



# Ohio Legislative Service Commission

## Bill Analysis

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### **Am. Sub. S.B. 210** 128th General Assembly (As Passed by the Senate)

**Sens.** Coughlin and Kearney, Cafaro, Goodman, Harris, Husted, D. Miller, R. Miller, Morano, Sawyer, Schiavoni, Smith, Strahorn, Turner, Wagoner, Fedor

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#### **BILL SUMMARY**

- Requires that teachers initially hired on or after July 1, 2013 to teach physical education be licensed in physical education.
- Requires school districts and certain schools<sup>1</sup> to adopt a requirement that, with certain exemptions, students participate in at least 30 minutes of moderate to rigorous physical activity per day.
- Provides that, due to an undue financial hardship, a district or school may apply for a waiver of the physical activity requirement.
- Requires that the health unit required for graduation include instruction in nutrition and the benefits of physical activity.
- Requires school districts and certain schools to establish a body mass index (BMI) and weight status category screening program.
- Provides that, due to an undue financial hardship, a school district or school may apply for a waiver of the BMI and weight status category screening requirements.
- Requires the state's school district and building report cards to include measures of student success in meeting physical activity and wellness standards and of whether the district is complying with the bill's physical activity and BMI standards instead of operating under a waiver.

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<sup>1</sup> The schools are chartered non-public schools, community schools, and Science, Technology, Engineering, and Math (STEM) schools.

- Revises nutritional requirements for food sold at schools and extends them to beverages.
- Exempts schools under contract for the provision of food and beverages from the bill's food and beverage nutrition requirements until renewal of the contracts.
- Requires the Department of Education to make nutrition software available to public and chartered nonpublic schools without charge if it becomes available to the Department free of charge and requires them to use the software if it becomes available.
- Permits breakfast provided as part of a school breakfast program to be offered in the classroom.
- Provides that, if the General Assembly appropriates funds for this purpose, students eligible for breakfast at a reduced price will receive it free of charge.
- Establishes the Healthy Choices for Healthy Children Council.
- Requires the Council to make recommendations on development of a clearinghouse of best practices regarding student nutrition, physical activity, and body mass index screenings and the Department of Education to establish the clearinghouse for use by schools.

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## CONTENT AND OPERATION

### Physical education teacher license

(R.C. 3314.03, 3319.076, and 3326.13)

Current law does not require a physical education teacher to hold certification in physical education, nor does it require the State Board of Education to establish such certification. The bill prohibits a school district,<sup>2</sup> Science, Technology, Engineering, and Mathematics (STEM) school,<sup>3</sup> or community school<sup>4</sup> from employing any classroom teacher initially hired by the school on or after July 1, 2013, to provide instruction in physical education in grades K-12 unless the teacher holds a valid license for teaching physical education.

### Physical activity requirement

(R.C. 3313.6016, 3314.03, and 3326.11)

The bill provides that, not later than July 1, 2011, the board of education of each school district, each community school, each chartered nonpublic school,<sup>5</sup> and each STEM school, except those granted waivers (see "**Waiver**," below), is to adopt a policy that, beginning in the 2011-2012 school year, requires students in kindergarten through twelfth grade (K-12) to engage in at least 30 minutes of moderate to rigorous physical activity each school day, exclusive of recess. Physical activity engaged in during a physical education course counts toward the daily requirement. As does physical activity engaged in during an approved before- or after-school program, provided school officials are able to monitor students' participation in the activity to ensure compliance. The board or governing authority of a school may excuse a student from the daily activity requirement for any period in which the student is participating in interscholastic athletics, marching band, or cheerleading. It may also excuse a kindergarten student not enrolled in all-day kindergarten from the requirement.

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<sup>2</sup> Public school districts are designated as city, exempted village, or local school districts. Vocational school districts and joint vocational school districts have the same powers and duties as city school districts.

<sup>3</sup> H.B. 119 of the 127th General Assembly established independent STEM schools teaching any of grades six through twelve.

