

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

Introduced

### House Bill 3048

FISCAL  
NOTE

BY DELEGATE CLARK

[Introduced March 10, 2021; Referred to the  
Committee on Education]

1 A BILL to amend and reenact §18-2-7a of the Code of West Virginia, 1931, as amended; and to  
2 amend said code by adding thereto a new section, designated §18-2-7g, all relating to  
3 designating the specific grade levels to which the specified physical education  
4 requirements are applicable; allowing a school district to develop or adopt a program in  
5 which the subject of nutrition and exercise education is taught instead of the program  
6 required to be prescribed by the state board; setting forth requirements for program  
7 developed or adopted; allowing the program to be virtual, in-person, or a combination of  
8 both; allowing school districts to apply for funding to support the implementation of the  
9 program; creating the Nutrition and Exercise Education Fund from which moneys are to  
10 be awarded on a competitive basis to eligible school districts; requiring the Department of  
11 Education to annually submit a report to the Governor and the Legislative Oversight  
12 Commission on Education Accountability; setting forth more specific provisions for a  
13 program that would qualify under the aforementioned provisions allowing a school district  
14 to develop or adopt an alternate program; setting forth requirements applicable to the  
15 program; allowing school districts utilizing the program to be eligible to apply for funding  
16 from the Nutrition and Exercise Education Fund; setting forth requirements applicable to  
17 each school in a school district electing to participate in the program; allowing school  
18 districts to issue a request for proposals to contract with qualified service providers on a  
19 per-student rate to provide certain programs and/or products; setting forth certain criteria  
20 that providers of programs and products must meet to be considered by school districts;  
21 and setting forth required program accountability measures.

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

## **ARTICLE 2. STATE BOARD OF EDUCATION.**

### **§18-2-7a. Legislative findings; required physical education; program in physical fitness.**

1 (a) The Legislature hereby finds that obesity is a problem of epidemic proportions in this  
2 state. There is increasing evidence that all segments of the population, beginning with children,

3 are becoming more sedentary, more overweight, and more likely to develop health risks and  
4 diseases, including Type II Diabetes, high blood cholesterol, and high blood pressure. The  
5 Legislature further finds that the promotion of physical activity during the school day for school  
6 children is a crucial step in combating this growing epidemic and in changing the attitudes and  
7 behavior of the residents of this state toward health-promoting physical activity.

8 (b) As a result of these findings, the State Department of Education shall establish the  
9 requirement that each child enrolled in the public schools of this state actively participates in  
10 physical education classes during the school year to the level of his or her ability as follows:

11 (1) ~~Elementary school grades~~ Kindergarten to and including grade five. — Not less than  
12 30 minutes of physical education, including physical exercise and age-appropriate physical  
13 activities, for not less than three days a week.

14 (2) ~~Middle school grades~~ Grade six to and including grade eight. — Not less than one full  
15 period of physical education, including physical exercise and age-appropriate physical activities,  
16 each school day of one semester of the school year.

17 (3) ~~High school grades~~ Grade nine to and including grade 12. — Not less than one full  
18 course credit of physical education, including physical exercise and age-appropriate physical  
19 activities, which shall be required for graduation, and the opportunity to enroll in an elective lifetime  
20 physical education course.

21 (c) Enrollment in physical education classes and activities required by the provisions of  
22 this section shall not exceed, and shall be consistent with, state guidelines for enrollment in all  
23 other subjects and classes: *Provided*, That schools which do not currently have the number of  
24 certified physical education teachers, do not currently have the required physical setting, or would  
25 have to significantly alter academic offerings to meet the physical education requirements may  
26 develop alternate programs that will enable current staff, physical settings, and offerings to be  
27 used to meet the physical education requirements established herein. These alternate programs  
28 shall be submitted to the State Department of Education and the Healthy Lifestyle Council for

29 approval. ~~Those schools needing to develop alternate programs shall not be required to~~  
30 ~~implement this program until the school year commencing two thousand six~~

