

**As Introduced**

**128th General Assembly  
Regular Session  
2009-2010**

**S. B. No. 24**

**Senator Kearney**

—

**A B I L L**

To amend sections 3302.07, 3313.814, 3314.03, and 1  
3326.11 and to enact section 3313.816 of the 2  
Revised Code to establish nutritional standards 3  
for food and beverages sold in vending machines in 4  
public schools. 5

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 3302.07, 3313.814, 3314.03, and 6  
3326.11 be amended and section 3313.816 of the Revised Code be 7  
enacted to read as follows: 8

**Sec. 3302.07.** (A) The board of education of any school 9  
district, the governing board of any educational service center, 10  
or the administrative authority of any chartered nonpublic school 11  
may submit to the state board of education an application 12  
proposing an innovative education pilot program the implementation 13  
of which requires exemptions from specific statutory provisions or 14  
rules. If a district or service center board employs teachers 15  
under a collective bargaining agreement adopted pursuant to 16  
Chapter 4117. of the Revised Code, any application submitted under 17  
this division shall include the written consent of the teachers' 18  
employee representative designated under division (B) of section 19  
4117.04 of the Revised Code. The exemptions requested in the 20

application shall be limited to any requirement of Title XXXVIII of 21  
the Revised Code or of any rule of the state board adopted 22  
pursuant to that title except that the application may not propose 23  
an exemption from any requirement of or rule adopted pursuant to 24  
Chapter 3307. or 3309., section 3313.814 or 3313.816, sections 25  
3319.07 to 3319.21, or Chapter 3323. of the Revised Code. 26

(B) The state board of education shall accept any application 27  
submitted in accordance with division (A) of this section. The 28  
superintendent of public instruction shall approve or disapprove 29  
the application in accordance with standards for approval, which 30  
shall be adopted by the state board. 31

(C) The superintendent of public instruction shall exempt 32  
each district or service center board or chartered nonpublic 33  
school administrative authority with an application approved under 34  
division (B) of this section for a specified period from the 35  
statutory provisions or rules specified in the approved 36  
application. The period of exemption shall not exceed the period 37  
during which the pilot program proposed in the application is 38  
being implemented and a reasonable period to allow for evaluation 39  
of the effectiveness of the program. 40

**Sec. 3313.814.** Each school district board of education shall 41  
adopt and enforce standards governing the types of food and 42  
beverages that may be sold on the premises of its schools, and 43  
specifying the time and place each type of food or beverage may be 44  
sold. In adopting the standards, the board shall consider ~~each~~ 45  
~~food's~~ the nutritional value of each food or beverage. No food or 46  
beverage may be sold on any school premises except in accordance 47  
with the standards adopted by the board of education. The 48  
standards shall comply with section 3313.816 of the Revised Code. 49

The state board of education shall formulate and adopt 50  
guidelines, which boards of education may follow in enforcing and 51

implementing this section. The state board shall not exempt any 52  
school district from compliance with this section pursuant to 53  
section 3302.05 of the Revised Code. 54

Sec. 3313.816. (A) As used in this section: 55

(1) "Added sweeteners" means any additives that enhance the 56  
sweetness of a beverage, including processed sugar. "Added 57  
sweeteners" do not include any natural sugars found in fruit or 58  
vegetable juices that are a component of the beverage. 59

(2) "Processed sugar" means any sugar that does not occur 60  
naturally in fruits, vegetables, or dairy products. 61

(B) Each individual food item, excluding beverages, sold to 62  
students in any school operated by a school district through a 63  
vending machine shall meet all of the following nutritional 64  
standards: 65

(1) It contains less than two hundred calories. 66

(2) Not more than thirty per cent of its total calories are 67  
derived from fat, except that this requirement shall not apply to 68  
unsalted nuts or seeds. 69

(3) Not more than ten per cent of its total calories are 70  
derived from saturated fat and trans fat. 71

(4) Not more than thirty-five per cent of its total weight is 72  
composed of processed sugar. 73

(C) No school district shall permit the sale of beverages 74  
other than the following to students through a vending machine: 75

