

# Senate Bill No. 663

(By Senators Unger, Edgell, Cookman, Laird,  
Miller, Palumbo, Plymale, Prezioso, Stollings,  
M. Hall and Barnes)

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[Originating in the Select Committee on Children and Poverty;  
reported March 27, 2013.]

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A BILL to repeal §18-5-37 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §18-5D-1, §18-5D-2, §18-5D-3 and §18-5D-4, all relating to improving the nutrition and health of West Virginia's children; creating the West Virginia Feed to Achieve Act; providing legislative findings and intent; phasing in implementation of the West Virginia Feed to Achieve Act; requiring nutritious breakfast and lunch be made available to all students; requiring all schools to adopt delivery systems, strategies and methods to maximize participation by students; providing for record keeping and reporting; authorizing continuation or termination of nutrition programs under certain conditions; providing that classroom teachers may not be required to operate a breakfast program as part of their regular

duties; establishing nonprofit foundations or funds to provide moneys for school nutrition programs; providing for acceptance of private contributions; authorizing expenditures of private funds to draw down maximum federal funds for child nutrition; authorizing certain expenditures; prohibiting use of private funds for administrative or personnel expenses; authorizing partnerships with federal and state agencies and public and private organizations to expand options for providing healthy, nutritious food to children; encouraging healthy food initiatives such as community gardens and farm-to-school programs; and requiring an annual audit of the private funds.

*Be it enacted by the Legislature of West Virginia:*

That §18-5-37 of the Code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new article, designated §18-5D-1, §18-5D-2, §18-5D-3 and §18-5D-4, all to read as follows:

**ARTICLE 5D. West Virginia Feed to Achieve Act.**

**§18-5D-1. Short title.**

1 This act shall be known and may be cited as the West  
2 Virginia Feed to Achieve Act.

**§18-5D-2. Legislative findings; intent.**

1 (a) The Legislature finds and declares that:

2 (1) Every child in school needs to have nutritious meals  
3 in order to achieve his or her potential. Providing the best  
4 schools and teachers alone does not ensure a child is mentally  
5 present and able to learn. A growing body of research  
6 establishes that a hungry child is less able to process the  
7 information provided and is less likely to be attentive to the  
8 lessons being taught.

9 (2) President Harry S. Truman began the national school  
10 lunch program in 1946 as a measure of national security to  
11 safeguard the health and well being of the nation's children  
12 and to encourage the domestic consumption of nutritious  
13 agricultural commodities and other food. Last year in West  
14 Virginia, 32.3 million school lunches were served to students  
15 in public schools.

16 (3) Research shows that students who eat breakfast at  
17 school have: (A) Increased standardized achievement test  
18 scores; (B) improved attendance; (C) reduced tardiness; (D)  
19 improved academic, behavioral and emotional functioning;  
20 and (E) improved nutrition.

21 (4) Schools that provide universal breakfast in the  
22 classroom also report: (A) Decreases in discipline and  
23 psychological problems; (B) decreases in visits to school

24 nurses; (C) decreases in tardiness; (D) increases in student  
25 attentiveness; (E) increases in attendance; and (F) improved  
26 learning environments.

27 (5) An effective school breakfast program is not an  
28 interruption of the school day; it is an integral and vital part  
29 of the school day.

30 (6) The participation rate for the school breakfast  
31 program varies greatly among our counties. Those counties  
32 which have made a determined effort to increase participation  
33 by offering programs to best meet student needs, such as  
34 grab-and-go breakfasts, providing breakfast in the classroom  
35 or providing breakfast after first period, are feeding  
36 significantly higher percentages of their students.

37 (7) The West Virginia Center on Budget and Policy  
38 reports that in 2011 more than twenty-five percent of the  
39 children in West Virginia lived in homes with a household  
40 income below the federal poverty line, which is \$23,050 for  
41 a family of four. About fifty percent of West Virginia  
42 children live in homes with a household income below twice  
43 the federal poverty level, \$46,100 for a family of four, which  
44 is approximately the level of the Work Force West Virginia  
45 self-sufficiency standard.