<sup>4</sup> A community school is a public school that is independent of any school district (R.C. 3314.01).

<sup>5</sup> A chartered nonpublic school is a nonpublic school that meets standards established for such schools by the State Board (R.C. 5104.01).

## **Exemptions from physical activity requirement**

The bill provides that all of the following are exempt from the physical activity requirement:

- (1) A student enrolled in the post-secondary enrollment options program;<sup>6</sup>
- (2) A student enrolled in a career-technical education program operated by the board or governing authority;
- (3) A student enrolled in a dropout prevention and recovery program operated by the board or governing authority.

## **Physical activity waiver**

A board or governing authority, for financial reasons, may apply to the Superintendent of Public Instruction for a waiver of the student physical activity requirement. The Superintendent is required to grant the waiver if the board or authority demonstrates, to the Superintendent's satisfaction, that compliance with the requirement will create an undue financial hardship on the school district or chartered nonpublic school. An affidavit submitted to the Superintendent by the board or governing authority, attested to by the president or presiding officer of the board or governing authority, is conclusive evidence of the need for the waiver.

## **Health curriculum**

(R.C. 3313.603)

Under current law, students entering ninth grade in the 2010-2011 school year or later generally must complete the Ohio Core curriculum as one condition of earning a high school diploma from a public or chartered nonpublic high school. (Disabled students must instead complete their individualized education plans.) The Ohio Core consists of 20 units of study, of which one-half unit (60 hours) is devoted to health. The bill provides that the health unit must include instruction in nutrition and the benefits of nutritious foods and physical activity for overall health.

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<sup>6</sup> This program permits a secondary school student to enroll in a college on a full- or part-time basis and receive high school and college credit.

## Body mass screening

(R.C. 3313.674, 3314.03, and 3326.11)

Under the bill, each school district, community school, chartered nonpublic school, and STEM school, except those granted waivers (see "**BMI waiver**," below), is to require each student enrolled in kindergarten, third grade, fifth grade, and ninth grade to undergo a screening for body mass index (BMI) and weight status category before May 1 of that school year.<sup>7</sup> The screening may be provided by the board or governing authority, the board or governing authority may contract with another entity for provision of the screenings, or the board or governing authority may request that the parent or guardian of each student obtain the screening from a provider selected by the parent or guardian and submit the results to the board or governing authority. If the board or governing authority provides the screenings itself or contracts with another entity for the screenings, the board or governing authority is required to protect student privacy by ensuring that each student is screened alone and not in the presence of other students or staff.

Before February 1, the board or governing authority is required to provide the parent or guardian of each student subject to the bill's screening requirements information about the screening program. If the board or governing authority requests that parents and guardians obtain a screening from a provider of their choosing, the board or governing authority is to provide the parents and guardians with a list of providers and information about screening services available in the community to those who cannot afford a private provider.

A parent or guardian of a student subject to the screening requirements may sign and submit to the board or governing authority a written statement indicating that the parent or guardian does not wish to have the student undergo the screening. The board or governing authority is prohibited from requiring such students to be screened.

The bill requires the board or governing authority to notify the parent or guardian of each student screened under the program of any health risks associated with the student's screening results and provide to the parent or guardian information about appropriately addressing the risks. For this purpose, the Department of Health, in consultation with the Department of Education and the Healthy Choices for Healthy Children Council established by the bill (see "**Healthy Choices for Healthy Children Council**," below), is to develop a list of documents, pamphlets, or other resources that the board or governing authority may distribute to parents and guardians.

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<sup>7</sup> The bill exempts internet- or computer-based community schools from the BMI screening requirements.