(1) Unflavored water; 76

(2) Milk, including chocolate or other flavored milk, soy 77  
milk, rice milk, and other similar dairy or nondairy milk; 78

(3) Fruit or vegetable juices that contain at least fifty per 79  
cent juice and have no added sweeteners; 80

<u>(4) Nectar or other fruit-based beverages that contain at least thirty-five per cent fruit and have no added sweeteners;</u>	81
<u>(5) Electrolyte replacement beverages.</u>	82
<u>(D) No beverage described in division (C) of this section, other than unflavored water, shall be sold to students through a vending machine in a size that exceeds twelve ounces.</u>	83
<u>(E) No school district shall permit the sale to students through a vending machine of any beverage that is carbonated or that contains more than one hundred fifty calories per serving.</u>	84
<u>(F) No school district or public school shall enter into a contract with any producer or distributor of a food or beverage that would require the sale to students through a vending machine of a food or beverage that does not meet the requirements of this section.</u>	85
<u>(G) Divisions (B) to (E) of this section do not apply to food and beverage items sold in vending machines that are accessible only to school district employees.</u>	86
<b>Sec. 3314.03.</b> A copy of every contract entered into under this section shall be filed with the superintendent of public instruction.	87
(A) Each contract entered into between a sponsor and the governing authority of a community school shall specify the following:	88
(1) That the school shall be established as either of the following:	89
(a) A nonprofit corporation established under Chapter 1702. of the Revised Code, if established prior to April 8, 2003;	90
(b) A public benefit corporation established under Chapter 1702. of the Revised Code, if established after April 8, 2003;	91

(2) The education program of the school, including the school's mission, the characteristics of the students the school is expected to attract, the ages and grades of students, and the focus of the curriculum;	110 111 112 113
(3) The academic goals to be achieved and the method of measurement that will be used to determine progress toward those goals, which shall include the statewide achievement tests;	114 115 116
(4) Performance standards by which the success of the school will be evaluated by the sponsor;	117 118
(5) The admission standards of section 3314.06 of the Revised Code and, if applicable, section 3314.061 of the Revised Code;	119 120
(6)(a) Dismissal procedures;	121
(b) A requirement that the governing authority adopt an attendance policy that includes a procedure for automatically withdrawing a student from the school if the student without a legitimate excuse fails to participate in one hundred five consecutive hours of the learning opportunities offered to the student.	122 123 124 125 126 127
(7) The ways by which the school will achieve racial and ethnic balance reflective of the community it serves;	128 129
(8) Requirements for financial audits by the auditor of state. The contract shall require financial records of the school to be maintained in the same manner as are financial records of school districts, pursuant to rules of the auditor of state, and the audits shall be conducted in accordance with section 117.10 of the Revised Code.	130 131 132 133 134 135
(9) The facilities to be used and their locations;	136
(10) Qualifications of teachers, including a requirement that the school's classroom teachers be licensed in accordance with sections 3319.22 to 3319.31 of the Revised Code, except that a	137 138 139

community school may engage noncertificated persons to teach up to 140  
twelve hours per week pursuant to section 3319.301 of the Revised 141  
Code; 142

(11) That the school will comply with the following 143  
requirements: 144

(a) The school will provide learning opportunities to a 145  
minimum of twenty-five students for a minimum of nine hundred 146  
twenty hours per school year. 147

(b) The governing authority will purchase liability 148  
insurance, or otherwise provide for the potential liability of the 149  
school. 150

(c) The school will be nonsectarian in its programs, 151  
admission policies, employment practices, and all other 152  
operations, and will not be operated by a sectarian school or 153  
religious institution. 154