46       (8) The majority of students from families below the self-  
47 sufficiency standard are currently not eating breakfast at  
48 school. On the average school day during the 2011-2012  
49 school year, less than half of the West Virginia students  
50 eligible for a federally funded free breakfast actually received  
51 one. On that same average day, only about one third of the  
52 students eligible to receive a reduced-price breakfast actually  
53 received one.

54       (9) In order to maximize each child's potential to learn  
55 and develop, the Legislature, schools and communities must  
56 partner to provide the most basic learning tool: nutritious  
57 meals.

58       (10) In order to maximize student participation in school  
59 nutrition programs and to reduce the secondary adverse  
60 impacts of poverty, it is important that schools provide  
61 nutritious meals without a risk to students of being  
62 stigmatized as poor.

63       (11) High rates of childhood hunger and childhood  
64 obesity occur simultaneously because children are not  
65 receiving healthy, nutritious food. According to the Data  
66 Resource Center for Child and Adolescent Health and others,  
67 in 2008 West Virginia ranked 44 in overall prevalence of

68 childhood obesity, with 35.5 percent of children considered  
69 either overweight or obese.

70 (12) According to the 2008 Pediatric Nutrition  
71 Surveillance System, which assesses weight status of children  
72 from low-income families participating in the Women Infants  
73 and Children program, 28.3 percent of low-income children  
74 age 2-5 are overweight or obese in West Virginia.

75 (13) The Food Research and Action Center has found that  
76 providing a balanced school breakfast may protect against  
77 childhood obesity. School breakfast participation is  
78 associated with a lower body mass index, lower probability  
79 of being overweight and lower probability of obesity.

80 (14) Participation in federally funded meals in child care,  
81 preschool, school or summer settings is associated with a  
82 lower body mass index among young, low-income children.

83 (15) Private and nonprofit sectors have shown a  
84 willingness to commit significant resources to addressing  
85 hunger in America, leveraging federal programs and enlisting  
86 their employees, customers and clients to improve the  
87 availability and accessibility of affordable, healthy food for  
88 those in need of assistance.

89 (b) In order to maximize the economies of scale and to  
90 access all available federal funds to support our school  
91 nutrition programs, the Feed to Achieve initiative requires  
92 free meals to be provided to all prekindergarten through  
93 twelfth grade students, as funds becomes available.

94 (c) The Legislature intends to provide a framework for  
95 the State Board of Education and the county boards of  
96 education to provide a minimum of two nutritious, free meals  
97 each school day to all students.

98 (d) The Legislature intends for the state and county  
99 boards of education to enter into public-private partnerships  
100 to eventually provide free nutritious meals for all  
101 prekindergarten through twelfth grade school children in  
102 West Virginia.

**§18-5D-3. School nutrition programs.**

1 (a) Each county board of education shall establish and  
2 operate school nutrition programs under which, at a  
3 minimum, a nutritious breakfast and lunch are made  
4 effectively available to all students enrolled in the schools of  
5 the county in accordance with the State Board of Education  
6 standards. The standards shall include guidelines for  
7 determining the eligibility of students for paid, free and

8 reduced meals. The standards shall also establish procedures  
9 and guidelines for the Feed to Achieve initiative to provide  
10 free meals to all elementary school students.

11 (b) The Feed to Achieve initiative will be phased in for  
12 all elementary schools as sufficient funds become available.  
13 Nothing in this article prohibits any school from providing  
14 free meals to all of its students.

15 (c) Each county board of education shall:

16 (1) Require all schools to adopt a delivery system  
17 approved by the State Office of Child Nutrition, no later than  
18 the 2015 school year, that ensures all students are given an  
19 adequate opportunity to eat breakfast. These approved  
20 systems shall include, but are not limited to, grab-and-go  
21 breakfasts, breakfast in the classroom or breakfast after first  
22 period; and

23 (2) collaborate with the State Office of Child Nutrition to  
24 develop strategies and methods to increase the percentage of  
25 children participating in the school breakfast and lunch  
26 nutrition programs.

