



Ohio Legislative Service Commission

Edward Millane

Fiscal Note & Local Impact Statement

Bill: H.B. 373 of the 128th G.A.

Date: December 1, 2009

Status: As Introduced

Sponsor: Rep. 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

STATE FUND	FY 2010	FY 2011	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential increase in ODE staff costs to conduct school site visits to check for compliance with food and beverage standards		
	Potential increase ranging from minimal to \$6.0 million for ODE to develop a physical fitness assessment for a performance indicator		
	Potential increase in administrative costs for ODE for various requirements		

Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.

- According to the Ohio Department of Education (ODE), nine additional staff members may need to be hired at an annual cost of \$765,000 if the bill's requirement to determine compliance with food and beverage standards necessitates site visits to every school.
- ODE may incur costs ranging from minimal to approximately \$6.0 million depending on whether an existing physical fitness assessment is used or a new one tailored to Ohio's standards is developed for the performance indicator required by the bill.
- ODE may incur administrative costs in implementing various requirements of the bill including establishing a clearinghouse, creating a list of resources for parents, and issuing an annual report.
- 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

LOCAL GOVERNMENT	FY 2010	FY 2011	FUTURE YEARS
School Districts			
Revenues		- 0 -	
Expenditures	- 0 -	Potential increase in administrative costs	
	- 0 -	Potential increase in administrative costs for BMI screening and EMIS reporting requirements	- 0 -
	- 0 -	Potential increase in personnel costs to meet increased physical education graduation and physical activity requirements	

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- School districts, community schools, STEM schools, and chartered nonpublic schools may incur administrative costs as a result of meeting the bill's requirements 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 through the Education Management Information System (EMIS).
- Some schools may need to hire more teachers due to the bill's increase in the graduation requirement of one-half unit of physical education and 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.

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 ODE 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 organization represented by the chairperson of the Council is to provide administrative support to the Council. These provisions likely preclude any cost to the state.

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. 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 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. 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.

ODE's role in assuring compliance

The bill requires ODE, at least once every five years, to determine whether each school is in compliance with the bill's restrictions on "a la carte" food and beverage sales. The bill states that these determinations may be made in conjunction with ODE's regular review of each school's food service program. Currently, ODE is required to review the food service program in school districts participating in the National School Lunch Program (NSLP) once every five years to check for compliance with United States Department of Agriculture (USDA) regulations. Funding for these reviews is supplied by the USDA. If ODE can couple the bill's required review with its current review, presumably the additional cost may not be significant.

According to ODE, however, the current review covers only 20% of school buildings, since the state is only required to review a certain subset of schools for any given district. If, under the bill, ODE is required to perform a site visit at each school, ODE estimates needing to hire an additional nine staff members at a cost of approximately \$765,000 per year. Currently, ODE employs nine full-time and two intermittent staff to conduct their current reviews.

¹ Please see the bill analysis and 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 to establish 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. The bill requires ODE to consider the recommendations of the Healthy Choices for Healthy Children Council in developing the clearinghouse.

School and district local report cards

New performance indicator

The bill requires the State Board 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 is likely to be based on a student assessment, as are all but two of the existing indicators. 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.

Reporting of BMI and weight status

The bill requires ODE to include on the report card the percentage of students enrolled in kindergarten, third, fifth, and ninth grades in the following four weight status categories: underweight, healthy weight, overweight, and obese. Districts, community schools, and STEM schools are to report these data through the Education Management Information System (EMIS). The data are to be based on screenings for body mass index (BMI) and weight status category to be required by the schools for all students in the aforementioned grades prior to the first day of November of each school year. 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.

Adding one variable to EMIS reporting may not increase costs for schools if the change can be worked into the system's normal annual update process. 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 ODE, in consultation with the Department of Health (DOH) and the Healthy Choices for Healthy Children Council to develop a list of resources for parents 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 ODE 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 education and physical activity requirements

The bill makes several additions and changes to physical education and other health-related standards in public schools. First, the bill increases the physical education and total credits required for graduation by one-half unit. For physical education, one-half unit is equivalent to 120 hours. Second, the bill requires that, beginning with the 2010-2011 school year, students engage in at least 30 minutes "of moderate to rigorous physical activity each school day, exclusive of recess." Finally, the bill requires schools to use the physical education standards adopted by the State Board of Education, whereas under current law their use by schools is optional.

According to a spokesperson at the Buckeye Association of School Administrators (BASA), some schools may not have the staff, time, or facilities currently available to them to meet these requirements and may incur significant additional costs. Schools may need to hire additional physical education teachers to offer the additional one-half unit of physical education in high school. 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. 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. The mandated use of the state's physical education standards is not likely to increase the costs of schools substantially.

Physical education teachers

The bill requires ODE to develop certification requirements for physical education teachers by December 31, 2010. ODE has licensure standards for physical education teachers in place, so it is unclear what additional work is required under this provision. The bill also prohibits, beginning on July 1, 2013, school districts, community schools, and STEM schools from employing 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. If not, schools may need to replace these teachers or perhaps assist them in obtaining the required certification.

Annual report

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