

1 **ENROLLED**

2 **Senate Bill No. 663**

3 (BY SENATORS UNGER, EDGELL, COOKMAN, LAIRD, MILLER, PALUMBO, PLYMALE,
4 PREZIOSO, STOLLINGS, M. HALL AND BARNES)

5 _____
6 [Passed April 13, 2013; in effect from passage.]
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8
9 AN ACT to repeal §18-5-37 the Code of West Virginia, 1931, as
10 amended; and to amend said code by adding thereto a new
11 article, designated §18-5D-1, §18-5D-2 ,§18-5D-3 and §18-5D-4,
12 all relating to improving the nutrition, physical activity and
13 health of West Virginia's children; creating the West Virginia
14 Feed to Achieve Act; providing legislative findings and
15 intent; encouraging adoption of comprehensive policies and
16 programs; phasing in implementation of the West Virginia Feed
17 to Achieve Act; making nutritious breakfast and lunch be made
18 available to all students; promoting delivery systems,
19 strategies and methods to maximize participation by students;
20 providing for recordkeeping and reporting; authorizing
21 continuation or termination of nutrition programs under
22 certain conditions; providing that classroom teachers may not
23 be required to operate a breakfast program as part of their
24 regular duties; establishing restricted use funds or nonprofit
25 foundations to provide moneys for school nutrition programs;

1 providing for acceptance of private contributions; authorizing
2 expenditures of private funds to draw down maximum federal
3 funds for child nutrition; authorizing certain expenditures;
4 prohibiting use of private funds for administrative or
5 personnel expenses; authorizing partnerships with federal and
6 state agencies and public and private organizations to expand
7 options for providing healthy, nutritious food to children;
8 encouraging healthy food initiatives such as community gardens
9 and farm-to-school programs; and requiring an annual audit of
10 the private funds.

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

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13 be repealed; and that said code be amended by adding thereto a new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

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

17 **§18-5D-1. Short title.**

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

20 **§18-5D-2. Legislative findings; intent.**

21 (a) The Legislature finds and declares that:

22 (1) Every child in school needs to have nutritious meals in
23 order to achieve his or her potential. Providing the best schools
24 and teachers alone does not ensure a child is mentally present and
25 able to learn. A growing body of research establishes that a
26 hungry child is less able to process the information provided and

1 is less likely to be attentive to the lessons being taught.

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

8 (3) Research shows that healthy eating, proper nutrition and
9 regular physical activity result in students who have: (A)
10 Increased standardized achievement test scores; (B) improved
11 attendance; (C) reduced tardiness; (D) improved academic,
12 behavioral and emotional functioning; and (E) improved nutrition,
13 and for many students, the nutritious breakfast at school is
14 essential.

15 (4) Schools that provide universal breakfast programs also
16 report: (A) Decreases in discipline and psychological problems; (B)
17 decreases in visits to school nurses; (C) decreases in tardiness;
18 (D) increases in student attentiveness; (E) increases in
19 attendance; and (F) improved learning environments, and these
20 positive attributes are furthered through comprehensive healthy
21 schools policies that include quality nutrition, integrating
22 physical activity during the school day, and teaching children
23 about the importance of embracing a healthy active lifestyle.

24 (5) An effective school breakfast program is not an
25 interruption of the school day; it is an integral and vital part of
26 the school day.

1 (6) The participation rate for the school breakfast program
2 varies greatly among our counties. Those counties which have made
3 a determined effort to increase participation by offering programs
4 to best meet student needs, such as Grab-And-Go Breakfasts,
5 providing Breakfast in the Classroom or providing Breakfast After
6 First Period, are feeding significantly higher percentages of their
7 students.

8 (7) The West Virginia Center on Budget and Policy reports that
9 in 2011 more than 25 percent of the children in West Virginia lived
10 in homes with a household income below the federal poverty line,
11 which is \$23,050 for a family of four. About 50 percent of West
12 Virginia children live in homes with a household income below twice
13 the federal poverty level, \$46,100 for a family of four, which is
14 approximately the level of the Work Force West Virginia self-
15 sufficiency standard.

