A BILL TO BE ENTITLED
AN ACT TO TRANSFER THE CHILD NUTRITION PROGRAM AND CHILD NUTRITION SERVICES OF THE DIVISION OF SCHOOL SUPPORT OF THE DEPARTMENT OF PUBLIC INSTRUCTION TO THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. (a) The Child Nutrition Program and Child Nutrition Services of the Division of School Support are transferred from the Department of Public Instruction to the Department of Agriculture and Consumer Services with all the elements of a Type I transfer as defined by G.S. 143A-6.

SECTION 1. (b) Article 7 of Chapter 143A of the General Statutes, is amended by adding a new section to read:

§ 143A-65.2. Child Nutrition Program; transfer.
The Child Nutrition Program and Child Nutrition Services of the Division of School Support are transferred from the Department of Public Instruction to the Department of Agriculture and Consumer Services with all the elements of a Type I transfer as defined by G.S. 143A-6."

SECTION 2. Part 2 of Article 17 of Chapter 115C of the General Statutes reads as rewritten:

"§ 115C-263. Required provision of services.
As a part of the function of the public school system, local boards of education shall provide to the extent practicable school food services in the schools under their jurisdiction. All school food services made available under this authority shall be provided in accordance with standards and regulations recommended by the Superintendent of Public Instruction, Commissioner of Agriculture of the Department of Agriculture and Consumer Services and approved by the State Board of Education, Board of Agriculture.

§ 115C-264. Operation.
(a) In the operation of their public school nutrition programs, the public schools shall participate in the National School Lunch Program established by the federal government. The program shall be under the jurisdiction of the Division of School Support, Child Nutrition Services of the Department of Public Instruction, Department of Agriculture and Consumer Services and in accordance with federal guidelines as established by the Food and Nutrition Service of the United States Department of Agriculture.
(b) For nutritional purposes, the public schools shall not (i) use cooking oils in their school food programs that contain trans-fatty acids or (ii) sell processed foods containing trans-fatty acids that were formed during the commercial processing of the foods.

c) All school food services shall be operated on a nonprofit basis, and any earnings therefrom over and above the cost of operation as defined herein shall be used to reduce the cost of food, to serve better food, or to provide free or reduced-price lunches to indigent children and for no other purpose. The term "cost of operation" means the actual cost incurred in the purchase and preparation of food, the salaries of all personnel directly engaged in providing food services, and the cost of nonfood supplies as outlined under standards adopted by the State Board of Education. "Personnel" means child nutrition supervisors or directors, bookkeepers directly engaged in food service record keeping and those persons directly involved in preparing and serving food. Child nutrition personnel shall be paid from the funds of food services only for services rendered in behalf of the child nutrition program. Any cost incurred in the provisions and maintenance of school food services over and beyond the cost of operation shall be included in the budget request filed annually by local boards of education with boards of county commissioners. Public schools are not required to comply with G.S. 115C-522(a) in the purchase of supplies and food for such school food services.

§ 115C-264.1. Preference to high-calcium foods and beverages in purchasing contracts.

(a) In addition to any requirements established by the United States Department of Agriculture under the National School Lunch Program, the School Breakfast Program, or other federally supported food service programs, local boards of education shall give preference in purchasing contracts to high-calcium foods and beverages. For purposes of this section, "high-calcium foods and beverages" means foods and beverages that contain a higher level of calcium and that are equal to or lower in price than other products of the same type or quality.

(b) Notwithstanding the provisions of subsection (a) of this section, if a local school board determines that a high-calcium food or beverage would interfere with the proper treatment and care of an individual receiving services from the public school food program, the local school board shall not be required to purchase a high-calcium food or beverage for that individual. A local school board that has entered into a contract with a supplier to purchase food or beverages before the effective date of this section is not required to purchase high-calcium foods or beverages for the duration of that contract if purchasing those products would change the terms of the contract.

§ 115C-264.2. Vending machine sales.

(a) Each school may, with the approval of the local board of education, sell to students beverages in vending machines during the school day so long as:

1. Soft drinks are not sold (i) during the breakfast and lunch periods, (ii) at elementary schools, or (iii) contrary to the requirements of the National School Lunch Program;
2. Sugared carbonated soft drinks, including mid-calorie carbonated soft drinks, are not offered for sale in middle schools;
3. Not more than fifty percent (50%) of the offerings for sale to students in high schools are sugared carbonated soft drinks;
4. Diet carbonated soft drinks are not considered in the same category as sugared carbonated soft drinks; and
5. Bottled water products are available in every school that has beverage vending.

(b) Nothing in subsection (a) of this section prohibits a school from adopting stricter policies with respect to beverage vending.

c) Snack vending in all schools shall, by school year 2006-2007, meet the Proficient Level of the NC Eat Smart Nutrition Standards, such that in elementary schools, no snack...
vending is available to students, and in middle and high schools, seventy-five percent (75%) of 

§ 115C-264.3. Child Nutrition Program standards.