The board or governing authority is required to maintain the confidentiality of each student's individual screening results. No board or governing authority is to report a student's individual screening results to any person other than the student's parent or guardian. However, the board or governing authority is required to report aggregated body mass index and weight status category data collected under the program, along with any demographic data required by the Director of Health, to the Department of Health. The data is required to be aggregated to the district level, in the case of a school district, or to the school level, in the case of a community, chartered nonpublic, or STEM school. The Department is to annually publish the data, aggregated by county. If any district or chartered nonpublic school was granted a waiver (see "**Waiver**," below) for the school year covered by the published data, the Department must note that the data for the county in which the district or school is located is incomplete. The Department is authorized to share data reported under the screening program with other governmental entities for the purpose of monitoring population health, making reports, or public health promotional activities.

### **BMI waiver**

A board or governing authority, for financial reasons, may apply to the Superintendent of Public Instruction for a waiver of the BMI and weight status category screening requirements. The Superintendent is required to grant the waiver if the board or authority demonstrates, to the Superintendent's satisfaction, that compliance with the requirements will create an undue financial hardship on the school district or school. An affidavit submitted to the Superintendent by the board or governing authority, attested to by the president or presiding officer of the board or governing authority, is conclusive evidence of the need for the waiver.

### **School district report cards**

(R.C. 3302.032)

Current law requires the Department of Education to issue an annual report card for each school district, each school building, and the state as a whole based on certain performance indicators. Districts and schools receive ratings based on this data.

The bill requires the State Board, no later than December 31, 2011, to establish for use in the report card a measure of (1) student success in meeting the benchmarks of the physical education standards established under current law, which may be standards adopted by the State Board of Education or standards developed by the National Association for Sport and Physical Education for grades K-12, (2) compliance with the

requirements for local wellness policies prescribed by the federal Child Nutrition Act,<sup>8</sup> and (3) whether a school district or building is complying with the bill's physical activity and body mass screening requirements instead of operating under a waiver from those requirements. Beginning with the 2012-2013 school year, the measure is to be included on building and school district report cards. The bill specifies that the measure is not to be used as a factor in determining performance ratings.

The bill also specifies that the Department of Education may accept, receive, and expend gifts, devises, or bequests of money for the purpose of establishing the measure required by the bill.

### **School nutrition requirements**

(R.C. 3301.921, 3313.814, 3313.816, 3313.817, 3314.03, and 3326.11; Sections 3 and 4)

Under current law, each school district board of education must adopt and enforce standards that (1) govern the types of food that may be sold on the premises of the district's schools and (2) specify the time and place each type of food may be sold. In adopting these standards, a board is required to consider each food's nutritional value. A board is prohibited from selling food on any school premises unless the sales are in accordance with the board's standards. The State Board is required to formulate and adopt guidelines, which boards of education are permitted, but not required, to follow with respect to food sales on school premises.

Beginning the July following its effective date, the bill revises provisions concerning requirements for food sold at schools, applies them to beverages, and extends the provisions to community schools, chartered nonpublic schools, and STEM schools. Under the bill, each school district board of education, chartered nonpublic school governing authority, community school, and STEM school is to adopt and enforce nutrition standards governing types of food and beverages that may be sold on the premises of its schools, and specifying the time and place each type of food or beverage may be sold. The bill requires that the board or governing authority, when adopting the standards, do all of the following: (1) consider the nutritional value of each food or beverage, (2) consult with a licensed dietitian, a dietetic technician registered by the Commission on Dietetic Registration, or a school nutrition specialist

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<sup>8</sup> Under that act, school districts must set goals for nutrition education, physical activity, campus food provision, and other school-based activities designed to promote student wellness. Districts are required to involve a broad group of individuals in policy development and to have a plan for measuring policy implementation (<http://www.fns.usda.gov/tn/Healthy/Wellnesspolicy.html>).

certified or credentialed by the School Nutrition Association,<sup>9</sup> (3) consult the dietary guidelines for Americans jointly developed by the United States Departments of Agriculture and Health and Human Services and, to the maximum extent possible, incorporate those guidelines into the standards.

