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(In the Senate - Filed March 10, 2005; March 21, 2005, read first time and referred to Committee on Education; March 31, 2005, rereferred to Committee on Health and Human Services; April 28, 2005, reported adversely, with favorable Committee Substitute by the following vote: Yeas 6, Nays 0; April 28, 2005, sent to printer.)

COMMITTEE SUBSTITUTE FOR S.B. No. 1379 By: West

A BILL TO BE ENTITLED  
AN ACT

relating to a statewide initiative regarding the prevention and treatment of obesity-related health concerns.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 161, Health and Safety Code, is amended by adding Subchapter Z to read as follows:

SUBCHAPTER Z. OBESITY-RELATED TREATMENT AND  
PREVENTION INITIATIVES

Sec. 161.901. INTERAGENCY OBESITY COUNCIL. (a) The commissioner of agriculture, commissioner of state health services, and commissioner of education shall meet at least once a year as an interagency council to discuss the status of each agency's programs that promote better health and nutrition and prevent obesity among children and adults in this state.

(b) Not later than January 15 of each odd-numbered year, the interagency council shall submit a report to the governor, the lieutenant governor, and the speaker of the house of representatives on the activities of the council during the preceding two calendar years.

Sec. 161.902. PUBLIC AWARENESS CAMPAIGNS. The Department of State Health Services in the department's existing statewide or targeted public awareness campaigns to improve consumer health shall publicize the adverse consequences of obesity and steps people may take to prevent and reverse obesity.

Sec. 161.903. RESEARCH. The Department of State Health Services, with the assistance of the Texas Department of Insurance, shall identify and encourage evidence-based clinical interventions to prevent and treat obesity. The Department of State Health Services may promote guidelines for the medical community and insurers or other health benefit plan issuers in developing prevention or treatment plans for obesity-related health concerns.

Sec. 161.904. NUTRITION AND PHYSICAL ACTIVITY PROMOTION ANALYSIS. (a) The Department of State Health Services, with assistance from interested public and private entities, shall analyze the capacity of a local community selected by the department to improve the nutrition and physical activity behaviors within that community.

(b) In identifying a community in which to conduct the analysis, the department shall consider only communities with existing or potential resources that may be expended for the purpose of preventing or treating obesity-related health concerns in the community's population, including the resources of:

(1) the local health authority, health department, or public health district;

(2) the special supplemental nutrition program for women, infants, and children;

(3) school-based health clinics, coordinated school health programs, and school health advisory committees;

(4) state or federal diabetes funding;

(5) state or federal obesity-prevention funding;

(6) local media outlets; and

(7) other available sources of support.

(c) The department shall coordinate with existing community resources to:

(1) identify segments of the population that are not reached by current resources;

(2) determine whether current resources can be expanded to reach the missing segments of the population; and

(3) determine the feasibility of a comprehensive obesity-prevention initiative.

(d) The department shall analyze whether current resources in the community address:

(1) public awareness;

(2) school, community, and worksite interventions;

(3) clinical programs that improve nutrition and physical activity; and

(4) surveillance, research, and evaluation.

(e) The department shall work with the community to make recommendations regarding:

(1) the introduction of new health-related activities into the community;

(2) the reallocation of existing resources for health-related activities in the community to address the problem of obesity; and

(3) monitoring the progress of the community while the community implements the changes.

(f) The department shall coordinate with community resources to conduct the analysis over a three-year period.

(g) This section expires September 1, 2009.

SECTION 2. Title 2, Agriculture Code, is amended by adding Chapter 22 to read as follows:

#### CHAPTER 22. NUTRITION IN PUBLIC SCHOOLS

Sec. 22.001. GENERAL RESPONSIBILITIES. The department shall:

(1) develop recommendations to promote participation in the national school breakfast and lunch programs;

(2) expand the use of Texas agricultural products in public school breakfast and lunch meals to:

(A) improve the quality, nutritional content, and cost-efficiency of the meals; and

(B) promote Texas agriculture, with special emphasis on fresh Texas-grown fruits and vegetables;

(3) identify and create menus for public school breakfast and lunch meals that are more attractive to students, and help schools develop guidelines to provide adequate time and space for students to eat public school meals; and

(4) collect information related to innovative community and school district partnerships designed to improve education regarding the benefits of healthy eating habits and regular physical activity, including partnerships with:

(A) nonprofit organizations that provide health and fitness programs for school-age children; and

(B) local grocery providers to create donation programs to assist with universal breakfast and lunch programs for children in the district.

Sec. 22.002. OPERATION OF BREAKFAST PROGRAMS IN CERTAIN DISTRICTS. (a) If at least 60 percent of the students enrolled in a school district are eligible to participate in the national free or reduced-price breakfast program established under 42 U.S.C. Section 1751 et seq., the district shall consider seeking approval to act under the appropriate special assistance provision of the program that allows the district to:

(1) offer free breakfast to all students enrolled at each campus in the district; and

(2) reduce administrative costs and requirements associated with the program.