(d) The school will comply with sections 9.90, 9.91, 109.65, 155  
121.22, 149.43, 2151.357, 2151.421, 2313.18, 3301.0710, 3301.0711, 156  
3301.0712, 3301.0715, 3313.472, 3313.50, 3313.536, 3313.608, 157  
3313.6012, 3313.6013, 3313.6014, 3313.643, 3313.648, 3313.66, 158  
3313.661, 3313.662, 3313.666, 3313.667, 3313.67, 3313.671, 159  
3313.672, 3313.673, 3313.69, 3313.71, 3313.716, 3313.718, 3313.80, 160  
3313.814, 3313.816, 3313.96, 3319.073, 3319.321, 3319.39, 161  
3319.391, 3321.01, 3321.13, 3321.14, 3321.17, 3321.18, 3321.19, 162  
3321.191, 3327.10, 4111.17, 4113.52, and 5705.391 and Chapters 163  
117., 1347., 2744., 3365., 3742., 4112., 4123., 4141., and 4167. 164  
of the Revised Code as if it were a school district and will 165  
comply with section 3301.0714 of the Revised Code in the manner 166  
specified in section 3314.17 of the Revised Code. 167

(e) The school shall comply with Chapter 102. and section 168  
2921.42 of the Revised Code. 169

(f) The school will comply with sections 3313.61, 3313.611, 170

and 3313.614 of the Revised Code, except that for students who 171  
enter ninth grade for the first time before July 1, 2010, the 172  
requirement in sections 3313.61 and 3313.611 of the Revised Code 173  
that a person must successfully complete the curriculum in any 174  
high school prior to receiving a high school diploma may be met by 175  
completing the curriculum adopted by the governing authority of 176  
the community school rather than the curriculum specified in Title 177  
XXXIII of the Revised Code or any rules of the state board of 178  
education. Beginning with students who enter ninth grade for the 179  
first time on or after July 1, 2010, the requirement in sections 180  
3313.61 and 3313.611 of the Revised Code that a person must 181  
successfully complete the curriculum of a high school prior to 182  
receiving a high school diploma shall be met by completing the 183  
Ohio core curriculum prescribed in division (C) of section 184  
3313.603 of the Revised Code, unless the person qualifies under 185  
division (D) or (F) of that section. Each school shall comply with 186  
the plan for awarding high school credit based on demonstration of 187  
subject area competency, adopted by the state board of education 188  
under division (J) of section 3313.603 of the Revised Code. 189

(g) The school governing authority will submit within four 190  
months after the end of each school year a report of its 191  
activities and progress in meeting the goals and standards of 192  
divisions (A)(3) and (4) of this section and its financial status 193  
to the sponsor and the parents of all students enrolled in the 194  
school. 195

(h) The school, unless it is an internet- or computer-based 196  
community school, will comply with section 3313.801 of the Revised 197  
Code as if it were a school district. 198

(12) Arrangements for providing health and other benefits to 199  
employees; 200

(13) The length of the contract, which shall begin at the 201  
beginning of an academic year. No contract shall exceed five years 202

unless such contract has been renewed pursuant to division (E) of 203  
this section. 204

(14) The governing authority of the school, which shall be 205  
responsible for carrying out the provisions of the contract; 206

(15) A financial plan detailing an estimated school budget 207  
for each year of the period of the contract and specifying the 208  
total estimated per pupil expenditure amount for each such year. 209  
The plan shall specify for each year the base formula amount that 210  
will be used for purposes of funding calculations under section 211  
3314.08 of the Revised Code. This base formula amount for any year 212  
shall not exceed the formula amount defined under section 3317.02 213  
of the Revised Code. The plan may also specify for any year a 214  
percentage figure to be used for reducing the per pupil amount of 215  
the subsidy calculated pursuant to section 3317.029 of the Revised 216  
Code the school is to receive that year under section 3314.08 of 217  
the Revised Code. 218

(16) Requirements and procedures regarding the disposition of 219  
employees of the school in the event the contract is terminated or 220  
not renewed pursuant to section 3314.07 of the Revised Code; 221

(17) Whether the school is to be created by converting all or 222  
part of an existing public school or educational service center 223  
building or is to be a new start-up school, and if it is a 224  
converted public school or service center building, specification 225  
of any duties or responsibilities of an employer that the board of 226  
education or service center governing board that operated the 227  
school or building before conversion is delegating to the 228  
governing authority of the community school with respect to all or 229  
any specified group of employees provided the delegation is not 230  
prohibited by a collective bargaining agreement applicable to such 231  
employees; 232

(18) Provisions establishing procedures for resolving 233



disputes or differences of opinion between the sponsor and the 234  
governing authority of the community school; 235