The standards are to prohibit the placement of vending machines in any classroom where students are provided instruction, unless the classroom also is used to serve students meals. This prohibition does not apply to vending machines that sell only milk, reimbursable meals,<sup>10</sup> or food and beverage items that are part of a reimbursable meal and are available for sale as individually priced items in serving portions of the same size as in the reimbursable meal.

### **Annual report**

Each board or governing authority is required to designate staff to be responsible for ensuring the school meets the nutrition standards. The staff is required to prepare an annual report regarding the district or school's compliance with the standards and submit the report to the Department of Education. The board or governing authority is required to annually schedule a presentation on the report at one of its regular meetings. The report is to be available to the public on request.

### **Nutritional requirements for beverages**

When adopting standards, a board or school governing authority is required to comply with the following requirements regarding the sale of "a la carte"<sup>11</sup> beverages:

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<sup>9</sup> The bill provides that the person that the board or governing authority consults with may be an employee or consultant of the board or governing authority or a volunteer.

<sup>10</sup> "Reimbursable meal" is defined as a meal that is provided to student through a school breakfast or lunch program established under federal law and meets the criteria for reimbursement established by the U.S. Department of Agriculture.

<sup>11</sup> "A la carte item" is defined by the bill as an individually priced food or beverage item that is available for sale to students through any of the following:

- (a) A school food service program;
- (b) A vending machine located on school property;
- (c) A store operated by the school, a student association, or other school-sponsored organization.

The bill provides that "a la carte item" does not include any food or beverage item available for sale in connection with a school-sponsored fundraiser held outside of the regular school day, any other school-sponsored event held outside of the regular school day, or an interscholastic athletic event. "A la carte item" also does not include any food or beverage item that is part of a reimbursable meal and is available for sale as an individually priced item in a serving portion of the same size as in the reimbursable meal,



Grades	Time period	Beverages allowed			
Schools composed of a majority of grades K-4	Before January 1, 2014	Water	Eight ounces or less of low-fat or fat-free milk, including flavored milk, that contains no more than 170 calories per eight ounces	Eight ounces or less of 100% fruit juice, or a 100% fruit juice and water blend with no added sweeteners, that contains no more than 160 calories per eight ounces	No other beverage
	After January 1, 2014	Water	Same as above except that the milk may contain no more than 150 calories per eight ounces	Same as above	No other beverage
Schools composed of a majority of grades 5-8	Before January 1, 2014	Water	Eight ounces or less of low-fat or fat-free milk, including flavored milk, that contains no more than 170 calories per eight ounces	Ten ounces or less of 100% fruit juice, or a 100% fruit juice and water blend with no added sweeteners, that contains no more than 160 calories per eight ounces	No other beverage
	After January 1, 2014	Water	Same as above except the milk may contain no more than 150 calories per eight ounces	Same as above	No other beverage

regardless of whether the food or beverage item is included in the reimbursable meal served on a particular school day.



Grades	Time period	Beverages allowed			
Schools composed of a majority of grades 9-12	Before January 1, 2014	Water	Sixteen ounces or less of low-fat or fat-free milk, including flavored milk, that contains no more than 170 calories per eight ounces	Twelve ounces or less of 100% fruit juice, or a 100% fruit juice and water blend with no added sweeteners, that contains no more than 160 calories per eight ounces	Twelve ounces or less of any beverage that contains no more than 66 calories per eight ounces, or any size of a beverage that contains no more than ten calories per eight ounces, which may include caffeinated beverages and beverages with added sweeteners, carbonation, or artificial flavoring
	After January 1, 2014	Water	Same as above except the milk may contain no more than 150 calories per eight ounces	Same as above	Same as above

Each school is to require no less than 50% of the a la carte beverages available for sale from any of the following sources to be water or other beverages that contain no more than ten calories per eight ounces: the school food service program, a vending machine,<sup>12</sup> or a school store.

The bill provides that nothing in it prohibits a board or governing authority from adopting more restrictive standards than those required under the bill.

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<sup>12</sup> The requirement does not apply to a vending machine that sells only milk or reimbursable meals.

