

BILL ANALYSIS

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DIGEST AND PURPOSE

Currently, Texas faces an obesity health epidemic. Two out of three Texans are considered obese and the percentage has dramatically increased during this last decade. An estimated 40 percent of Texas' 4th grade students are obese and another 20 to 30 percent of all children are either overweight or at risk of becoming overweight. Moreover, the number one risk factor for adult obesity is obesity in adolescence. As proposed, S.B. 343 seeks to further address the crisis of obesity in Texas' school by limiting the amount of food and drink that do not meet federal nutrition standards; creating an Obesity Prevention Coordinating Council; establishing a service learning partnership between universities and public schools in order to promote health and fitness in schools; redirecting existing Texas Department of Health funds for school-based health centers to place nurses in those school that have no health care services; allowing school districts to designate schools that have coordinated school health programs; and requiring the state to ensure that the Children's Health Insurance Program, to the extent possible, reimburses for obesity prevention program and treatment.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the State Board of Education in SECTION 4 (Section 28.008, Education Code) and in SECTION 9 (Section 39.023, Education Code) of this bill.

Rulemaking authority is expressly granted to the commissioner of public health in SECTION 8 (Sections 38.102 and 38.105, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Sets forth the purpose of this Act.

SECTION 2. Amends Chapter 7B, Education Code, by adding Section 7.027, as follows:

Sec. 7.027. INCENTIVES TO PROVIDE ACCESS TO SCHOOL CAMPUSES AFTER REGULAR SCHOOL HOURS. (a) Requires the Texas Education Agency (TEA) to study incentives that could be provided to the board of trustees of a school district to adopt rules under Section 11.165 (Access to School Campuses) or to otherwise provide access to school campuses after regular school hours for indoor and outdoor recreational activities. Requires TEA, based on that study, to prepare a report recommending incentives.

(b) Requires TEA, by November 1, 2004, to submit a copy of the report prepared under Subsection (a) to the speaker of the house of representatives, the lieutenant governor, and the presiding officer of the standing committees in the house and senate primarily responsible for public education.

(c) Provides that this section expires December 31, 2004.

SECTION 3. (a) Amends Section 28.004, Education Code, by adding Subsections (d-1) and (k), as follows:

(d-1) Requires a school district to report to TEA concerning the activities of the local school health education advisory council, in accordance with rules adopted by the commissioner of education (commissioner).

(k) Requires a school district's health education faculty to confer with the district's science and physical education faculty, as directed by the board of trustees of the district, in providing a comprehensive and coordinated health education curriculum. Provides that the health education curriculum in all grade levels in which health is a part of the required curriculum must include the study of nutrition; fitness; and the cause and effect of obesity.

(b) Provides that Section 28.004(k), Education Code, as added by Subsection (a) of this section, applies at the beginning of the 2004-2005 school year.

SECTION 4. (a) Amends Chapter 28A, Education Code, by adding Sections 28.008 and 28.009, as follows:

Sec. 28.008. PHYSICAL EDUCATION INSTRUCTION. (a) Requires the State Board of Education (SBOE), after consulting with educators, parents, and medical professionals, by rule to require a student enrolled in kindergarten or a grade level below grade seven in an elementary school setting to participate in daily physical activity as a part of a school's district's physical education or curriculum or through structured activity during a school's campus daily recess, except that SBOE may not require more than 30 minutes of daily physical activity. Requires the rules to provide an exemption for student with an illness or a disability from participating in daily physical activity.

(b) Requires each student enrolled in a middle school or junior high school to participate in a physical education program as a part of the curriculum for the student's grade level unless the student is unable to participate due to an illness or a disability. Requires the SBOE to adopt rules for a school to use in determining whether a student is unable to participate in a physical education program under this subsection. Prohibits a student from substituting participation in a physical education program by participating to any type of extracurricular activity, including cheerleading or band.

(c) Requires the board by rule to ensure that the physical education program meets certain conditions.

Sec. 28.009. FITNESS ASSESSMENTS; REPORT CARD. (a) Requires TEA to adopt or develop physical fitness standards that the physical education teacher can implement in the classes in order to assess the physical fitness of students in kindergarten through grade 12.

(b) Requires each school district to use the standards to assess three specific components of a student's physical fitness.

(c) Requires TEA, in adopting or developing the standards, and each school, in administering the standards, as applicable, to ensure that certain requirements are met.

(d) Requires each school to distribute to each student whose physical fitness is assessed using the standard adopted or developed under this section a physical fitness report card based on the results of the assessment. Requires the fitness report card to meet certain requirements.

