



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

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**Bill:** [Sub. H.B. 373 of the 128th G.A.](#)

**Date:** May 18, 2010

**Status:** In House Health

**Sponsor:** Reps. Carney and Wachtmann

**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 guidelines, 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).
- Some schools may need to lengthen the work day due to the bill's requirement for 30 minutes of physical activity.

- 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 bill enumerates its restrictions on beverage sales for each type of school (elementary, middle, or high). The restrictions on food sales, however, are dependent on food ratings developed by certain software that may be made available to ODE free of charge. This software program 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. The bill does not specify an alternative to this rating system software should ODE not be able to obtain it free of charge.

Separately from the bill's restrictions, 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 this past school year (2008-2009). 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 requires that schools either use the food and beverage standards established by the bill or the ones established by the Alliance. The beverage standards offered by the Alliance appear to be more restrictive than those set by the bill.<sup>1</sup> 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. 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.

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<sup>1</sup> Please see the bill analysis and [www.HealthierGeneration.org](http://www.HealthierGeneration.org) for the 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 and school compliance with federally mandated local wellness policies. 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 districts, community schools, STEM schools, and chartered, nonpublic schools to 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 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.

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.

## **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 and health curriculum change**

The bill makes one addition and one change to health-related standards in public and chartered nonpublic schools. First, 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." Second, the bill requires the one-half unit of health needed to graduate include instruction in "nutrition and the benefits of nutritious foods and physical activity for overall health."

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, or if the physical activity were substituted for another activity, or if, as the bill permits, the physical activity were to take place during a 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. Any cost of the 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 would 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 will likely not result in significant new costs.

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## **Synopsis of Fiscal Changes**

- **Food and beverage standards.** The substitute bill requires schools to consult with a licensed dietitian, a registered dietetic technician, or a certified school nutrition specialist when adopting the food and beverage standards. The bill permits the consultant to be an employee of the school, to be a volunteer, or to be paid via contract. The "As Introduced" version of the bill did not have these provisions. 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.
- **Guidelines for food and beverage standards.** The "As Introduced" version included specific restrictions on "a la carte" food and beverage sales that must be included in each school's standards. The substitute bill retains these standards but requires that schools either use the food and beverage standards established by the bill or the ones established by the Alliance for a Healthier Generation. The beverage standards offered by the Alliance appear to be more restrictive than those set by the bill.
- **ODE's role in assuring compliance.** The "As Introduced" version required the (ODE), at least one every five years, to determine whether each school is in compliance with the bill's restrictions on "a la carte" food and beverage sales. That version also permitted ODE to conduct these compliance checks in conjunction with ODE's current federal reviews of each school's food service program. According to ODE, this provision may have required ODE to hire nine additional staff members at an annual cost of \$765,000 since the current reviews only cover about 20% of all school buildings. The substitute bill does not contain this provision, and therefore, ODE will not incur the additional cost.
- **Performance measure.** The "As Introduced" version of the bill required the State Board of Education to establish, no later than December 31, 2010, a new performance indicator for district and building report cards, based on student success in meeting benchmarks contained in the physical education standards

and school compliance with federally mandated local wellness policies. According to ODE, the new indicator was likely to be based on a student assessment, similar to all but two existing indicators. The estimated costs of the assessment ranged from a free President's Physical Fitness Challenge to moderate for a proprietary product to approximately \$6.0 million if ODE would have developed the assessment independently. The substitute bill, instead, requires the State Board to establish, no later than December 31, 2011, a performance measure based on student success in meeting the benchmarks and school compliance. This substitute bill requires that the measure be included on school district and building report cards beginning in FY 2013, but prohibits the measure from being a factor in school performance ratings. In this case, the cost of the measure will depend on what the State Board establishes. The substitute bill also permits ODE to accept, receive, and expend gifts, devises, or bequests of money to offset any costs in establishing the measure.

- **Reporting of BMI and weight status.** The "As Introduced" version of the bill required ODE to include on the report card the percentage of students enrolled in kindergarten, third, fifth, and ninth grades in the following four weight categories: underweight, healthy weight, overweight, and obese. Schools were to report the data, to be based on BMI and weight status category screenings, through the Education Management Information System (EMIS). The substitute bill still requires the BMI and weight status category screenings for those select students, but requires that schools report the data from the screenings to the Department of Health (DOH), which then is required to publish the data annually, aggregated by county. The substitute bill changes the deadline, from November 1 of each school year to May 1 of each school year, by which screenings are to take place. Although the reporting requirements have changed, the changes should have little, if any, fiscal impact. DOH may incur some additional administrative costs in having to report the data.
- **Parental resources.** The substitute bill requires DOH, rather than ODE as in the "As Introduced" version of the bill, to develop a list of parental resources that explain any risks associated with the screening results for their children. The substitute bill effectively transfers any costs in developing the list of resources from ODE to DOH. However, 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, and, therefore, costs to DOH should be negligible.
- **Physical education and activity requirements.** The "As Introduced" version of the bill increased the physical education and total credits required for graduation by one-half unit, required that students engage in at least 30

minutes of "moderate to rigorous physical activity each school day, exclusive of recess," and required that schools use the physical education standards adopted by the State Board of Education. The substitute bill retains only the 30-minute physical activity requirement and adds instruction in "nutrition and the benefits of nutritious foods and physical activity for overall health" to the one-half unit of health currently needed to graduate. With removal of the increased physical education credit provision, schools will no longer need to hire additional teachers or find space and time to meet that requirement. However, schools may still incur costs for meeting the physical activity requirement if they cannot add time to the beginning or end of a school day and if all teachers and personnel were required to be present, if the physical activity could not be substituted for another activity, or if the physical activity could not take place during a before or after-school program. Any cost of the change in the health curriculum will likely be negligible.

- **Physical education teachers.** The "As Introduced" version of the bill required ODE to develop certification requirements for physical education teachers by December 31, 2010 and prohibited, beginning on July 1, 2013, schools from *employing* a person to teach physical education who is not licensed in the area. The substitute bill no longer requires ODE to develop the certification requirements and prohibits schools from *hiring*, rather than *employing*, a person to teach physical education who is not licensed in the area. Under the "As Introduced" version, schools may have needed to replace, or perhaps, assist teachers in obtaining the required certification. Since the substitute bill's licensure requirement applies to only new hires, however, schools should not need to replace any current teachers.