27 (d) In addition to other statistics, the county boards of  
28 education, in consultation with the State Office of Child  
29 Nutrition, shall determine the number of children in each



30 school who are participating in each meal offered by the  
31 school; the number of children who are not eating each meal  
32 offered by the school; and the total daily attendance.

33 (e) The State Office of Child Nutrition shall report to the  
34 Joint Committee on Government and Finance, the Select  
35 Committee on Children and Poverty and the Legislative  
36 Oversight Commission on Education Accountability on or  
37 before December 31, 2015, and each year thereafter, on the  
38 impacts of the Feed to Achieve Act and any  
39 recommendations for legislation.

40 (f) County boards of education may utilize the nonprofit  
41 funds or foundations established in section four of this article  
42 or other available funds to offset the costs of providing free  
43 meals to elementary students.

44 (g) If at any time federal financial appropriations to this  
45 state for school nutrition programs are terminated, county  
46 boards of education are hereby authorized, but not required,  
47 to continue the programs at their own expense.

48 (h) Classroom teachers may not be required to participate  
49 in the operation of the school breakfast program as part of  
50 their regular duties.

**§18-5D-4. Creating public-private partnerships; creating nonprofit foundation or fund; audit.**

1 (a) The Department of Education and each county board  
2 of education shall promptly establish a nonprofit foundation  
3 or fund to provide supplemental or matching funds to  
4 increase participation in the nutrition programs in the Feed to  
5 Achieve initiative set forth in subsection (c) of this section.  
6 The Department of Education shall utilize its foundation or  
7 fund to assist county boards of education in counties whose  
8 foundation or fund lacks sufficient business, industry and  
9 individual contributors to fund the Feed to Achieve nutrition  
10 programs.

11 (b) Financial support for the foundation or fund may  
12 come from either public or private gifts, grants, contributions,  
13 bequests and endowments.

14 (c) Expenditures by the state or county foundations or  
15 from the funds shall be used for provision of food to students  
16 through any of the programs or initiatives approved by the  
17 Office of Child Nutrition, including the following programs:  
18 School Breakfast Program, National School Lunch Program,  
19 the Summer Food Service Program, the Fresh Fruit and  
20 Vegetable Program, the Child and Adult Care Food Program,

21 the farm-to-school initiative and community gardens.  
22 Expenditures may also be made for initiatives developed with  
23 the Department of Health and Human Resources and public-  
24 private partnerships to provide outreach and nutritional meals  
25 when students are not in school.

26 (d) No administrative expenses or personnel expenses for  
27 any of the state departments implementing this act, the State  
28 Board of Education, any county board of education, school  
29 or program may be paid by the foundation or from the fund.

30 (e) Individuals or businesses that contribute to the  
31 foundation or fund may specify schools or nutrition programs  
32 for which the contribution is to be used.

33 (f) The Department of Education and county boards of  
34 education may establish public-private partnerships to  
35 enhance current or advance additional nutrition programs that  
36 provide nutritious food for children to take home for  
37 weekend meals.

38 (g) The Department of Education and county boards of  
39 education shall form or expand existing partnerships with the  
40 federal and state departments of agriculture, Department of  
41 Health and Human Resources, local master gardeners, county  
42 extension agents or other experts in the field of agriculture or

43 gardening to develop community gardens, farm-to-school  
44 programs and other such programs that teach students how to  
45 grow and produce healthy food and provide healthy food to  
46 the students.

47 (h) The Department of Education shall collaborate with  
48 the Department of Health and Human Resources to develop  
49 effective strategies and programs such as after-school  
50 nutrition outreach and programs that improve the healthy  
51 lifestyle of all students in prekindergarten through twelfth  
52 grade. The Department of Health and Human Resources may  
53 propose rules for promulgation in accordance with the  
54 provisions of article three, chapter twenty-nine-a of this code  
55 to effectuate any programs so developed.

56 (i) All moneys contributed to a foundation or fund  
57 established pursuant to this section and all expenditures made  
58 therefrom shall be audited as part of the annual independent  
59 audit of the State Board of Education and the county boards  
60 of education.