(b) Requires, beginning with the 2003-2004 year, a student enrolled in kindergarten or a grade level below grade seven in an elementary school setting, to participate in daily physical activity provided by SBOE rules adopted under Section 28.00(a) Education Code, as added by

Subsection (a) of this section. Requires, beginning with the 2004-2005 year, a student enrolled in a middle school or junior high school to participate in a physical education program as provided by Section 28.008(b), Education Code, as added by Subsection (a) of this section.

(c) Requires TEA, by July 1, 2004, to adopt or develop physical fitness standards and requires the board of trustees of each school district to establish the format for a physical fitness report card as provided by Section 28.009, Education Code, as added by Subsection (a) of this section. Requires each district, at the beginning of the 2004-2005 year, to use physical fitness diagnostic standards and distribute physical fitness report card as provided by Section 28.009, Education Code, as added by Subsection (a).

SECTION 5. (a) Amends Chapter 29Z, Education Code, by adding Section 29.909, as follows:

Sec. 29.909. LONE STAR HEALTHY PLUS SCHOOL PROGRAMS. (a) Defines “program.”

(b) Authorizes a school district to provide a Lone Star Healthy Plus School Program.

(c) Requires TEA to adopt a comprehensive list of objectives relating to the promotion of the health of public school students, including sufficient physical activity and good nutrition, that a program must include.

(d) Requires a school district, in developing or selecting a program, to consult with a committee selected by the district that consists of certain individuals.

(e) Requires TEA to meet certain requirements.

(f) Authorizes TEA to accept money from federal government and private sources to use toward assisting school districts to implement programs that include the objectives TEA adopts under Subsection (c).

(b) Requires TEA, by December 31, 2003, to develop a list of objectives relating to the promotion of the health of public school students as required by Section 29.909 (c), Education Code, as added by Subsection (a) of this section.

SECTION 6. Amends Section 38.013(a), Education Code, as added by Chapter 907, Acts of the 77th Legislature, Regular Session, 2001, as follows:

(a) Requires TEA, with the assistance of the Obesity Prevention Coordinating Council, to make available to each school district a coordinated health program designed to prevent obesity, cardiovascular disease, and Type II diabetes in elementary school students.

SECTION 7. (a) Amends Chapter 38A, Education Code, by adding Section 38.017, as follows:

Sec. 38.017. FOOD AND BEVERAGES OFFERED FOR SALE IN SCHOOLS. (a) Prohibits an elementary school from offering for sale at the school a food or beverage that is not a part of the regular school meal program authorized under federal law, or permitting another person to do so. Requires the school to provide an environment that promotes students’ healthful eating habits.

(b) Requires a part of an elementary or secondary school’s regular meal program to offer healthful entree portions and a variety of fruits and vegetables of good quality.

(c) Prohibits a secondary school from offering for sale at the school a snack food that

derive more than 10 percent of its calories from saturated fat or contains more than 35 percent sugar or other added sweetener by weight, or permitting another person to do so. Prohibits the school or another person from offering for sale soft drinks, sports drinks, punch, iced tea, or any fruit juice beverage containing less than 50 percent fruit juice at the school. Authorizes the school or another person to offer for sale only certain beverages at the school.

(d) Requires TEA to work in cooperation with the United States Department of Agriculture to ensure the implementation of this section.

(e) Provides that this section does not prohibit an elementary or secondary school or another person from offering food or beverage during a bake sale, carnival, supper or similar event held on occasional basis at the school.

(b) Provides that Section 38.017, Education Code, as added by Subsection (a) of this section, applies at the beginning of the 2003-2004 school year.

SECTION 8. Amends Chapter 38, Education Code, by adding Subchapter C, as follows:

SUBCHAPTER C. FUNDING FOR SCHOOL NURSES

Sec. 38.101. GRANTS TO EMPLOY SCHOOL NURSES. Requires the commissioner of public health to administer a program under which grants are awarded to assist school districts with the cost of employing school nurses in accordance with this subchapter, subject to the availability of federal or state appropriated funds.

Sec. 38.102. GRANT PROCEDURES. Requires the commissioner of public health, by the rules adopted in accordance with this subchapter, to establish procedures for awarding grants. Requires the rules to provide that grants are awarded on an annual basis to school districts through a competitive process.

Sec. 38.103. ELIGIBILITY FOR INITIAL GRANT. (a) Specifies that a school district is eligible for a grant under this subchapter only if the district, at the time of initial application for the grant, does not provide a health care program or health care service through school nurses or school-based health clinics.