The State Board of Education, in direct consultation with a cross section of local directors of child nutrition services, shall establish statewide nutrition standards for school meals, a la carte foods and beverages, and items served in the After School Snack Program administered by the Department of Public Instruction and child nutrition programs of local school administrative units. The nutrition standards will promote gradual changes to increase fruits and vegetables, increase whole grain products, and decrease foods high in total fat, trans fat, saturated fat, and sugar. The nutrition standards adopted by the State Board of Education shall be implemented initially in elementary schools. All elementary schools shall achieve a basic level by the end of the 2009-2010 school year, followed by middle schools and then high schools."

SECTION 3. Part 5 of Article 1 of Chapter 106 of the General Statutes is amended by adding a new section to read:


(a) All school food services made available under Part 2 of Article 17 of Chapter 115C of the General Statutes shall be provided in accordance with standards and regulations recommended by the Commissioner of Agriculture of the Department of Agriculture and Consumer Services and approved by the Board of Agriculture. Further, the National School Lunch Program established by the federal government shall be under the jurisdiction of the Department of Agriculture and Consumer Services and in accordance with federal guidelines as established by the Food and Nutrition Service of the United States Department of Agriculture. The public schools shall, in the operation of their public school nutrition programs, participate in the National School Lunch Program consistent with the provisions of Part 2 of Article 17 of Chapter 115C of the General Statutes.

(b) The Board of Agriculture, in direct consultation with a cross section of local directors of child nutrition services, shall establish statewide nutrition standards for school meals, a la carte foods and beverages, and items served in the After School Snack Program administered by the Department of Agriculture and Consumer Services and child nutrition programs of local school administrative units. The nutrition standards will promote gradual changes to increase fruits and vegetables, increase whole grain products, and decrease foods high in total fat, trans fat, saturated fat, and sugar. The nutrition standards adopted by the Board of Agriculture shall be implemented initially in elementary schools. All middle schools shall achieve a basic level by the end of the 2011-2012 school year, followed by high schools."

SECTION 4. G.S. 106-22 is amended by adding a new subdivision to read:

"(18) Child Nutrition Program. – Have jurisdiction of the National School Lunch Program and the Child Nutrition Program established by the federal government."

SECTION 5. The Department of Public Instruction and the Department of Agriculture and Consumer Services shall fully cooperate with, and assist in, the transfer of the Child Nutrition Program and the transfer of Child Nutrition Services of the Division of School Support under this act. All of the following are specific areas where cooperation and assistance is needed to assure that a seamless transition occurs and there is no interruption in providing child nutrition services to public school students:

(1) The Department of Public Instruction shall assist the Department of Agriculture and Consumer Services in requesting and securing a waiver from, and the approval of, the United States Department of Agriculture as required under the federal National School Lunch Act, 42 U.S.C. § 1760(l), for the transfer of the administrative responsibilities of the federally supported National School Lunch Program from the State educational
agency, the Department of Public Instruction, to another State agency, the
Department of Agriculture and Consumer Services.

(2) The Department of Public Instruction shall cooperate in the transfer to the
Department of Agriculture and Consumer Services of any financial software
and computer equipment that is necessary to effectuate the transfer of federal
funds from the State department administering the federal Child Nutrition
Program to the school administrative units and child nutrition programs of
the school administrative units.

(3) The Department of Public Instruction and the Department of Agriculture and
Consumer Services shall cooperatively manage the transition of the direct
certification process. Accordingly, the Department of Public Instruction shall
share with the Department of Agriculture and Consumer Services the
information made available to the Department of Health and Human
Services under the federal Supplemental Nutrition Assistance Program
identifying which students are from households that receive benefits under
this federal Program. Further, the Department of Public Instruction shall
transfer to the Department of Agriculture and Consumer Services the
capability of the Department of Public Instruction to convey this information
to the school administrative units so that these identified students may
continue to receive free school meals without interruption and without the
need for an application to be submitted by the student's head of household.

(4) The Department of Public Instruction and the Department of Agriculture and
Consumer Services shall work cooperatively to manage and maintain the
confidentiality of confidential student information, including the information
that relates to eligibility for free lunches and lunches at a reduced price.

(5) Any current procurement alliance or partnership of local boards of education
to procure food and school supplies for the alliance or partnership shall
continue in order to obtain more competitive pricing than would be available
to an individual local board of education. Accordingly, any duties and
functions of the Department of Public Instruction regarding any such
alliance or partnership as such duties and functions pertain to the
procurement of food or supplies for the Child Nutrition Program or Child
Nutrition Services shall be transferred to the Department of Agriculture and
Consumer Services.

SECTION 6. The Revisor of Statutes shall make the conforming statutory changes
necessary to reflect the transfers under Section 1 of this act. The Revisor of Statutes may
correct any reference in the General Statutes to the statutes that are recodified by this act and
make any other conforming changes necessitated by this act.

SECTION 7. This act becomes effective July 1, 2011.