16 (8) The majority of students from families below the self-
17 sufficiency standard are currently not eating breakfast at school.
18 On the average school day during the 2011-2012 school year, less
19 than half of the West Virginia students eligible for a federally
20 funded free breakfast actually received one. On that same average
21 day, only about one third of the students eligible to receive a
22 reduced price breakfast actually received one.

23 (9) In order to maximize each child's potential to learn and
24 develop, the Legislature, schools and communities must partner to
25 provide the most basic support for learning: nutritious meals.

26 (10) In order to maximize student participation in school

1 nutrition programs and to reduce the secondary adverse impacts of
2 poverty, it is important that schools provide nutritious meals
3 without a risk to students of being stigmatized as poor.

4 (11) High rates of childhood hunger and childhood obesity
5 occur simultaneously because children are not receiving healthy,
6 nutritious food. According to the Data Resource Center for Child
7 and Adolescent Health and others, in 2008 West Virginia ranked 44
8 in overall prevalence of childhood obesity, with 35.5 percent of
9 children considered either overweight or obese.

10 (12) According to the 2008 Pediatric Nutrition Surveillance
11 System, which assesses weight status of children from low-income
12 families participating in the Women, Infants and Children program,
13 28.3 percent of low income children age 2-5 are overweight or obese
14 in West Virginia.

15 (13) The Food Research and Action Center has found that
16 providing a balanced school breakfast may protect against childhood
17 obesity. School breakfast participation, particularly when
18 combined with comprehensive efforts that include regular physical
19 activity and promote healthy eating habits, is associated with a
20 lower body mass index, a lower probability of being overweight and
21 a lower probability of obesity, all of which help prevent a range
22 of chronic diseases including Type II Diabetes, high blood
23 cholesterol, high blood pressure, heart disease and stroke.

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

1 (15) Private and nonprofit sectors have shown a willingness to
2 commit significant resources to addressing hunger in America,
3 leveraging federal programs and enlisting their employees,
4 customers and clients to improve the availability and accessibility
5 of affordable, healthy food for those in need of assistance.

6 (16) Public schools in this state and others are adopting a
7 continuum of policies to implement low cost, effective programs
8 that include physical activity, physical education, proper
9 nutrition and the promotion of healthy eating habits, along with
10 involvement by school staff, families and communities, and a
11 variety of resources to assist schools in adopting and implementing
12 these programs are easily accessible on the internet and through
13 the Office of Healthy Schools in the West Virginia Department of
14 Education.

15 (b) In order to maximize the economies of scale and to access
16 all available federal funds to support our school nutrition
17 programs, the Feed to Achieve initiative directs schools to make
18 available and to promote the federally approved and subsidized
19 meals to all pre-kindergarten through twelfth grade students, to
20 make them readily available and to consider reducing or eliminating
21 the cost to students if sufficient funds become available.

22 (c) The Legislature intends to provide a framework for the
23 State Board of Education and the county boards of education to
24 provide, as effectively and as efficiently as possible, a minimum
25 of two nutritious meals each school day to all students.

26 (d) The Legislature intends for the state and county boards of

1 education to enter into public-private partnerships to eventually
2 provide free nutritious meals for all pre-kindergarten through
3 twelfth grade school children in West Virginia.

4 (e) The Legislature encourages county boards to examine the
5 options available for comprehensive policies and programs to
6 improve student health and promote academic achievement and to
7 establish a comprehensive policy on healthy schools that best meets
8 the needs of their student population.

9 (f) It is not the intention of the Legislature to allow or
10 encourage parents to abdicate their parental responsibility related
11 to providing healthy, nutritious meals for their children.
12 However, it is the intent of the Legislature that no child be
13 denied nutritious meals.

14 (g) It is the intent of the Legislature that healthy
15 nutritious school lunches be made available to all students in a
16 manner which maximizes participation and minimizes stigma attached
17 to participating low income students.

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

19 (a) Each county board of education shall establish and operate
20 school nutrition programs under which, at a minimum, a nutritious
21 breakfast and lunch are made effectively available to all students
22 enrolled in the schools of the county in accordance with the State
23 Board of Education standards. The standards shall include
24 guidelines for determining the eligibility of students for paid,
25 free and reduced meals. The standards shall also establish
26 procedures and guidelines for the Feed to Achieve initiative to

1 allow for the provision of healthy, nutritious meals to all
2 elementary school students, without cost to students, where schools
3 find it practical to do so.

