

# HOUSE BILL REPORT

## 2ESHB 1508

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### As Passed Legislature

**Title:** An act relating to promoting student health and readiness through meal and nutrition programs.

**Brief Description:** Promoting student health and readiness through meal and nutrition programs.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Stonier, Dolan, Ortiz-Self, Riccelli, Orwall, Peterson, Sawyer, Doglio, Gregerson, Slatter, Frame, Macri, Bergquist, Senn, Ryu, Kloba, Stanford, Sells, Farrell, Lovick, McBride, Pollet, Hudgins, Jinkins, Kagi, Appleton, Goodman, Tharinger, Clibborn, Ormsby, Cody, Santos, Fey and Pettigrew).

### Brief History:

#### Committee Activity:

Education: 2/2/17, 2/9/17 [DPA];

Appropriations: 2/22/17, 2/23/17 [DPS(APP)].

#### Floor Activity:

Passed House: 3/2/17, 90-8.

Passed House: 5/2/17, 81-11.

Passed House: 5/25/17, 84-10.

Passed House: 1/10/18, 83-15.

Senate Amended.

Passed Senate: 1/31/18, 43-5.

House Concurred.

Passed House: 2/19/18, 87-8.

Passed Legislature.

### Brief Summary of Second Engrossed Substitute Bill

- Requires qualifying high-needs schools, beginning in the 2019-20 school year and until June 30, 2028, to offer breakfast after the bell (BAB) programs to students after the beginning of the school day.
- Specifies that the period of time designated for student participation in a BAB program is considered instructional time if required conditions are met.
- Modifies school meal grant provisions to include provisions for BAB programs and other purposes.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

- Directs the Joint Legislative Audit and Review Committee to conduct and complete an analysis of BAB programs by December 1, 2026.
- Authorizes the OSPI to coordinate with the Washington State Department of Agriculture to promote new and existing regional markets programs, including farm-to-school initiatives and small farm direct marketing assistance.
- Authorizes the OSPI to award grants to school districts to collaborate with community-based organizations, food banks, and farms or gardens for reducing high school dropout occurrences through farm engagement projects.

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## HOUSE COMMITTEE ON EDUCATION

**Majority Report:** Do pass as amended. Signed by 16 members: Representatives Santos, Chair; Dolan, Vice Chair; Stonier, Vice Chair; Harris, Ranking Minority Member; Muri, Assistant Ranking Minority Member; Bergquist, Caldier, Johnson, Kilduff, Lovick, Ortiz-Self, Senn, Slatter, Springer, Steele and Stokesbary.

**Minority Report:** Without recommendation. Signed by 2 members: Representatives McCaslin and Volz.

**Minority Report:** Do not pass. Signed by 1 member: Representative Hargrove.

**Staff:** Ethan Moreno (786-7386).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill by Committee on Appropriations be substituted therefor and the substitute bill do pass. Signed by 24 members: Representatives Ormsby, Chair; Robinson, Vice Chair; MacEwen, Assistant Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Bergquist, Caldier, Cody, Fitzgibbon, Hansen, Harris, Hudgins, Jinkins, Kagi, Lytton, Manweller, Nealey, Pettigrew, Pollet, Sawyer, Senn, Springer, Sullivan, Tharinger and Wilcox.

**Minority Report:** Do not pass. Signed by 8 members: Representatives Chandler, Ranking Minority Member; Buys, Condotta, Haler, Schmick, Taylor, Vick and Volz.

**Staff:** Jessica Harrell (786-7349).

### **Background:**

#### Child Nutrition Programs.

There are a variety of child nutrition programs subsidized by the United States Department of Agriculture and administered by the state. The programs include the National School Lunch Program (NSLP), the School Breakfast Program (SBP), the Child and Adult Care Food Program, the Summer Food Service Program, the Fresh Fruit and Vegetable Program, and the Special Milk Program. The NLSP and the SBP are federally assisted meal programs

operating in public and nonprofit private schools and residential childcare institutions. The programs provide nutritionally balanced, low-cost, or free lunches to children each school day.