31 (d) The state board shall prescribe a program within the existing health and physical  
32 education program which incorporates fitness testing, reporting, recognition, fitness events, and  
33 incentive programs which requires the participation in grades four through eight and the required  
34 high school course, subject to the following:

35 (1) The program shall be selected from nationally accepted fitness testing programs  
36 designed for school-aged children that test cardiovascular fitness, muscular strength, and  
37 endurance, flexibility and body composition; ~~Provided, That nothing~~

38 (2) Nothing in this subsection shall be construed to prohibit the use of programs designed  
39 under the auspices of the President's Council on Physical Fitness and Sports;

40 (3) The program shall include modified tests for exceptional students;

41 (4) Each school in the state shall participate in National Physical Fitness and Sports Month  
42 in May of each year and shall make every effort to involve the community it serves in the related  
43 events; and

44 (5) Instead of the program required above to be prescribed by the state board and except  
45 for the requirements set forth in subdivision (4) of this subsection, a school district may develop  
46 or adopt a program, including, but not limited to, the optional physical fitness program set forth in  
47 §18-2-7g of this code, in which the subject of nutrition and exercise education is taught and  
48 focuses on the importance of increasing awareness as to how nutrition and exercise prevent  
49 childhood obesity and its secondary diseases, such as diabetes, heart disease, hypertension,  
50 asthma, certain cancers, low-self-esteem, and depression. Such program shall include pre- and  
51 post-testing for purposes of accountability and measuring improvement in the subjects targeted  
52 by the program, must be at least eight weeks long, and must include instruction on the applicable  
53 wellness standards in accordance with state board policy. A program developed or adopted by a  
54 school district pursuant to this subdivision may be virtual, in-person, or a combination of both.

55 School districts may apply for funding administered by the state board pursuant to the provisions  
56 of subsection (f) of this section to support the implementation of a program pursuant to this  
57 subdivision.

58 (e) The state board shall promulgate a rule in accordance with the provisions §29A-3B-1  
59 *et seq.* of this code that includes at least the following provisions to provide for the collection,  
60 reporting, and use of body mass index data in the public schools:

61 (1) The data shall be collected using the appropriate methodology for assessing the body  
62 mass index from student height and weight data;

63 (2) The data shall be collected on a scientifically drawn sample of students;

64 (3) The data shall be collected and reported in a manner that protects student  
65 confidentiality;

66 (4) The data shall be reported to the Department of Education; and

67 (5) All body mass index data shall be reported in aggregate to the Governor, the State  
68 Board of Education, the Healthy Lifestyles Coalition, and the Legislative Oversight Commission  
69 on Health and Human Resources Accountability for use as an indicator of progress toward  
70 promoting healthy lifestyles among school-aged children.

71 (f) The Nutrition and Exercise Education Fund is hereby created in the State Treasury as  
72 a special revenue account. Moneys in the fund shall be awarded on a competitive basis to school  
73 districts eligible to receive such funding pursuant to this section or §18-2-7g of this code. The fund  
74 may consist of all appropriations by the Legislature for the fund; any gifts, grants, or contributions  
75 received for the fund; and all interest or other income earned from investment of the fund. Any  
76 funds remaining in the fund at the close of the fiscal year are carried forward for use in the next  
77 fiscal year. Nothing in this section requires any specific level of funding by the Legislature, nor  
78 guarantees or entitles any person or entity to any benefit or grant of funds. The state board shall  
79 adopt guidelines for administration of the fund.

80 (g) Annually, the Department of Education shall submit to the Governor and the Legislative

81 Oversight Commission on Education Accountability a report that summarizes awards made from  
82 the Nutrition and Exercise Education Fund and the reported accountability measures of school  
83 districts receiving a grant award from the fund.

**§18-2-7g. Optional physical fitness program.**

1 (a) A school district may make available to schools within the district a program in which  
2 the subject of nutrient and exercise education is taught and focuses on the importance of  
3 increasing awareness as to how nutrition and exercise prevent childhood obesity and its  
4 secondary diseases, such as diabetes, heart disease, hypertension, asthma, certain cancers,  
5 low-self-esteem, and depression. School districts utilizing such a program are eligible to apply for  
6 funding under the provisions of §18-2-7a(f) of this code.

