or
- They have applied for BOOST Nutrition EBT benefits pursuant to this chapter, and it has been determined that their family income is below 185 percent of the federal poverty level.

California has experienced an unusual amount of state of emergencies in recent years due to fires, floods, earthquakes and a global pandemic. The Governor has the authority to declare and terminate a state of emergency. It has come to the committee's attention that proclamations terminating states of emergency are not always issued when the immediate danger appears to have subsided. This might lead one to wonder about conditioning the BOOST benefit on existence of a state of emergency. It should be noted that BOOST benefits would available be if a school campus is closed during a state of emergency for five or more days. This would limit availability of the benefit even when the official state of emergency continues.

#### *EBT Programs that Offer Children Food Benefits While School is Out*

The state has already established a system for providing a nutrition benefit to eligible students during school closures in the form of Pandemic EBT (P-EBT), which would likely act as a distribution model for the BOOST Nutrition benefit. P-EBT was authorized as an emergency benefit in order to provide food to children who are eligible for free or reduced priced school meals but unable to access those meals due to school closures during the COVID-19 pandemic. CDSS has been working with CDE to implement P-EBT and P-EBT cards have been mailed to eligible families and will be reloaded with benefits for any future issuances.

As of September 17, 2020, over 3.7 million children were issued \$365 in P-EBT benefits. Of those, about 2.3 million children were automatically eligible and 1.5 million were eligible based on application.

While not a California program, the federally funded Summer Electronic Benefits Transfer for Children (S-EBT) program reduces summer hunger by providing additional resources to purchase food during the summer months for families whose children are certified to receive free or reduced-price school meals during the school year. In the eight states that participate in S-EBT (California is not a participant) families were given EBT cards with \$60 in food benefits per child, for the summer months when the children would not be receiving meals at school. An evaluation of the program showed that receipt of S-EBT decreased the prevalence of very low food security among children by one-third. The program was most effective at reaching and fighting hunger among the poorest recipients. In addition, S-EBT improved nutritional intake, as families had sufficient resources to purchase the healthy, expensive items they otherwise cannot afford.

#### *Senate Judiciary Committee Input*

Typically, provisions of this bill would trigger the jurisdiction of the Senate Judiciary Committee. However, due to the limitations placed on committee hearings due to ongoing health

and safety risks of the COVID-19 virus, the referral to the Senate Judiciary Committee was rescinded. In order to fully vet the contents of this measure for the benefit of Senators and the public, this analysis includes information from the Senate Judiciary Committee as follows:

“One of the purposes of this bill is to ensure equitable access to opportunities in education by providing school children with free meals. Currently schools are required to make paper applications for free or reduced-price meals available. A school district, county office of education, or school food authority are authorized to make applications available online provided the information provided by the applicant is not used by a private entity for any purpose not related to the administration of the program. This bill additionally authorizes a third-party vendor to provide an online application, but bolsters the privacy-protective provisions to prohibit the sale sharing, or use of the applicant’s information for any purpose unrelated to the program.

The California Information Practices Act reiterates that the “right to privacy is a personal and fundamental right protected by Section 1 of Article I of the Constitution of California and by the United States Constitution and that all individuals have a right of privacy in information pertaining to them.” (*Civ. Code § 1798.1*) The public policy goals served by the collection of information authorized by this bill certainly justify any intrusion on privacy interests, especially given the clear restriction on what can be done with the personal information collected. In addition, the section also restricts any of these entities from requiring an applicant to waive any rights or to create a user account in order to apply, a tactic that is often used to collect a host of information from individuals to be used for various purposes. To emphasize the importance of these privacy protections, the bill subjects a third-party vendor who violates them to a civil penalty of \$1,000 for an initial violation and \$10,000 for any subsequent violations.”

#### **Related/Prior Legislation:**

***SB 265 (Hertzberg, Chapter 785, Statutes of 2019)*** amends the Child Hunger Prevention and Fair Treatment Act of 2017 to require applicable LEAs to ensure that a pupil whose parent or guardian has unpaid meal fees is not denied a reimbursable meal of the pupil’s choice because of the fact that the pupil’s parent or guardian has unpaid meal fees and that the pupil is not shamed or treated differently from other pupils, thus ensuring that all students receive a reimbursable meal.

***SB 499 (McGuire, 2019)*** would have established the California-Grown for Healthy Kids Program to increase the provision of universally free school meals with California-grown fruits and vegetables, which would have included supplemental funds of \$0.10 per breakfast served to eligible school food authorities. SB 499 was not heard in the Assembly Education Committee.

***AB 1871 (Bonta, Chapter 480, Statutes of 2018)*** required charter schools, commencing with the 2019-20 school year, to provide each low-income pupil with one nutritionally adequate free or reduced-price meal during each schoolday.

***SB 138 (McGuire, Chapter 724, Statutes of 2017)*** required CDE, in consultation with the State Department of Health Care Services, to develop and implement a process to use Medi-Cal data to directly certify children whose families meet the income criteria into the school meal program;

required school districts and county offices of education with high poverty schools and high poverty charter schools currently participating in the breakfast or lunch program to provide breakfast and lunch free of charge to all students at those schools; and, authorized a school district, county office of education or charter school to opt-out due to fiscal hardship.

