

103^D CONGRESS
1ST SESSION

H. R. 2956

To amend the National School Lunch Act to protect school districts and the Department of Agriculture from anti-competitive activities of suppliers that sell commodities to schools that participate in the school lunch program, the school breakfast program, the special milk program, and the summer food service program for children, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 6, 1993

Mr. KILDEE introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend the National School Lunch Act to protect school districts and the Department of Agriculture from anti-competitive activities of suppliers that sell commodities to schools that participate in the school lunch program, the school breakfast program, the special milk program, and the summer food service program for children, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “School Lunch Protec-
5 tion Act of 1993”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) in recent years, there has been an alarming
4 number of instances of price-fixing and bid-rigging
5 regarding foods purchased for—

6 (A) the school lunch program established
7 under the National School Lunch Act (42
8 U.S.C. 1751 et seq.); and

9 (B) the school breakfast program estab-
10 lished under the Child Nutrition Act of 1966
11 (42 U.S.C. 1771 et seq.);

12 (2) during the past several years, the Antitrust
13 Division of the Department of Justice has filed over
14 95 criminal cases against persons accused of bid-rig-
15 ging conspiracies, false statements, mail fraud,
16 price-fixing, and similar activities involving dairy
17 products sold to schools or the Department of De-
18 fense;

19 (3) over 30 grand juries in States are inves-
20 tigating similar activities, especially in connection
21 with activities involving the dairy industry;

22 (4) 45 corporations and 48 individuals have
23 been convicted by Federal courts of similar activi-
24 ties, and total fines and civil damages of approxi-
25 mately \$100,000,000 have been assessed in Federal
26 and State actions for similar activities;

1 (5) a report of the Comptroller General of the
2 United States noted that, as of March 1992, the
3 Secretary of Agriculture had neither suspended nor
4 debarred any of the 13 dairy companies or 28 indi-
5 viduals convicted, as of March 1992, of milk con-
6 tract bid-rigging from participating in the school
7 lunch and breakfast programs;

8 (6) effective educational and monitoring pro-
9 grams can greatly reduce the incidence of price-fix-
10 ing and bid-rigging by companies that sell products
11 to schools;

12 (7) reducing the incidence of price-fixing and
13 bid-rigging in connection with the school lunch and
14 breakfast programs could save school districts, par-
15 ents, and taxpayers millions of dollars per year;

16 (8) the Comptroller General of the United
17 States has noted that bid-rigging awareness training
18 is an effective means of deterring improper collusion
19 and bid-rigging; and

20 (9) the Comptroller General of the United
21 States in a General Accounting Office report ad-
22 dressed many of the concerns described in this sec-
23 tion with respect to bid rigging in the school lunch
24 program.

1 **SEC. 3. DUTIES OF THE SECRETARY RELATING TO ANTI-**
2 **COMPETITIVE ACTIVITIES.**

3 The National School Lunch Act (42 U.S.C. 1751 et
4 seq.) is amended by adding at the end the following new
5 section:

6 **“SEC. 25. DUTIES OF THE SECRETARY RELATING TO ANTI-**
7 **COMPETITIVE ACTIVITIES.**

8 “(a) IN GENERAL.—The Secretary shall—

9 “(1) provide advice, training, technical assist-
10 ance, and guidance to representatives of States, con-
11 tracting entities, school food service authorities, and
12 other appropriate entities (as determined by the Sec-
13 retary) regarding means of identifying and prevent-
14 ing anticompetitive activities relating to the acquisi-
15 tion of commodities for—

16 “(A) the school lunch program established
17 under this Act;

18 “(B) the school breakfast program estab-
19 lished under the Child Nutrition Act of 1966
20 (42 U.S.C. 1771 et seq.);

21 “(C) the special milk program established
22 under section 3 of the Child Nutrition Act of
23 1966 (42 U.S.C. 1772); and

24 “(D) the summer food service program for
25 children established under section 13 of this
26 Act;

1 “(2) provide information to, and fully cooperate
2 with, the Attorney General and State attorneys gen-
3 eral regarding investigations of anticompetitive ac-
4 tivities relating to the acquisition of commodities for
5 the programs referred to in paragraph (1);

6 “(3) provide awareness training, training films,
7 technical advice, troubleshooting advice, and other
8 guidance related to avoiding or detecting bid-rigging,
9 price-fixing, or other anticompetitive activities con-
10 cerning the acquisition of commodities for the pro-
11 grams; and

12 “(4) debar or suspend a person under section
13 12A, applicable regulations issued by the Secretary
14 (such as part 3017 of chapter XXX of subtitle B of
15 title 7, Code of Federal Regulations), and other ap-
16 plicable Federal laws (including regulations).

17 “(b) FOOD SERVICE MANAGEMENT INSTITUTE.—
18 The Secretary may request assistance from the food serv-
19 ice management institute authorized under section 21 in
20 carrying out this section. The Secretary may contract with
21 the institute to carry out all or part of the duties described
22 in paragraphs (1) and (3) of subsection (a).

23 “(c) TERMINATION.—The authority provided by this
24 section shall terminate on September 30, 1999.”.