4 (b) The Feed to Achieve initiative will be phased in for all
5 elementary schools as sufficient funds become available, through
6 donations, contributions and payments made by individuals,
7 communities, businesses, organizations and parents or guardians on
8 behalf of students. Nothing in this article prohibits any school
9 from providing free meals to all of its students.

10 (c) Each county board of education shall:

11 (1) Require all schools to adopt a delivery system approved by
12 the state Office of Child Nutrition, no later than the 2015 school
13 year, that ensures all students are given an adequate opportunity
14 to eat breakfast. These approved systems shall include, but are
15 not limited to, Grab-And-Go Breakfasts, Breakfast in the Classroom
16 or Breakfast After First Period; and

17 (2) Collaborate with the state Office of Child Nutrition to
18 develop strategies and methods to increase the percentage of
19 children participating in the school breakfast and lunch nutrition
20 programs.

21 (d) In addition to other statistics, the county boards of
22 education, in consultation with the state Office of Child
23 Nutrition, shall determine the number of children in each school
24 who are participating in each meal offered by the school; the
25 number of children who are not eating each meal offered by the
26 school; and the total daily attendance.

1 (e) The state Office of Child Nutrition shall report to the
2 Joint Committee on Government and Finance, the Select Committee on
3 Children and Poverty and the Legislative Oversight Commission on
4 Education Accountability on or before December 31, 2015, and each
5 year thereafter, on the impacts of the Feed to Achieve Act and any
6 recommendations for legislation.

7 (f) County boards of education may utilize the nonprofit funds
8 or foundations established in section four of this article or other
9 available funds to offset the costs of providing free meals, after
10 school and summer nutrition programs to elementary students.

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

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

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

20 (a) The Department of Education and each county board of
21 education shall promptly establish a fund that is restricted solely
22 for the receipt and expenditure of gifts, grants and bequests for
23 the purposes of this article and may establish in lieu thereof a
24 nonprofit foundation for this purpose. The purpose of the fund or
25 nonprofit foundation is to provide supplemental or matching funds
26 to increase participation in the nutrition programs in the Feed to

1 Achieve initiative set forth in subsection (c) of this section.
2 The Department of Education shall utilize its fund or nonprofit
3 foundation to assist county boards of education in counties whose
4 fund or foundation lacks sufficient business, industry and
5 individual contributors to fund the Feed to Achieve nutrition
6 programs.

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

10 (c) Expenditures from the state or county funds or by the
11 foundations shall be used for provision of food to students through
12 any of the programs or initiatives approved by the Office of Child
13 Nutrition, including the following programs: School Breakfast
14 Program, National School Lunch Program, the Summer Food Service
15 Program, the Fresh Fruit and Vegetable Program, the Child and Adult
16 Care Food Program, the farm-to-school initiative and community
17 gardens. Expenditures may also be made for initiatives developed
18 with the Department of Health and Human Resources and public-
19 private partnerships to provide outreach and nutritional meals when
20 students are not in school.

21 (d) No administrative expenses or personnel expenses for any
22 of the state departments implementing this act, the State Board of
23 Education, any county board of education, school or program may be
24 paid from the funds or by the foundations.

25 (e) Individuals or businesses that contribute to the funds or
26 foundations may specify schools or nutrition programs for which the

1 contribution is to be used.

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

6 (g) The Department of Education and county boards of education
7 shall form or expand existing partnerships with the federal and
8 state departments of agriculture, Department of Health and Human
9 Resources, local master gardeners, county extension agents or other
10 experts in the field of agriculture or gardening to develop
11 community gardens, farm-to-school programs and other such programs
12 that teach students how to grow and produce healthy food and
13 provide healthy food to the students.

14 (h) The Department of Education shall collaborate with the
15 Department of Health and Human Resources to develop effective
16 strategies and programs such as after school nutrition outreach and
17 programs that improve the healthy lifestyle of all students in pre-
18 kindergarten through twelfth grade. The Department of Health and
19 Human Resources may propose rules for promulgation in accordance
20 with the provisions of article three, chapter twenty-nine-a of this
21 code to effectuate any programs so developed.

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