#### Breakfast After the Bell Programs.

Breakfast After the Bell (BAB) programs include several food service models where breakfast is served after the beginning of the regular school day, rather than in the cafeteria before school starts. Research on school breakfasts in other states indicates that participation in school breakfast programs is higher in schools using innovative breakfast models, such as breakfast in the classroom models that make breakfast part of the school day. A number of states have adopted legislation requiring schools with large populations of free and reduced price meal-eligible students to implement a BAB program.

#### Free and Reduced Price Meals.

To qualify for free school meals, a student's family income must be at or below 130 percent of the federal poverty level. Students whose families have an income between 130 percent and 185 percent of the federal poverty level are eligible for reduced-price meals. Students whose families earn more than 185 percent of the poverty level pay full price, but the meals are federally subsidized to some extent. According to the 2015-16 free and reduced price meals (FRPM) eligibility data of the Office of the Superintendent of Public Instruction (OSPI), over 476,000 public school students (44.4 percent) in Washington were reported as eligible for FRPM, with more than 405,000 public school students (38 percent) reported as eligible for free meals.

#### Community Eligibility Provision and Provision 2.

The Community Eligibility Provision (CEP) of the federal Healthy, Hunger-Free Kids Act and Provision 2 of the National School Lunch Act provides an alternative to household applications for FRPM by allowing schools with high numbers of low-income students to serve free meals to all students. A school, group of schools, or district is eligible for the CEP if at least 40 percent of its students are identified as eligible for free meals through means other than household applications (for example, students directly certified through the Supplemental Nutrition Assistance Program or Temporary Assistance for Needy Families, and foster, homeless, and migrant students). In the 2016-17 school year, there were 58 districts and 208 school sites participating in the CEP.

Under Provision 2, in year one, a school makes FRPM eligibility determinations and reports daily meal counts by type for federal meal reimbursement, but all students are served meals at no charge. In years two through four, a school continues to serve all children at no charge, but counts only the total number of reimbursable meals served. In the 2016-17 school year, there were eight districts and one tribal school participating wholly or partially in both breakfast and lunch under Provision 2, and six school districts wholly or partially participating for breakfast only.

#### School Breakfast Programs.

The federal SBP provides cash assistance to states to operate nonprofit breakfast programs in schools and residential childcare institutions. According to the United States Department of Agriculture, in October 2016, the average daily participation in Washington in the school breakfast program was 201,252.

Under federal guidelines, if 40 percent or more of the lunches served to students at a school in the second preceding school year were served at a free or reduced price, the school is eligible for federal severe need reimbursements. Under state law, severe need schools are required to offer school breakfast programs for students. These schools must serve breakfast to all students, but may charge students who do not qualify for FRPM.

#### State Support for School Breakfasts.

The Legislature has appropriated state funds specifically to support school breakfasts by:

- eliminating the breakfast and lunch copays for students eligible for reduced price meals in kindergarten through third grade;
- reimbursing school districts for school breakfasts served to students eligible for free and reduced price lunches; and
- providing grants to districts to initiate and expand school breakfast programs.

#### Grants for School Breakfast and Lunch Programs.

To the extent funds are provided in an operating or supplemental budget, the Superintendent of Public Instruction (SPI) may award grants to school districts to:

- increase participation in school breakfast and lunch programs;
- improve program quality; and
- improve the equipment and facilities used in the programs.

School districts seeking the grant funds must demonstrate that they have applied for applicable federal funds before applying for the state grants.

The SPI, to the extent such funds are provided in an operating or supplemental budget, is directed to increase the state support for school breakfasts and lunches.

#### Instructional Hours.

In accordance with the state's program of basic education, school districts are required to provide a specified minimum number of instructional hours per year, which are defined as those hours during which students are provided the opportunity to engage in educational activity planned by, and under the direction of, school district staff. Time spent on meals does not count as instructional hours.