(19) A provision requiring the governing authority to adopt a 236  
policy regarding the admission of students who reside outside the 237  
district in which the school is located. That policy shall comply 238  
with the admissions procedures specified in sections 3314.06 and 239  
3314.061 of the Revised Code and, at the sole discretion of the 240  
authority, shall do one of the following: 241

(a) Prohibit the enrollment of students who reside outside 242  
the district in which the school is located; 243

(b) Permit the enrollment of students who reside in districts 244  
adjacent to the district in which the school is located; 245

(c) Permit the enrollment of students who reside in any other 246  
district in the state. 247

(20) A provision recognizing the authority of the department 248  
of education to take over the sponsorship of the school in 249  
accordance with the provisions of division (C) of section 3314.015 250  
of the Revised Code; 251

(21) A provision recognizing the sponsor's authority to 252  
assume the operation of a school under the conditions specified in 253  
division (B) of section 3314.073 of the Revised Code; 254

(22) A provision recognizing both of the following: 255

(a) The authority of public health and safety officials to 256  
inspect the facilities of the school and to order the facilities 257  
closed if those officials find that the facilities are not in 258  
compliance with health and safety laws and regulations; 259

(b) The authority of the department of education as the 260  
community school oversight body to suspend the operation of the 261  
school under section 3314.072 of the Revised Code if the 262  
department has evidence of conditions or violations of law at the 263

school that pose an imminent danger to the health and safety of 264  
the school's students and employees and the sponsor refuses to 265  
take such action; 266

(23) A description of the learning opportunities that will be 267  
offered to students including both classroom-based and 268  
non-classroom-based learning opportunities that is in compliance 269  
with criteria for student participation established by the 270  
department under division (L)(2) of section 3314.08 of the Revised 271  
Code; 272

(24) The school will comply with sections 3302.04 and 273  
3302.041 of the Revised Code, except that any action required to 274  
be taken by a school district pursuant to those sections shall be 275  
taken by the sponsor of the school. However, the sponsor shall not 276  
be required to take any action described in division (F) of 277  
section 3302.04 of the Revised Code. 278

(25) Beginning in the 2006-2007 school year, the school will 279  
open for operation not later than the thirtieth day of September 280  
each school year, unless the mission of the school as specified 281  
under division (A)(2) of this section is solely to serve dropouts. 282  
In its initial year of operation, if the school fails to open by 283  
the thirtieth day of September, or within one year after the 284  
adoption of the contract pursuant to division (D) of section 285  
3314.02 of the Revised Code if the mission of the school is solely 286  
to serve dropouts, the contract shall be void. 287

(B) The community school shall also submit to the sponsor a 288  
comprehensive plan for the school. The plan shall specify the 289  
following: 290

(1) The process by which the governing authority of the 291  
school will be selected in the future; 292

(2) The management and administration of the school; 293

(3) If the community school is a currently existing public 294

school or educational service center building, alternative 295  
arrangements for current public school students who choose not to 296  
attend the converted school and for teachers who choose not to 297  
teach in the school or building after conversion; 298

(4) The instructional program and educational philosophy of 299  
the school; 300

(5) Internal financial controls. 301

(C) A contract entered into under section 3314.02 of the 302  
Revised Code between a sponsor and the governing authority of a 303  
community school may provide for the community school governing 304  
authority to make payments to the sponsor, which is hereby 305  
authorized to receive such payments as set forth in the contract 306  
between the governing authority and the sponsor. The total amount 307  
of such payments for oversight and monitoring of the school shall 308  
not exceed three per cent of the total amount of payments for 309  
operating expenses that the school receives from the state. 310

(D) The contract shall specify the duties of the sponsor 311  
which shall be in accordance with the written agreement entered 312  
into with the department of education under division (B) of 313  
section 3314.015 of the Revised Code and shall include the 314  
following: 315

(1) Monitor the community school's compliance with all laws 316  
applicable to the school and with the terms of the contract; 317

(2) Monitor and evaluate the academic and fiscal performance 318  
and the organization and operation of the community school on at 319  
least an annual basis; 320