## Nutrition software

The bill requires the Department of Education to make available, free of charge, to each public and chartered nonpublic school, any computer software for assessing the nutritional value of foods if the software is available to the Department free of charge and does all of the following:

- (1) Rates the healthiness of foods based on nutrient density;
- (2) Assesses the amount of calories, total fat, saturated fat, trans fat, sugar, protein, fiber, calcium, iron, vitamin A, and vitamin C in each food item;
- (3) Evaluates the nutritional value of foods based on the dietary guidelines for Americans jointly developed by the U.S. Departments of Agriculture and Health and Human Services as they pertain to children and adolescents.

If software is provided, a school is required to use it to determine the nutritional value of each a la carte food item available for sale at the school. In addition, the school must do all of the following:

- (1) Not sell a la carte food that is in the lowest rated category of foods designated by the software;
- (2) In the first school year in which it is required to use the software, see that at least 20% of the a la carte food items available during the regular and extended school day are in the highest rated category of foods designated by the software and in each school year thereafter, at least 40% of the a la carte food items available for sale are in that category;
- (3) Require that, for each a la carte food item not in the highest rated category of foods designated by the software, the food item contain at least two of the following:
  - (i) No less than five grams of protein.
  - (ii) No less than 10% of the recommended daily value of fiber.
  - (iii) No less than 10% of the recommended daily value of calcium.
  - (iv) No less than 10% of the recommended daily value of iron.
  - (v) No less than 10% of the recommended daily value of vitamin A.
  - (vi) No less than 10% of the recommended daily value of vitamin C.

As an alternative to these requirements, a school may comply with the most recent guidelines for competitive foods issued by the Alliance for a Healthier Generation with respect to the sale of a la carte food items.

### **Existing food or beverage contracts**

The bill provides that its food and beverage nutritional requirements do not apply to any school district or public or chartered nonpublic school that, prior to the bill's effective date, entered into a contract with a producer or distributor of a food or beverage that requires the sale of the food or beverage to students in violation of the bill's provisions. The provisions apply at the expiration of the contract and to any renewal.

Any contract entered into between the bill's effective date and the first day of July following that date (the date the nutritional requirements begin) is required to comply with the bill's provisions, even though those provisions are not yet in effect.

### **School lunches and breakfasts**

#### **Federal school food programs**

(R.C. 3313.813, 3314.18, and 3326.11)

Current law provides that school districts, chartered nonpublic schools, and community schools may, and in some instances must, participate in the federal school breakfast and lunch programs.

The bill provides that any school district board of education, chartered nonpublic school, or community school that participates in a breakfast program may offer breakfast to pupils in their classrooms during the school day. It also provides that, notwithstanding any other requirement of state law regarding the federal school food program, in each fiscal year in which the General Assembly appropriates funds for this purpose, each school district, chartered nonpublic school, and community school that participates in the breakfast program must provide free breakfasts to students eligible for breakfast at a reduced price.

### **Healthy Choices for Healthy Children Council**

(R.C. 3301.92, 3301.921, and 3301.923; Section 5)

The bill establishes the Healthy Choices for Healthy Children Council, composed of the following:



(1) The following individuals, one each appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives:

(a) Three representatives of the Ohio Children's Hospital Association;

(b) Three representatives of the Ohio Business Roundtable;

(c) Three representatives of the Ohio Chapter of the American Academy of Pediatrics. The Governor's appointment must have expertise in minority health issues and the Senate President's appointment must represent the Appalachian region of Ohio.

(d) Three representatives of school districts. The Governor's appointment must be a representative of the Ohio School Boards Association, the Senate President's appointment must be a representative of the Buckeye Association of School Administrators, and the Speaker's appointment must be a representative of the Ohio Association of School Business Officials.

(e) Three school district employees whose job responsibilities involve promoting student health and wellness. The Governor's appointment must be a school-based mental health professional, the Senate President's appointment must represent the School Nutrition Association of Ohio and be a licensed dietitian, and the Speaker's appointment must be a school nurse.