(b) Provides that this section does not prohibit the renewal of a grant awarded under this subchapter.

Sec. 38.104. PARTICIPATION OF OTHER ENTITIES. Authorizes a school district to cooperate with a public or private institution of higher education, clinic or other health care provider, or other entity to participate in a program to employ a school nurse under this subchapter. Authorizes the entity to meet certain objectives, in cooperation with the school district.

Sec. 38.105. PROGRAM REQUIREMENTS. (a) Requires a program to employ a school nurse funded through a grant awarded under this subchapter to be designed to meet certain requirements.

(b) Requires the commissioner of public health to adopt rules establishing standards for employment of school nurses funded through grants that place a primary emphasis on delivery of health services and secondary emphasis on population-based models that prevent emerging health threats.

Sec. 38.106. MATCHING FUNDS; LIMITATIONS ON GRANTS. (a) Requires a

district to provide matching funds in accordance with rules adopted under Section 38.102 (Grant Procedures), in order to be eligible to receive a grant. Authorizes the matching funds to be obtained from any source available to the district, including in-kind contributions, community or foundation grants, individual contributions, and local government agency operating funds.

(b) Prohibits a school district from receiving more than \$50,000 in a state fiscal biennium through grants awarded under this subchapter.

Sec. 38.107. SURVEY RELATING TO SERVICES. Requires the commissioner of public health to require client surveys to be conducted in relation to the services of nurses funded through grants awarded under this subchapter, and requires the results of those surveys to be included in the annual report required under Section 38.064, (Report to the Legislature).

SECTION 9. (a) Amends Section 39.023(a), Education Code, as follows:

(a) Requires TEA to adopt or develop appropriate criterion-referenced assessment instruments designed to assess essential knowledge and skills in health, in addition to other mandated subjects. Requires all students, except students assessed under Subsection (b) or (1) or exempted under Section 39.027 (Exemptions), to be assessed in certain school subject areas including health, annually in grades three to nine. Makes nonsubstantive changes.

(b) Requires SBOE, by December 31, 2003, to adopt rules for the administration of assessment instruments designed to test essential knowledge and skills in health education as provided by Section 39.023(a), Education Code, as amended by Subsection (a) of this section. Requires the SBOE, at the beginning of the 2004-2005 school year, to administer assessment instruments in accordance with the rules adopted under this subsection.

SECTION 10. Amends Chapter 61C, Education Code, by adding Section 61.0551, as follows:

Sec. 61.0551. COORDINATION OF NUTRITION AND PHYSICAL FITNESS PROGRAMS WITH ELEMENTARY SCHOOLS. (a) Requires SBOE to develop procedures for establishing a partnership or affiliation between a general academic teaching institution and an elementary school to coordinate and promote nutrition and physical fitness programs.

(b) Authorizes a general academic teaching institution, through a partnership or affiliation established under Subsection (a), to develop, test, and promote certain programs.

SECTION 11. (a) Amends Chapter 62D, Health and Safety Code, by adding Section 62.161, as follows:

Sec. 62.161. REIMBURSEMENT FOR PREVENTION AND TREATMENT OF OBESITY. (a) Requires the Health and Human Services Commission (HHSC) to periodically examine and evaluate the degree to which services provided by health care providers to children regarding the prevention and treatment of obesity are covered under the child health plan.

(b) Requires the HHSC, based on the result of the examination and evaluation required by Subsection (a), to take certain actions to promote the availability of services relating to the prevention and treatment of obesity for children under the child health plan.

(b) Requires the HHSC, by December 1, 2004, to prepare and submit a report to the legislature regarding the results of the initial examination and evaluation required by Section

62.161, Health and Safety Code, as added by Subsection (a) of this section, and the HHSC's actions taken in accordance with the requirements of Section 62.161.

SECTION 12. (a) Amends Title 2E, Health and Safety Code, by adding Chapter 112, as follows:

CHAPTER 112. OBESITY PREVENTION COORDINATING COUNCIL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 112.001. DEFINITION. Defines "council."

Sec. 112.002. COUNCIL. Requires the Texas Department of Health (TDH) and TEA to jointly establish and support the Obesity Prevention Coordinating Council (council).

Sec. 112.003. COMPOSITION; TERMS. (a) Provides that the council is composed of six members who serve staggered two year terms. Provides that three members' terms expire February 1 of each year.