7 (b) The program shall include a provision for evidence-based nutrient and structured  
8 exercise education for all teachers and children in grades three through six. The education for  
9 teachers shall include all classroom teachers, including physical education teachers and teachers  
10 teaching health. The program shall be at least eight weeks long and shall include the provision of  
11 all third through sixth grade teachers and students with complete access to turn-key, evidence-  
12 based nutrient and structured exercise education to implement in the classroom, during school,  
13 before school, after school, and/or at home with the family. The structured exercise education  
14 may be in the form of book, DVD, CD, online, or another form of technology.

15 (c) Each school in a school district electing to participate in the program created by this  
16 section shall ensure the following:

17 (1) Time is allowed during the school day for the classroom, physical education, and/or  
18 health education teaching personnel to provide students with up to 30 minutes of structured  
19 exercise pursuant to the physical activity requirements in §18-2-7a of this code and state board  
20 policy;

21 (2) Time is allowed during the school day for the classroom, physical education, and/or  
22 health education teaching personnel to provide students nutrient education pursuant to state

23 board policy;

24 (3) Time is allowed during the school day for the classroom, physical, and/or health  
25 education teaching personnel to provide both students and the teacher with time to fill out a daily  
26 journal to track information relating to any of the following: Food, nutrient, exercise, and physical  
27 activity. The nutrient information may include information such as the amounts of water,  
28 carbohydrates, protein, fat, minerals, and vitamins consumed; and

29 (4) All data that is necessary to comply with the accountability measures set forth in  
30 subsection (e) of this section is provided to the Department of Education and its service providers.  
31 Data collected pursuant to this program is subject to state and federal data privacy laws to protect  
32 the privacy and confidentiality of individual students and not subject to disclosure under the West  
33 Virginia Freedom of Information Act set forth in §29B-1-1 et seq. of this code.

34 (d) School districts may issue a request for proposals to contract with qualified service  
35 providers on a per-student rate to provide evidence-based childhood obesity prevention programs  
36 and/or products consisting of nutrient education, structured exercise, use of technology, and  
37 associated licenses for teachers and students in grades three through six in school districts  
38 electing to participate in the program provided for under this section. School districts may consider  
39 all providers of programs and products that meet the following criteria:

40 (1) The provider has operated for 10 or more years in schools serving primarily  
41 underserved, low-income students; and

42 (2) The provider has at least 10 years of empirical research data demonstrating  
43 improvement in students' strength endurance, such as through push-ups and sit-ups, heart health  
44 measurements, such as blood pressure and resting heart rate, and nutrient knowledge.

45 (e) Programs implemented pursuant to this section shall include the following  
46 accountability measures:

47 (1) Annually, school districts implementing a program pursuant to this section shall report  
48 accountability measures in the aggregate to the Department of Education, which shall make such

49 reports available to the general public.

50 (2) At a minimum, reports submitted to the Department of Education shall include  
51 aggregated student pre- and post-testing data in the areas of:

52 (A) Nutrition and fitness knowledge;

53 (B) Strength endurance using such measures as push-ups and sit-ups;

54 (C) Heart health using such measures as blood pressure and heart rate; and

55 (D) Attendance.

56 (3) The pre-testing required by subdivision (2) of this subsection shall occur prior to the  
57 beginning of the nutrient and structured exercise instruction each school year, and the post-testing  
58 shall occur each school year near or after the conclusion of the instruction.

NOTE: The purpose of this bill is to allow a school district to develop or adopt a program in which the subject of nutrition and exercise education is taught instead of the program required to be prescribed by the state board; set forth requirements for program; allow the program to be virtual, in-person, or a combination of both; allow school districts to apply for funding to support the implementation of the program; create the Nutrition and Exercise Education Fund from which moneys are to be awarded on a competitive basis to eligible school districts; require the Department of Education to annually submit a report to the Governor and the LOCEA; and set forth more specific provisions for a program that would qualify under the aforementioned provisions allowing a school district to develop or adopt an alternate program.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.