*SB 250 (Hertzberg, Chapter 726, Statutes of 2017)* required a LEA to ensure that a pupil whose parent or guardian has unpaid school meal fees is not shamed, treated differently or served a meal that differs from what a pupil whose parent or guardian does not have unpaid school meal fees would receive under the LEA's policy; required a LEA to attempt to directly certify a family for the free and reduced lunch program when a student has unpaid school meal fees and before the LEA notifies the parent or guardian within 10 days of reaching a negative balance; and, prohibited school personnel from allowing any disciplinary action that is taken against the student to result in the denial or delay of a nutritionally adequate meal, to that pupil.

### COMMENTS

While P-EBT appears to be a good model to build upon for issuance of the new BOOST Nutrition EBT benefit, there may be implementation issues with regard to CDSS and the counties working with schools and the technology necessary to implement such an ongoing statewide benefit. Additionally, P-EBT was built under emergency authorizations that will eventually terminate or expire. Should this bill move out of this committee, the author might work with stakeholders to determine how to resolve those implementation issues.

#### **Arguments in support:**

The California Association of Food Banks writes the following in support of this bill, “SB 364 will allow our schools to serve free meals to all students as the negative economic stresses of the pandemic continue to impact California families in the years to come. This legislation will also establish an Electronic Benefits Transfer (EBT) program to ensure that children from low-income families have access to food when schools are closed during breaks and prolonged emergencies, making California the first state in the nation to build on the current Pandemic Electronic Benefits Transfer (P-EBT) program to ensure that kids have access to food while schools are closed during the pandemic.

#### **Arguments in opposition:**

Cynthia Phan of Los Gatos writes the following in opposition of this bill, “Let's support childrens' human right to food by providing them access to food via a mechanism other than prepared school meals. School meal programs, despite the good intentions and hard work of many, remain highly flawed. SB364 rushes to fund and grow utilization of school meals programs without adequately addressing egregious school meal program flaws.” Ms. Fan identifies program flaws as use of ultra-processed food; massive plate waste; stigma of free meals; and supporting the food supply chain that leave food chain workers' families hungry.

### PRIOR VOTES

Senate Education Committee:

7 – 0

**POSITIONS****Support:**

50 Acterra Action for A Healthy Planet  
 Agricultural Institute of Marin  
 Alameda County Community Food Bank  
 Alameda County Office of Education  
 Alpine Union School District  
 American Academy of Pediatrics, California  
 American Diabetes Association  
 American Heart Association  
 API Forward Movement  
 Asian Americans for Housing and Environmental Justice (AA4HEJ)  
 Bay Area Community Services  
 Bay Area Ranchers' Cooperative, INC  
 California Association for Health, Physical Education, Recreation & Dance  
 California Association of Food Banks  
 California Association of Student Councils  
 California Food and Farming Network; Environmental Working Group; Fibershed; Friends of  
 The Earth; Agricultural Institute of Marin; Pesticide Action Network North America; Latino  
 Coalition for A Healthy California (One letter)  
 California School Employees Association  
 California School Nurses Organization  
 California School-based Health Alliance  
 California State Council of Service Employees International Union (SEIU California)  
 California Teachers Association  
 CaliforniaHealth+ Advocates  
 Center for Ecoliteracy  
 Center for Food Safety; the  
 Center for Science in The Public Interest  
 Ceres Community Project  
 Chico Unified School District Nutrition Services  
 Children's Advocacy Institute  
 Clergy and Laity United for Economic Justice  
 Common Sense  
 Community Action Partnership of Orange County  
 Community Action Partnership of San Bernardino County  
 Community Alliance With Family Farmers  
 Dolores Huerta Foundation  
 Eat. Learn. Play. Foundation  
 Ecology Center, Berkeley  
 Farm2people  
 Feeding San Diego  
 Food Bank Coalition of San Luis Obispo County  
 Food Research & Action Center

Foodcorps  
Fresh Approach  
Fresno Barrios Unidos  
Friends Committee on Legislation of California  
Friends of The Earth  
Frog Hollow Farm  
Healthy Schools Campaign  
Hidden Harvest  
LA Mesa-spring Valley Schools  
Latino Coalition for A Healthy California  
Livermore Valley Joint Unified School District  
Los Angeles County Office of Education  
Lunchassist  
Marin Food Policy Council  
Mt. Diablo Unified School District  
Natural Resources Defense Council (NRDC); The Edible Schoolyard Project; Californians for Pesticide Reform; California Certified Organic Farmers (One letter)  
Nextgen California  
Oakland Unified School District  
Open Heart Kitchen  
Policylink  
River City Food Bank  
San Diego Unified School District School and Nutrition Food Services  
San Francisco-Marin Food Bank  
San Jose Bridge Communities  
San Luis Coastal Unified School District  
San Mateo County Food Systems Alliance  
Second Harvest Food Bank Santa Cruz County  
Second Harvest of Silicon Valley  
Second Harvest of The Greater Valley  
Share Our Strength  
Sierra Harvest  
Stemple Creek Ranch  
Street Level Health Project  
The Office of Kat Taylor  
The Public Interest Law Project  
The Resource Connection Food Bank  
Tomkat Ranch  
Union of Concerned Scientists  
United States Healthful Food Council Inc., Dba Eat Real  
Urban & Environmental Policy Institute Occidental College  
Western Center on Law & Poverty  
Western Center on Law & Poverty, INC.  
Westside Food Bank  
Women's Foundation California  
Work Equity Action Fund  
2 individuals

**Oppose:**  
1 individual

-- END --