

**WEST VIRGINIA LEGISLATURE**  
**EIGHTY-FIRST LEGISLATURE**  
**REGULAR SESSION, 2013**



**ENROLLED**

**Senate Bill No. 663**

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

[PASSED APRIL 13, 2013; IN EFFECT FROM PASSAGE.]

SB663

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**E N R O L L E D**

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**AN ACT 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, physical activity and health of West Virginia's children; creating the West Virginia Feed to Achieve Act; providing legislative findings and intent; encouraging adoption of comprehensive policies and programs; phasing in implementation of the West Virginia Feed to Achieve Act; making nutritious breakfast and lunch be made available to all students; promoting 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 restricted use funds or nonprofit foundations 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That §18-5-37 of the Code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new article, designated §18-5D-1, §18-5D-2, §18-5D-3 and §18-5D-4, all to read as follows: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 healthy eating, proper nutrition  
17 and regular physical activity result in students who have: (A)  
18 Increased standardized achievement test scores; (B) improved  
19 attendance; (C) reduced tardiness; (D) improved academic,  
20 behavioral and emotional functioning; and (E) improved  
21 nutrition, and for many students, the nutritious breakfast at  
22 school is essential.

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

33           (5) An effective school breakfast program is not an  
34 interruption of the school day; it is an integral and vital part  
35 of the school day.

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

43           (7) The West Virginia Center on Budget and Policy  
44 reports that in 2011 more than 25 percent of the children in  
45 West Virginia lived in homes with a household income below  
46 the federal poverty line, which is \$23,050 for a family of  
47 four. About 50 percent of West Virginia children live in  
48 homes with a household income below twice the federal

49 poverty level, \$46,100 for a family of four, which is  
50 approximately the level of the Work Force West Virginia  
51 self-sufficiency standard.

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

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

64 (10) In order to maximize student participation in school  
65 nutrition programs and to reduce the secondary adverse  
66 impacts of poverty, it is important that schools provide  
67 nutritious meals without a risk to students of being  
68 stigmatized as poor.

69 (11) High rates of childhood hunger and childhood  
70 obesity occur simultaneously because children are not  
71 receiving healthy, nutritious food. According to the Data  
72 Resource Center for Child and Adolescent Health and others,  
73 in 2008 West Virginia ranked 44 in overall prevalence of  
74 childhood obesity, with 35.5 percent of children considered  
75 either overweight or obese.

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

81           (13) The Food Research and Action Center has found that  
82 providing a balanced school breakfast may protect against  
83 childhood obesity. School breakfast participation, particularly  
84 when combined with comprehensive efforts that include  
85 regular physical activity and promote healthy eating habits,  
86 is associated with a lower body mass index, a lower  
87 probability of being overweight and a lower probability of  
88 obesity, all of which help prevent a range of chronic diseases  
89 including Type II Diabetes, high blood cholesterol, high  
90 blood pressure, heart disease and stroke.

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

94           (15) Private and nonprofit sectors have shown a  
95 willingness to commit significant resources to addressing  
96 hunger in America, leveraging federal programs and enlisting  
97 their employees, customers and clients to improve the  
98 availability and accessibility of affordable, healthy food for  
99 those in need of assistance.

100       \_\_\_(16) Public schools in this state and others are adopting  
101 a continuum of policies to implement low cost, effective  
102 programs that include physical activity, physical education,  
103 proper nutrition and the promotion of healthy eating habits,  
104 along with involvement by school staff, families and  
105 communities, and a variety of resources to assist schools in  
106 adopting and implementing these programs are easily  
107 accessible on the internet and through the Office of Healthy  
108 Schools in the West Virginia Department of Education.

109           (b) In order to maximize the economics of scale and to  
110 access all available federal funds to support our school  
111 nutrition programs, the Feed to Achieve initiative directs  
112 schools to make available and to promote the federally  
113 approved and subsidized meals to all pre-kindergarten

114 through twelfth grade students, to make them readily  
115 available and to consider reducing or eliminating the cost to  
116 students if sufficient funds become available.

117 (c) The Legislature intends to provide a framework for  
118 the State Board of Education and the county boards of  
119 education to provide, as effectively and as efficiently as  
120 possible, a minimum of two nutritious meals each school day  
121 to all students.

