

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

Senate Bill 219

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SMITH, AND MARONEY

[Originating in the Committee on Education; reported
on January 26, 2022]

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; requiring the existing program prescribed by the State Board
5 of Education within the existing health and physical education program to include pre- and
6 post-testing; allowing a school district to develop or adopt a program in which the subject
7 of nutrition and exercise education is taught instead of the program required to be
8 prescribed by the state board; setting forth requirements for program developed or
9 adopted; allowing school districts to apply for funding to support the implementation of the
10 program; requiring the Department of Education to assess body mass index data as a
11 factor in determining whether, and to what degree, any of certain programs are improving
12 student health; creating the Nutrition and Exercise Education Fund from which moneys
13 are to be awarded on a competitive basis to eligible school districts; requiring the
14 Department of Education to annually submit a report to the Governor and the Legislative
15 Oversight Commission on Education Accountability; allowing a school district to make
16 available to schools within the district a program in which the subject of nutrient and
17 exercise education is taught; setting forth requirements applicable to the program; allowing
18 school districts utilizing the program to be eligible to apply for funding from the Nutrition
19 and Exercise Education Fund; setting forth requirements applicable to each school in a
20 school district electing to participate in the program; allowing school districts to issue a
21 request for proposals to contract with qualified service providers on a per-student rate to
22 provide certain programs and/or products; setting forth certain criteria that providers of
23 programs and products must meet to be considered by school districts; and setting forth
24 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 significant problem of ~~epidemic~~
2 ~~proportions~~ in this state. There is increasing evidence that all segments of the population,
3 beginning with children, are becoming more sedentary, more overweight, and more likely to
4 develop health risks and diseases, including Type II Diabetes, high blood cholesterol, and high
5 blood pressure. The Legislature further finds that the promotion of physical activity during the
6 school day for school children is a crucial step in combating this growing epidemic and in changing
7 the attitudes and 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 5. — Not less than 30
12 minutes of physical education, including physical exercise and age-appropriate physical activities,
13 for not less than three days a week.

14 (2) ~~Middle school grades~~ Grade 6 to and including grade 8. — Not less than one full period
15 of physical education, including physical exercise and age-appropriate physical activities, each
16 school day of one semester of the school year.

17 (3) ~~High school grades~~ Grade 9 to and including grade 12. — Not less than one full course
18 credit of physical education, including physical exercise and age-appropriate physical activities,
19 which shall be required for graduation, and the opportunity to enroll in an elective lifetime physical
20 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) The program shall include pre- and post-testing for purposes of accountability and
39 measuring improvement;

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

42 (4) The program shall include modified tests for exceptional students;

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

46 (6) Instead of the program required above to be prescribed by the state board and except
47 for the requirements set forth in subdivision (5) of this subsection, a school district may develop
48 or adopt a program, including, but not limited to, the optional physical fitness program set forth in
49 §18-2-7g of this code, in which the subject of nutrition and exercise education is taught and
50 focuses on the importance of increasing awareness as to how nutrition and exercise prevent
51 childhood obesity and its secondary diseases, such as diabetes, heart disease, hypertension,

52 asthma, certain cancers, low-self-esteem, and depression. Such program shall include pre- and
53 post-testing for purposes of accountability and measuring improvement in the subjects targeted
54 by the program, must be at least eight weeks long, must include instruction on the applicable
55 wellness standards in accordance with state board policy, and must require participation in grades
56 three through six. School districts may apply for funding administered by the state board pursuant
57 to the provisions of subsection (f) of this section to support the implementation of a program
58 pursuant to this subdivision.

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

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

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

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

67 (4) The data shall be reported to the Department of Education who shall assess the data
68 as a factor in determining whether, and to what degree, any of the programs implemented
69 pursuant to this section or §18-2-7g of this code are improving student health; and

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

74 (f) The Nutrition and Exercise Education Fund is hereby created in the State Treasury as
75 a special revenue account. Moneys in the fund shall be awarded on a competitive basis to school
76 districts eligible to receive such funding pursuant to this section or §18-2-7g of this code. The fund
77 may consist of all appropriations by the Legislature for the fund; any gifts, grants, or contributions

78 received for the fund; and all interest or other income earned from investment of the fund. Any
79 funds remaining in the fund at the close of the fiscal year are carried forward for use in the next
80 fiscal year. Nothing in this section requires any specific level of funding by the Legislature, nor
81 guarantees or entitles any person or entity to any benefit or grant of funds. The state board shall
82 adopt guidelines for administration of the fund.

83 (g) Annually, the Department of Education shall submit to the Governor and the Legislative
84 Oversight Commission on Education Accountability a report that summarizes awards made from
85 the Nutrition and Exercise Education Fund and the reported accountability measures of school
86 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 which 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 the identity of the participating schools and accountability measures in the aggregate to the
49 Department of Education, which shall make such 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.