(b) A school district that does not have sufficient funds available to provide breakfast under Subsection (a) may apply to nonprofit foundations, governmental entities, or other sources for grants for that purpose.

Sec. 22.003. BREAKFAST FUND; GIFTS, GRANTS, AND DONATIONS.

(a) The breakfast fund is an account established in the general revenue fund. The fund is composed of money appropriated to the

fund and gifts, grants, and donations accepted for the fund under this section. Money in the breakfast fund may be appropriated only to the department to provide grants to school districts to operate breakfast programs under Section 22.002.

(b) The department may seek and accept gifts, grants, and donations for the breakfast fund from appropriate nonprofit foundations, governmental entities, and other sources.

(c) All gifts, grants, and donations of money accepted under this section shall be deposited to the credit of the breakfast fund.

Sec. 22.004. SCHOOL NUTRITION POLICY. (a) The commissioner shall, by rule, establish public school nutrition policy in accordance with this chapter.

(b) In establishing public school nutrition policy, the commissioner may seek input from the commissioner of education and the commissioner of state health services.

(c) Public school nutrition policy may be more stringent than any recommended or required federal guidelines.

(d) The commissioner may not change public school nutrition policy in a manner that would allow more foods of minimal nutritional value to be served at a public school than the amount allowed by the policy on January 1, 2005.

Sec. 22.005. ACCESS TO CERTAIN BEVERAGES RESTRICTED. A carbonated beverage may not be sold on a public school campus in a container larger than 12 ounces. Not more than 30 percent of beverages in vending machines on a public school campus may be sugared, carbonated drinks.

SECTION 3. Subsection (a), Section 38.013, Education Code, is amended to read as follows:

(a) The agency shall make available to each school district one or more coordinated health programs designed to prevent obesity, cardiovascular disease, and Type 2 diabetes in elementary school students. Each program must provide for coordinating:

- (1) health education;
- (2) physical education and physical activity;
- (3) nutrition services, which may include nutrition education for elementary school children and their parents; and
- (4) parental involvement.

SECTION 4. Subchapter A, Chapter 38, Education Code, is amended by adding Section 38.017 to read as follows:

Sec. 38.017. MENTOR PROGRAM. School health advisory councils, working together with student councils, peer-assisted leadership groups, and other student groups, may develop mentoring programs for middle school and high school students by training students to act as friends or mentors and offer peer support to other students on weight-loss programs approved by their physicians and parents or legal guardians and to students coping with health problems related to obesity. The district and the school health advisory council shall monitor mentors and students participating in a mentoring program.

SECTION 5. Chapter 38, Education Code, is amended by adding Subchapter C to read as follows:

#### SUBCHAPTER C. RECOGNIZING EXTRAORDINARY ACHIEVEMENT IN CHILDREN'S HEALTH (REACH) PROGRAM

Sec. 38.101. DEFINITIONS. In this subchapter:

- (1) "Department" means the Department of Agriculture.
- (2) "Program" means the Recognizing Extraordinary Achievement in Children's Health (REACH) Program.

Sec. 38.102. PROGRAM. (a) The Department of Agriculture, as the state agency responsible for administering the United States Department of Agriculture's child nutrition programs, shall administer the Recognizing Extraordinary Achievement in Children's Health Program.

(b) The department may consult with the agency, regional education service centers, local school health advisory councils, and other appropriate entities in establishing and administering the program.

Sec. 38.103. ELIGIBILITY FOR PARTICIPATION. A school is eligible to participate in the program if the school participates in the national school lunch program established under 42 U.S.C.

Section 1751 et seq. or the national school breakfast program provided for by the Child Nutrition Act of 1966 (42 U.S.C. Section 1773).

Sec. 38.104. MEASURING HEALTH PERFORMANCE. (a) The department shall measure the health performance of each school that participates in the program by using:

(1) the school health index developed by the Centers for Disease Control and Prevention of the United States Public Health Service; and

(2) any other criteria adopted by the department.

(b) The department, in consultation with school health experts, shall determine the minimum health performance score a school must achieve under this section for the school to be eligible for a monetary program award under Section 38.105.

(c) In determining a school's health performance score under Subsection (b), the department, as provided by department rule, shall award additional points to a school that has a high percentage of educationally disadvantaged students.

(d) A school that achieves the minimum health performance score under Subsection (b) may receive a monetary program award only if sufficient funds are available under Section 38.106.

Sec. 38.105. PROGRAM AWARDS. (a) Subject to the availability of funding for the program, the department may provide a school that participates in the program and achieves the minimum health performance score under Section 38.104(b) with a monetary program award.

(b) The department by rule shall establish the criteria for determining the amount of money awarded to a school. The criteria must include consideration of the average daily attendance and the grade levels provided at the applicant schools.

(c) The department may provide a nonmonetary award to a school as determined by the department.

Sec. 38.106. FUNDING. (a) The department may solicit and accept gifts and grants for the benefit of the program.

(b) The department shall administer the program using gifts and grants received under Subsection (a) and funds appropriated to the department for program purposes.