122 (d) The Legislature intends for the state and county  
123 boards of education to enter into public-private partnerships  
124 to eventually provide free nutritious meals for all pre-  
125 kindergarten through twelfth grade school children in West  
126 Virginia.

127 (e) The Legislature encourages county boards to examine  
128 the options available for comprehensive policies and  
129 programs to improve student health and promote academic  
130 achievement and to establish a comprehensive policy on  
131 healthy schools that best meets the needs of their student  
132 population.

133 (f) It is not the intention of the Legislature to allow or  
134 encourage parents to abdicate their parental responsibility  
135 related to providing healthy, nutritious meals for their  
136 children. However, it is the intent of the Legislature that no  
137 child be denied nutritious meals.

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

**§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 allow for  
10 the provision of healthy, nutritious meals to all elementary  
11 school students, without cost to students, where schools find  
12 it practical to do so.

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

20 (c) Each county board of education shall:

21 (1) Require all schools to adopt a delivery system  
22 approved by the state Office of Child Nutrition, no later than  
23 the 2015 school year, that ensures all students are given an  
24 adequate opportunity to eat breakfast. These approved  
25 systems shall include, but are not limited to, Grab-And-Go  
26 Breakfasts, Breakfast In The Classroom or Breakfast After  
27 First Period; and

28 (2) Collaborate with the state Office of Child Nutrition to  
29 develop strategies and methods to increase the percentage of  
30 children participating in the school breakfast and lunch  
31 nutrition programs.

32 (d) In addition to other statistics, the county boards of  
33 education, in consultation with the state Office of Child  
34 Nutrition, shall determine the number of children in each

35 school who are participating in each meal offered by the  
36 school; the number of children who are not eating each meal  
37 offered by the school; and the total daily attendance.

38 (e) The state Office of Child Nutrition shall report to the  
39 Joint Committee on Government and Finance, the Select  
40 Committee on Children and Poverty and the Legislative  
41 Oversight Commission on Education Accountability on or  
42 before December 31, 2015, and each year thereafter, on the  
43 impacts of the Feed to Achieve Act and any  
44 recommendations for legislation.

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

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

54 (h) Classroom teachers may not be required to participate  
55 in the operation of the school breakfast program as part of  
56 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 fund that is restricted  
3 solely for the receipt and expenditure of gifts, grants and  
4 bequests for the purposes of this article and may establish in  
5 lieu thereof a nonprofit foundation for this purpose. The  
6 purpose of the fund or nonprofit foundation is to provide  
7 supplemental or matching funds to increase participation in

8 the nutrition programs in the Feed to Achieve initiative set  
9 forth in subsection (c) of this section. The Department of  
10 Education shall utilize its fund or nonprofit foundation to  
11 assist county boards of education in counties whose fund or  
12 foundation lacks sufficient business, industry and individual  
13 contributors to fund the Feed to Achieve nutrition programs.

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

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

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

33 (e) Individuals or businesses that contribute to the funds  
34 or foundations may specify schools or nutrition programs for  
35 which the contribution is to be used.

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

41           (g) The Department of Education and county boards of  
42 education shall form or expand existing partnerships with the  
43 federal and state departments of agriculture, Department of  
44 Health and Human Resources, local master gardeners, county  
45 extension agents or other experts in the field of agriculture or  
46 gardening to develop community gardens, farm to school  
47 programs and other such programs that teach students how to  
48 grow and produce healthy food and provide healthy food to  
49 the students.

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Rocky Ferguson*  
.....  
member ~~Chairman~~ Senate Committee

*Tommy Wells*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*Joseph M. Minard*  
.....  
Clerk of the Senate

*Gregg B. Smith*  
.....  
Clerk of the House of Delegates

*Jeffrey K. ...*  
.....  
President of the Senate

*...*  
.....  
Speaker of the House of Delegates

2013 MAY -3 PM 2:32  
FILED  
OFFICE OF STATE CLERK

The within *is assented* this the *3rd*  
*May*  
Day of ....., 2013.

*Carl Ray Tomblin*  
.....  
Governor

**PRESENTED TO THE GOVERNOR**

MAY - 1 2013

Time 1:45 pm