



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: [Am. Sub. S.B. 210 of the 128th G.A.](#)

Date: May 20, 2010

Status: As Passed by the Senate

Sponsor: Sens. Coughlin and Kearney

Local Impact Statement Procedure Required: Yes

Contents: Establishes the Healthy Choices for Healthy Children Council; restricts the sale of certain foods and beverages to students in schools; and makes other changes

State Fiscal Highlights

- The Ohio Department of Education (ODE) may incur costs in establishing a school physical education performance measure.
- ODE may incur administrative costs in implementing various requirements of the bill including establishing a clearinghouse and issuing an annual report.
- The Department of Health (DOH) may incur administrative costs in publishing school data on BMI and weight status and creating a list of resources for parents.
- Subject to General Assembly appropriations, state expenditures may increase by approximately \$1.4 million per year, based on FY 2009 costs, to provide free breakfasts to children eligible for reduced-price breakfasts under federal guidelines. The bill does not make these appropriations.

Local Fiscal Highlights

- School districts, community schools, STEM schools, and chartered nonpublic schools may incur administrative costs as a result of meeting the bill's requirements for adopting food and beverage standards, for complying with food and beverage guidelines, and for compiling and distributing annual compliance reports.
- Schools' costs may increase if they establish their own Body Mass Index (BMI) screening programs. They may incur minimal administrative costs due to the bill's requirement to report BMI and weight status to the Department of Health (DOH). However, schools may obtain a waiver of the BMI screening requirement.
- Some schools may need to lengthen the work day due to the bill's requirement for 30 minutes of physical activity, although schools with significant costs are likely to qualify for a waiver of this requirement.

- If the General Assembly makes appropriations for this purpose, school districts offering reduced-price breakfasts to eligible students would receive state revenue to cover the costs of providing free breakfasts. This revenue would be offset by the cost of those breakfasts.
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Detailed Fiscal Analysis

Healthy Choices for Healthy Children Council

The bill creates the Healthy Choices for Healthy Children Council to monitor progress in improving student health and wellness, make policy recommendations to the State Board of Education regarding ways to improve food and beverage nutrition standards, make recommendations to the Ohio Department of Education (ODE) for the development of the best practices clearinghouse, which is described below, and assist the Ohio Department of Health (DOH) in developing a list of resources regarding health risks associated with weight status. The bill specifies that the members of the Council are not compensated for their services and that the member of the Senate and the member of the House of Representatives on the Council are to serve as joint chairpersons. Legislative staff may incur minimal administrative costs to support the Council's work.

Food and beverage nutrition standards

Continuing law requires school districts to adopt standards governing the types of food that may be sold on school premises. The bill extends this requirement to community schools, STEM schools, and chartered nonpublic schools and includes standards for beverages as well as food. In adopting the food and beverage standards, the bill requires schools to consult with a licensed dietitian, a registered dietetic technician, or a certified school nutrition specialist. The bill permits the consultant to be an employee of the school, to be a volunteer, or to be paid via contract. Presumably, most schools will use, if possible, a volunteer or employee to consult with in order to avoid any costs. Should a school have to contract with an individual for consultation, however, the administrative costs of that school may increase.

The bill also requires each school to designate staff who are responsible for ensuring the school meets the school's nutritional standards. These staff must prepare an annual report regarding compliance with the standards that is to be submitted to ODE, presented at a meeting of the school board or governing authority, and made available to the public upon request.

The bill includes specific restrictions on "a la carte" food and beverage sales that must be included in each school's standards. "A la carte" items are defined in the bill and in general include individually priced items available for sale to students during the school day. They do not include items that are part of a complete meal provided

through the federally subsidized breakfast and lunch programs or items sold outside of the school day, such as at a sporting event.