(3) Report on an annual basis the results of the evaluation 321  
conducted under division (D)(2) of this section to the department 322  
of education and to the parents of students enrolled in the 323  
community school; 324

(4) Provide technical assistance to the community school in 325  
complying with laws applicable to the school and terms of the 326  
contract; 327

(5) Take steps to intervene in the school's operation to 328  
correct problems in the school's overall performance, declare the 329  
school to be on probationary status pursuant to section 3314.073 330  
of the Revised Code, suspend the operation of the school pursuant 331  
to section 3314.072 of the Revised Code, or terminate the contract 332  
of the school pursuant to section 3314.07 of the Revised Code as 333  
determined necessary by the sponsor; 334

(6) Have in place a plan of action to be undertaken in the 335  
event the community school experiences financial difficulties or 336  
closes prior to the end of a school year. 337

(E) Upon the expiration of a contract entered into under this 338  
section, the sponsor of a community school may, with the approval 339  
of the governing authority of the school, renew that contract for 340  
a period of time determined by the sponsor, but not ending earlier 341  
than the end of any school year, if the sponsor finds that the 342  
school's compliance with applicable laws and terms of the contract 343  
and the school's progress in meeting the academic goals prescribed 344  
in the contract have been satisfactory. Any contract that is 345  
renewed under this division remains subject to the provisions of 346  
sections 3314.07, 3314.072, and 3314.073 of the Revised Code. 347

(F) If a community school fails to open for operation within 348  
one year after the contract entered into under this section is 349  
adopted pursuant to division (D) of section 3314.02 of the Revised 350  
Code or permanently closes prior to the expiration of the 351  
contract, the contract shall be void and the school shall not 352  
enter into a contract with any other sponsor. A school shall not 353  
be considered permanently closed because the operations of the 354  
school have been suspended pursuant to section 3314.072 of the 355  
Revised Code. Any contract that becomes void under this division 356

shall not count toward any statewide limit on the number of such 357  
contracts prescribed by section 3314.013 of the Revised Code. 358

**Sec. 3326.11.** Each science, technology, engineering, and 359  
mathematics school established under this chapter and its 360  
governing body shall comply with sections 9.90, 9.91, 109.65, 361  
121.22, 149.43, 2151.357, 2151.421, 2313.18, 2921.42, 2921.43, 362  
3301.0712, 3301.0714, 3301.0715, 3313.14, 3313.15, 3313.16, 363  
3313.18, 3313.201, 3313.26, 3313.472, 3313.48, 3313.481, 3313.482, 364  
3313.50, 3313.536, 3313.608, 3313.6012, 3313.6013, 3313.6014, 365  
3313.61, 3313.611, 3313.614, 3313.615, 3313.643, 3313.648, 366  
3313.66, 3313.661, 3313.662, 3313.666, 3313.667, 3313.67, 367  
3313.671, 3313.672, 3313.673, 3313.69, 3313.71, 3313.716, 368  
3313.718, 3313.80, 3313.801, 3313.814, 3313.816, 3313.96, 369  
3319.073, 3319.21, 3319.32, 3319.321, 3319.35, 3319.39, 3319.391, 370  
3319.45, 3321.01, 3321.13, 3321.14, 3321.17, 3321.18, 3321.19, 371  
3321.191, 3327.10, 4111.17, 4113.52, and 5705.391 and Chapters 372  
102., 117., 1347., 2744., 3307., 3309., 3365., 3742., 4112., 373  
4123., 4141., and 4167. of the Revised Code as if it were a school 374  
district. 375

**Section 2.** That existing sections 3302.07, 3313.814, 3314.03, 376  
and 3326.11 of the Revised Code are hereby repealed. 377

**Section 3.** Any school district or public school that, prior 378  
to the effective date of this act, entered into a contract with a 379  
producer or distributor of a food or beverage that requires the 380  
sale of the food or beverage to students in violation of section 381  
3313.816 of the Revised Code, as enacted by this act, shall not be 382  
required to comply with that section until the expiration of the 383  
contract. Any renewal of the contract shall comply with that 384  
section. 385