(c) A school may use the monetary program award as determined by the school, but should use a portion of the money to pay for implementing the program or administering new or administering existing health improvement programs at the school.

Sec. 38.107. APPLICATIONS. (a) An eligible school may apply to the department to participate in the program. In applying, the school shall provide the department with:

(1) the completed school health index assessment described by Section 38.104(a)(1) for the school;

(2) information concerning the average daily attendance of students at the school;

(3) a statement of the number of educationally disadvantaged students at the school; and

(4) any other information the department requires.

(b) Before submitting the application to the department, a school must present the application for verification and approval to the superintendent of the school district in which the school is located or the superintendent's designee or to any other official determined by the department.

Sec. 38.108. AGREEMENT. The department shall enter into an agreement with each school that participates in the program before the school receives a monetary program award from the department. The agreement must:

(1) specify any recordkeeping requirements for participation in the program; and

(2) provide that the department or its designee may audit records required under Subdivision (1) and otherwise monitor compliance with program rules.

Sec. 38.109. RULES. The department may adopt rules as necessary to administer this subchapter.

SECTION 6. Subchapter D, Chapter 262, Occupations Code, is amended by adding Section 262.153 to read as follows:

5-1        Sec. 262.153. DUTY TO PROVIDE NUTRITIONAL EDUCATION  
 5-2 INFORMATION. A dental hygienist shall provide nutrition  
 5-3 information related to oral health with dental hygiene services  
 5-4 performed in schools, Head Start centers, and day-care facilities  
 5-5 to help establish good nutritional and oral care habits at the  
 5-6 earliest age possible in accordance with nationally recognized  
 5-7 guidelines for oral health.

5-8        SECTION 7. (a) The Department of State Health Services  
 5-9 shall analyze and evaluate whether a statewide wellness council  
 5-10 would assist the department in promoting consumer health and  
 5-11 educating Texans on the importance of proper nutrition and physical  
 5-12 activity in preventing obesity-related health concerns. The  
 5-13 wellness council would promote and advance a healthy community  
 5-14 through workplace activities in the public and private sectors. In  
 5-15 analyzing and evaluating the statewide wellness council, the  
 5-16 department shall consider whether the council could achieve  
 5-17 objectives related to health care cost containment, reduced  
 5-18 absenteeism, improved employee health status, and improved morale.  
 5-19 Not later than September 1, 2006, the Department of State Health  
 5-20 Services shall submit a report to the governor, lieutenant  
 5-21 governor, and speaker of the house of representatives regarding the  
 5-22 department's recommendation for the creation of a statewide  
 5-23 wellness council.

5-24        (b) The Texas Department of Insurance shall analyze and  
 5-25 evaluate the changes in law needed to require health insurers and  
 5-26 other health benefit plan issuers to provide coverage for the  
 5-27 treatment and prevention of obesity, including coverage for  
 5-28 counseling of overweight and obese individuals. Not later than  
 5-29 September 1, 2006, the Texas Department of Insurance shall submit a  
 5-30 report to the governor, lieutenant governor, and speaker of the  
 5-31 house of representatives regarding the department's  
 5-32 recommendations for required changes in law.

5-33        SECTION 8. (a) Not later than October 1, 2005, the  
 5-34 Department of State Health Services shall begin the analysis  
 5-35 required by Section 161.904, Health and Safety Code, as added by  
 5-36 this Act.

5-37        (b) Not later than December 31 of each even-numbered year  
 5-38 through December, 2010, the Department of State Health Services  
 5-39 shall submit a report to the governor, lieutenant governor, and  
 5-40 speaker of the house of representatives regarding the department's  
 5-41 findings and analysis under Section 161.904, Health and Safety  
 5-42 Code, as added by this Act.

5-43        (c) As soon as practicable after September 1, 2005, the  
 5-44 commissioner of agriculture shall adopt any rules necessary to  
 5-45 implement Chapter 22, Agriculture Code, as added by this Act.

5-46        (d) If a state or local governmental entity determines that  
 5-47 a waiver or authorization from a federal agency is necessary to  
 5-48 implement a provision of Chapter 22, Agriculture Code, as added by  
 5-49 this Act, the state or local governmental entity shall request the  
 5-50 waiver or authorization and may delay implementing that provision  
 5-51 until the waiver or authorization is granted.

5-52        (e) To the extent carbonated beverages on a public school  
 5-53 campus are sold, or beverages in vending machines on a public school  
 5-54 campus are provided, pursuant to a contract, Section 22.005,  
 5-55 Agriculture Code, as added by this Act, applies only to carbonated  
 5-56 beverages on a public school campus sold, or beverages in vending  
 5-57 machines on a public school campus provided, pursuant to a contract  
 5-58 executed or renewed on or after the effective date of this Act.

5-59        (f) Subchapter C, Chapter 38, Education Code, as added by  
 5-60 this Act, applies beginning with the 2005-2006 school year.

5-61        SECTION 9. This Act takes effect September 1, 2005.

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