The Alliance for a Healthier Generation, a joint initiative between the American Heart Association and the William J. Clinton Foundation, and representatives from PepsiCo, Coca-Cola, Cadbury Schweppes, and the American Beverage Association collaborated in 2006 to set up guidelines for serving nutritious and lower calorie beverages in schools during the school day. The goal of this compact was to achieve implementation of these standards in 75% of schools under contract prior to the beginning of the 2008-2009 school year and to achieve implementation in all schools prior to the beginning of the 2009-2010 school year. According to a spokesperson from the Ohio Soft Drink Association, company representatives in Ohio have agreed with the policy and have reached compliance with the standards in over 85% of schools as of the 2008-2009 school year.

The bill enumerates its restrictions on beverage sales for each type of school (elementary, middle, or high). The beverage standards offered by the Alliance appear to be more restrictive than those set by the bill.¹ For example, the Alliance's standards for beverages sold at elementary schools are identical to the bill's standards except that the bill restricts the calories in milk to 170 per eight ounces (150 calories beginning in January 2014) and the calories in fruit juice to 160 per eight ounces, whereas the Alliance restricts the calories per eight ounces to 150 and 120, respectively.

The Alliance has worked with the Campbell Soup Company, Dannon, Kraft Foods, and Mars to offer better nutritional food choices in schools as well. The bill permits schools to follow the Alliance's guidelines for foods or adopt restrictions on food sales that are enumerated in the bill. The bill's food restrictions are dependent on food ratings developed by certain software that may be made available to ODE free of charge. This software can be used to determine the nutritional value of each "a la carte" food item and then rate each of the items based on the results. The bill requires that this software be made available free of charge to each public and chartered nonpublic school.

It is possible that schools may see changes in the amount of revenue they collect from contracts for food and beverage sales when the choices provided to students are changed. Given that the food and beverage industry is moving toward similar nutritional standards for items sold in schools, however, the additional fiscal impact of the bill's restrictions on revenues from these sales likely will not be significant. In addition, the bill exempts schools with existing contracts with food and beverage vendors from complying with the bill's restrictions until the existing contracts expire.

¹ Please see the bill analysis and www.HealthierGeneration.org for the food and beverage guidelines set forth by the bill and Alliance for a Healthier Generation, respectively.

Best practices clearinghouse

The bill requires ODE, upon receipt of the initial recommendations of the Council, to establish and then maintain a clearinghouse of best practices in the areas of student nutrition, physical activity for students, and body mass index (BMI) screenings that schools may use to promote health. This requirement may increase the administrative burden of ODE. According to ODE, the technology to support the clearinghouse is fairly inexpensive and the collection and approval of materials may be moderately time intensive.

Performance measure

The bill requires the State Board to establish, no later than December 31, 2011, a performance measure based on student success in meeting benchmarks contained in the physical education standards, school compliance with federally mandated local wellness policies, and whether a school or district is complying with the BMI and physical activity requirements of the bill instead of operating under a waiver. The bill requires that the measure be included on school district and building report cards beginning in FY 2013, but prohibits the measure being a factor in school performance ratings. The cost of the measure will depend on what the State Board establishes. All but two of the performance indicators used in school performance ratings are based on student assessments. According to ODE, costs for a physical education assessment range from minimal, if the assessment is based on the free President's Physical Fitness Challenge, to moderate for a proprietary product such as FitnessGram, published by Human Kinetics Publishers, Inc., to approximately \$6.0 million if ODE develops an assessment independently. To offset any cost in establishing the measure, the bill permits ODE to accept, receive, and expend gifts, devises, or bequests of money.

Reporting of BMI and weight status

The bill requires that districts, brick and mortar community schools, STEM schools, and chartered nonpublic schools screen students enrolled in kindergarten, third, fifth, and ninth grades for body mass index (BMI) and weight status category (underweight, healthy weight, overweight, or obese) prior to the first day of May of each school year. Schools are to report the data from the screenings to the Department of Health (DOH), which then is required to publish the data annually, aggregated by county. In order to meet this screening requirement, the bill permits schools to conduct the BMI checks themselves, contract with another entity to provide them, or request the parents or guardians of the students obtain them from their doctor and provide the results to the school. The bill exempts e-schools from participating in the BMI screenings.