(f) Three elementary or secondary school teachers. The Governor's appointment must represent the Ohio Education Association, the Senate President's appointment must represent the Ohio Federation of Teachers, and the Speaker's appointment must be a chartered nonpublic school teacher.

(2) The following individuals, appointed as follows:

(a) A representative of the Ohio Parks and Recreation Association, appointed by the Senate President;

(b) A representative of an Ohio State Alliance of Young Men's Christian Associations, appointed by the Speaker;

(c) A representative of Ohio Action for Healthy Kids, appointed by the Speaker;

(d) A representative of the Children's Hunger Alliance, appointed by the Speaker;

(e) A representative of the American Heart Association, appointed by the Speaker;



(f) A representative of the Ohio Association for Health, Physical Education, Recreation and Dance, appointed by the Governor;

(g) A representative of the Ohio Soft Drink Association, appointed by the Governor;

(h) A representative of the Ohio Dairy Producers Association, appointed by the President;

(i) A representative of the Office of Healthy Ohio in the Department of Health, appointed by the Governor;

(j) A representative of the Department of Education, appointed by the Governor;

(k) A parent, appointed by the Senate President;

(l) A representative of chartered nonpublic schools, appointed by the Senate President;

(m) A member of the Senate, appointed by the Senate President;

(n) A member of the House, appointed by the Speaker.

The organizations specified under (1)(a), (b), (c), (d), and (2)(a) through (h) are required to submit recommendations for their representatives on the Council.

Members are to be appointed within 30 days after the bill's effective date and serve at the pleasure of the appointing authority. Vacancies are to be filled in the same manner as the original appointment. Members are not to be compensated. The member of the Senate and the member of the House are to serve as joint chairpersons of the Council. The chairpersons are to call the first meeting of the Council no later than 30 days after the last member of the Council has been appointed. The Council is to meet at least annually and at other times at the call of the chairpersons.

The Council is required to do all of the following:

(1) Monitor progress in improving student health and wellness;

(2) Make periodic policy recommendations to the State Board of Education regarding ways to improve the nutritional standards for food and beverages for sale at schools (see "**School nutrition requirements**," above);

(3) Make recommendations for changes to the nutritional standards under the bill within 60 days of the United States Department of Agriculture adopting regulations for the sale of food or beverages in schools;

(4) Make periodic recommendations to the Department of Education for the development of a clearinghouse of best practices in the areas of student nutrition, physical activity for students, and body mass index screenings;

(5) Assist the Department of Health in developing a list of resources regarding health risks associated with weight status for distribution to parents and guardians under the body mass screening requirements (see "**Body mass screening**," above);

(6) Regularly review developments in science and nutrition to ensure the Council remains informed for purposes of making its recommendations described in (2) and (4), above.

### **Best practices clearinghouse**

(R.C. 3301.923)

The bill requires the Department of Education, on receipt of the initial recommendations of the Healthy Choices for Healthy Children Council, to establish a clearinghouse of best practices that schools may use to promote student health. The Department must update the clearinghouse as necessary to reflect subsequent recommendations of the Council.

### **Annual report**

(R.C. 3301.922)

The Department of Education is required by the bill to issue an annual report on the compliance of public and chartered nonpublic schools with the requirements of the bill regarding daily physical activity and body mass screenings.<sup>13</sup>

The Department is to include in each report any data regarding student health and wellness collected by the Department in preparing the annual report. The Department is to submit the report to the Governor, the General Assembly, and the Healthy Choices for Healthy Children Council.

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<sup>13</sup> Though STEM schools and community schools are required to meet these requirements, their information is not required to be included in the annual report.

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## HISTORY

### ACTION

### DATE

Introduced	11-17-09
Reported, S. Health, Human Services & Aging	05-17-10
Passed Senate (24-7)	05-18-10

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