1 **SEC. 4. NONPROCUREMENT DEBARMENT.**

2 (a) IN GENERAL.—The National School Lunch Act
3 is further amended by inserting after section 12 (42
4 U.S.C. 1760) the following new section:

5 **“SEC. 12A. NONPROCUREMENT DEBARMENT.**

6 “(a) IN GENERAL.—Except as provided in sub-
7 sections (b) and (c), the Secretary shall debar a person,
8 and each principal and affiliate of the person, for at least
9 1 year from supplying, providing, or selling a product or
10 commodity to a school, school district, school food service
11 authority, or school district consortium participating in
12 the school lunch program established under this Act, the
13 school breakfast program established under the Child Nu-
14 trition Act of 1966 (42 U.S.C. 1771 et seq.), the special
15 milk program established under section 3 of the Child Nu-
16 trition Act of 1966 (42 U.S.C. 1772), or the summer food
17 service program for children established under section 13
18 of this Act if the person, or a principal or affiliate of the
19 person, is convicted, in connection with supplying, provid-
20 ing, or selling a product or commodity to any school,
21 school district, school food service authority, or school dis-
22 trict consortium participating in any of the programs, or
23 to any Federal agency, of—

24 “(1) an anticompetitive activity, including bid-
25 rigging, price-fixing, the allocation of customers be-

1 tween competitors, or other violation of Federal or
2 State law related to protecting competition;

3 “(2) mail fraud, bribery, theft, or embezzle-
4 ment;

5 “(3) making a false statement or claim;

6 “(4) making a false declaration before a grand
7 jury; or

8 “(5) other obstruction of justice.

9 “(b) SUBSEQUENT CONVICTIONS.—Except as pro-
10 vided in subsection (c), if a person, or a principal or affili-
11 ate of the person, is convicted of an activity described in
12 subsection (a) after having been previously debarred under
13 this section, the person, and each principal and affiliate
14 of the person, shall be debarred for at least 3 years from
15 supplying, providing, or selling a product or commodity
16 to any school, school district, school food service authority,
17 or school district consortium participating in a program
18 described in subsection (a) or to any Federal agency.

19 “(c) WAIVERS.—The Secretary may waive a debar-
20 ment imposed under subsection (a) or (b) if the Secretary
21 determines that debarment would—

22 “(1) likely have a significant adverse effect on
23 competition or prices in the relevant market or na-
24 tionally;

1 “(2) seriously interfere with the ability of a
2 school, school district, school food service authority,
3 or school district consortium to procure a needed
4 product or commodity for a program described in
5 subsection (a);

6 “(3) be unfair to a person, subsidiary corpora-
7 tion, affiliate, parent company, or local division of a
8 corporation that is not involved in the improper ac-
9 tivity that would otherwise result in the debarment;
10 or

11 “(4) not be in the public interest.

12 “(d) RELATIONSHIP TO OTHER AUTHORITY.—A de-
13 barment imposed under this section shall not reduce or
14 diminish the authority of a Federal, State, or local govern-
15 ment agency or court to—

16 “(1) penalize, fine, suspend, debar, or otherwise
17 punish, in a civil or criminal action, a person or a
18 principal or affiliate of the person; or

19 “(2) imprison, debar, suspend, fine, or other-
20 wise punish a person or a principal or affiliate of the
21 person.

22 “(e) REGULATIONS.—The Secretary shall issue such
23 regulations as are necessary to carry out this section.”.

24 (b) IMPLEMENTATION.—

1 (1) APPLICATION.—The amendment made by
2 subsection (a) shall not apply to a conviction that is
3 based on an activity that took place prior to the date
4 of enactment of this Act.

5 (2) REGULATIONS.—Not later than July 1,
6 1994, the Secretary of Agriculture shall amend the
7 nonprocurement regulations established under part
8 3017 of chapter XXX of subtitle B of title 7, Code
9 of Federal Regulations, to conform with section 12A
10 of the National School Lunch Act (as added by sub-
11 section (a)).

12 (3) CONSISTENT DEBARMENT POLICY.—Not
13 later than 120 days after the date of enactment of
14 this Act, the Secretary of Agriculture, in consulta-
15 tion with the Director of the Office of Management
16 and Budget, the Secretary of Defense, and such
17 other officials as the Secretary of Agriculture deter-
18 mines are appropriate, shall advise the appropriate
19 committees of Congress and the Comptroller General
20 of the United States as to the appropriateness and
21 usefulness of a consistent debarment policy under—

22 (A) the Federal acquisition regulations is-
23 sued under title 48, Code of Federal Regula-
24 tions; and

25 (B) Federal nonprocurement regulations.

1 (4) NO REDUCTION IN AUTHORITY.—

2 (A) IN GENERAL.—The authority of the
3 Secretary of Agriculture that exists on the date
4 of enactment of this Act to debar or suspend a
5 person, or a principal or affiliate of the person,
6 from Federal financial and nonfinancial assist-
7 ance and benefits under Federal programs and
8 activities, on a government-wide basis, shall not
9 be diminished or reduced by this section or the
10 amendment made by this section.

11 (B) DEBARMENT OR SUSPENSION.—The
12 Secretary may continue, after the date of enact-
13 ment of this Act, to debar or suspend a person
14 (or a principal or affiliate of the person), on a
15 government-wide basis, from Federal financial
16 and nonfinancial assistance and benefits for any
17 cause for debarment or suspension that is speci-
18 fied in part 3017 of chapter XXX of subtitle B
19 of title 7, Code of Federal Regulations, or as
20 otherwise permitted by law (including regula-
21 tions).

1 **SEC. 5. INFORMATION RELATING TO PREVENTION AND**
2 **CONTROL OF ANTICOMPETITIVE ACTIVITIES.**

3 The National School Lunch Act (as amended by sec-
4 tion 3) is further amended by adding at the end the follow-
5 ing new section:

6 **“SEC. 26. INFORMATION RELATING TO PREVENTION AND**
7 **CONTROL OF ANTICOMPETITIVE ACTIVITIES.**

8 “On request, the Secretary shall present to the appro-
9 priate committees of the Congress information regarding
10 the administration of section 12A (relating to
11 nonprocurement debarment) and section 25 (relating to
12 the duties of the Secretary relating to anticompetitive ac-
13 tivities), and any waiver granted under section 12A(c).”.

○