Schools may apply to the Superintendent of Public Instruction for a waiver from this requirement for financial reasons. The Superintendent is required to grant the waiver if the school demonstrates to the Superintendent that the provision will create

an undue hardship on the school. The bill specifies that an affidavit submitted to the Superintendent can serve as conclusive evidence of the need for the waiver.

Establishing a height and weight screening program could be costly for schools that do not currently have the necessary equipment and personnel. However, if schools take advantage of the option provided by the bill of having parents obtain the measurements independently, many of these costs may be avoided. Schools that obtain a waiver will not incur costs associated with the requirement for as long as the waiver is in effect.

Parental resources

The bill requires DOH, in consultation with ODE and the Council to develop a list of resources that can be distributed to parents explaining any risks associated with the screening results for their children. This requirement will likely increase the administrative burden of DOH only negligibly. DOH has already issued a publication entitled "Guidelines for Measuring Heights and Weights and Calculation of Body Mass Index-for-Age in Ohio's Schools" that includes a short list of resources.

School breakfast

The bill requires that each school district, community school, STEM school, and chartered nonpublic school that participates in a federally subsidized school breakfast program provide free breakfasts to each student who is eligible under federal requirements for a reduced-price breakfast in addition to those students eligible under federal requirements for a free breakfast. The bill makes this requirement subject to General Assembly appropriations to pay the cost. According to ODE figures, about 4.5 million reduced-price breakfasts were served to students in FY 2009. At \$0.30 per reduced-price meal, the cost to the state of this provision would have been approximately \$1.4 million that year. The bill does not make an appropriation for this purpose.

Physical activity requirement

The bill requires that, beginning with the 2011-2012 school year, students engage in at least 30 minutes "of moderate to rigorous physical activity each school day, exclusive of recess." However, schools may apply to the Superintendent of Public Instruction for a waiver from this requirement for financial reasons in the same way schools can obtain a waiver from the BMI screening requirement. The bill also exempts e-schools and students enrolled in a post-secondary enrollment options (PSEO) program, a career-technical education program operated by the school, or a dropout prevention and recovery program operated by the school from participating in the required physical activity.

According to a spokesperson at the Buckeye Association of School Administrators (BASA), including 30 minutes of physical activity in each school day may be accomplished without too much additional cost if the time were added to the beginning or end of the day and all teachers and personnel were not required to be

present, if the physical activity were substituted for another activity, or if, as the bill permits, the physical activity were to take place during an existing before or after-school program. However, if these options are not available to schools, they may need to renegotiate contracts to lengthen the work day, possibly resulting in increased personnel costs. Schools that obtain a waiver will not incur costs associated with the requirement for as long as the waiver is in effect, while schools with students enrolled in programs that are exempt will not incur any costs of providing the physical activity to those qualified students.

Health curriculum change

The bill requires that the one-half unit of health needed to graduate under continuing law include instruction in "nutrition and the benefits of nutritious foods and physical activity for overall health." Any cost of this change in the health curriculum will likely be negligible.

Physical education teachers

The bill prohibits, beginning on July 1, 2013, school districts, community schools, and STEM schools from hiring a person to teach physical education who is not licensed in that subject area. The State Board currently issues a multi-age license in physical education, valid for teaching in grades pre-K to 12, and multi-disciplinary licenses for elementary schools, valid for teaching multiple subjects, including physical education, in those schools. According to a spokesperson at ODE, over 900 teachers are employed to teach physical education at the elementary level under a multi-disciplinary license. It is not clear whether these licenses will meet the bill's requirements. However, since the bill's licensure requirement applies only to new hires, schools do not need to replace these teachers.

Annual report

The bill requires ODE to issue an annual report on the compliance of schools with the BMI screening and physical activity requirements. The report may increase the administrative burden of ODE, but likely will not result in significant new costs.