(b) Requires TDH and TEA to each appoint three members to the council. Requires each member to be affiliated with a nonprofit or community organization in this state that is concerned with the health of children in this state or with the prevention or treatment of obesity or of one or more diseases that are caused or aggravated by obesity.

(c) Provides that no two members may be affiliated with the same nonprofit or community organization of a type described by Subsection (b), except that members who are affiliated with different local or regional nonprofit or community organizations of a type described by Subsection (b) may be affiliated with the same statewide nonprofit or community organization.

(d) Requires TDH and TEA to make appointments in a manner that provides a balanced representation from this state's geographic regions.

Sec. 112.004. OFFICERS. Requires the council to elect one of its members to serve as presiding officer and another member to serve as assistant presiding officer. Authorizes the council to elect other officers that it considers necessary.

Sec 112.005. MEETINGS. Requires the council to meet at least quarterly and authorizes it to meet more often at the call of its presiding officer.

Sec. 112.006. REIMBURSEMENT FOR EXPENSES. Provides that a member of the council is not entitled to compensation but is entitled to reimbursement for the member's travel expenses as provided by Chapter 660 (Travel Expenses), Government Code, and the General Appropriations Act.

Sec. 112.007. PERSONNEL AND FACILITIES. Provides that TDH and TEA are jointly responsible for the administration of the council. Requires TDH and TEA to adopt a memorandum of understanding that prescribes the extent to which each agency, using existing staff and facilities, shall provide the necessary staff and facilities to assist the council in performing its duties.

Sec. 112.008. APPLICABILITY OF ADVISORY COMMITTEE LAW. Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the council.

[Reserves Sections 112.009-112.050 for expansion.]

SUBCHAPTER B. POWERS AND DUTIES

Sec. 112.051. COORDINATION WITH STEERING COMMITTEE; STRATEGIC PLAN. Requires the council to coordinate its activities with the Statewide Obesity Task Force Steering Committee established by TDH. Requires the council, to the extent possible, to ensure that its activities are consistent with the Strategic Plan for the Prevention of Obesity in Texas issued by the task force steering committee.

Sec. 112.052. COORDINATED HEALTH PROGRAM FOR ELEMENTARY SCHOOL STUDENTS. (a) Requires the council to assist TEA in developing and facilitating the implementation of the coordinated health program for elementary school under Sections 38.013 (Coordinated Health Program for Elementary School Students), and 38.014 (Implementation of Coordinated Health Program for Elementary School Students), Education Code, as added by Chapter 907, Acts of the 77th Legislature, Regular Session, 2001.

(b) Requires the council to develop a plan, and requires TDH and TEA to follow the plan to periodically evaluate the progress made in implementing the coordinated health program at all school districts in this state. Requires the plan to involve obtaining information from the local school health education advisory council for a school district in a manner that is independent of the means used to obtain information from the school district.

Sec. 112.053. CAMPAIGNS AND PROGRAMS. Requires the council, working with other appropriate public and private entities, to meet certain objectives.

Sec. 112.054. COORDINATION WITH OTHER GOVERNMENT PROGRAMS. Requires the council to assist appropriate federal, state, and local government agencies to incorporate strategies to prevent or reduce childhood obesity into government food assistance, health education, and recreation programs.

Sec. 112.055. CONFERENCES AND RECOMMENDATIONS. Requires the council to work with other entities concerned with the prevention of obesity by sponsoring meetings and conferences at which experts in nutrition, exercise, public health, mental health, education, parenting, media campaigns, food marketing, food security, agriculture, community planning, and other relevant disciplines gather to examine solutions to the problem of childhood obesity and to propose recommendations for state policy and guidelines for educators, parents, and other caregivers.

Sec. 112.056. GRANTS. (a) Authorizes the council to accept gifts, grants, and donations to accomplish its purposes, including the making of grants under Subsection (b).

(b) Authorizes the council, to the extent that state, federal, or private funds are made available to the council for this purpose, to make grants appropriate to public or private entities for the purpose of implementing community-based program in order to prevent or reduce childhood obesity that incorporate methods that the council considers to be efficient and effective. Requires the council to award each grant by contract. Requires the contract to meet certain conditions.

(b) Requires terms of the initial members of the Obesity Prevention Coordinating Council established as provided by Chapter 112, Health and Safety Code, as added by Subsection (a) of this section, to be determined by lot in which three members' terms expire February 1, 2005 and three members' terms expire February 1, 2006.

SECTION 13. Repealer: Section 28.002(l), Education Code (regarding required curriculum), as

added by Chapter 907, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 14. Effective date: upon passage or September 1, 2003.