#### School-related Farm Programs.

The Washington State Department of Agriculture (WSDA) operates a Farm to School Program that fosters relationships between schools and agricultural producers in the state. According to the WSDA, the goal of the program is to support expanding economic opportunities for farmers while educating students about the connections between food, farming, health, and the environment. The program provides information and assistance to interested parties, and provides specified assistance and services to schools and farms. The program works closely with the Small Farm and Direct Marketing Program of the WSDA, a program that seeks to increase the economic viability of small farms, build community vitality, and improve the environmental quality of the region.

#### **Summary of Second Engrossed Substitute Bill:**

### Breakfast After the Bell Programs: Implementation and Definitions.

If funded in a biennial or supplemental operating budget, beginning in the 2019-20 school year, each high-needs school, unless meeting exemption criteria, must offer a BAB program at the beginning of the school day and provide adequate time for the students to consume the offered food. The requirement to offer BAB programs in qualifying high-needs schools expires June 30, 2028.

Pertinent terms for BAB programs are defined, including:

- "*breakfast after the bell*" means a breakfast that is offered to students after the beginning of the school day. Examples of breakfast after the bell models are also specified in the definition; and
- "*high-needs school*" means any public school that: has an enrollment of 70 percent or more students eligible for FRPM in the prior school year; or is using Provision 2 or the CEP to provide universal meals and has a claiming percentage of 70 percent or more for FRPM.

High-needs schools with 70 percent or more FRPM eligible students participating in both breakfast and lunch programs are exempt from the requirement to offer a BAB program.

The period of time designated for student participation in a BAB program is considered part of instructional time (and instructional hours) if students are provided the opportunity to engage in educational activity that is part of the regular instructional program concurrently with the consumption of breakfast.

All breakfasts served in a BAB program must comply with federal meal patterns and nutrition standards for school breakfast programs, but schools may determine the BAB service model that best suits its students. When choosing foods to serve in a BAB program, schools must give preference to healthful and fresh, and if feasible, foods grown in Washington.

The BAB programs, including the provision of breakfast, are not considered part of the definition of or funding of the program of basic education under Article IX of the state Constitution.

### Agency Duties and Grants.

The OSPI must develop and distribute procedures and guidelines by January 2, 2019, to implement BAB programs, and offer related training and technical marketing assistance to public schools and school districts. The OSPI must also:

- maintain a list of opportunities for philanthropic support of school breakfast programs and make the list available to schools interested in a BAB program;
- incorporate the annual collection of information about BAB delivery models into existing data systems and to make the information publically available; and
- By December 1, 2018 and as needed thereafter, develop and distribute best practices and provide technical assistance to school districts on strategies for selecting food items that are low in added sugar.

With limited exceptions, the BAB-related duties of the OSPI expire on June 30, 2028.

To the extent that funds are appropriated for this purpose, the OSPI must administer one-time start-up allocation grants to each high-needs school implementing a BAB program. The grant funds must be used for the costs associated with launching a BAB program, including but not limited to, equipment purchases, training, additional staff costs, and janitorial services.

#### Grant Funding.

To the extent funds are appropriated for this purpose, the SPI may award grants to school districts to:

- increase awareness of and participation in school breakfast and lunch programs, including BAB programs;
- improve program quality, including the nutritional content of program food and the promotion of nutritious food choices by students;
- promote innovative school-based programs, including but not limited to developing organic gardens that provide produce used in school breakfast or lunch programs; and
- improve the equipment and facilities used in the programs.

If applicable, school districts must demonstrate that they have applied for applicable federal funds before applying for the grant funds.

The SPI is also directed, to the extent funds are appropriated for this purpose, to increase the state support for school breakfasts and lunches, including BAB programs.

#### Analysis of Breakfast after the Bell Programs.

The Joint Legislative Audit and Review Committee must conduct an analysis of BAB programs established in schools. The analysis of the schools establishing BAB programs must include a review of any changes in student:

- tardiness and absenteeism;
- suspensions;
- reported illnesses and visits to nurses' offices;
- results on standardized tests; and
- graduation rates.

The analysis must also include a review of the outcomes of similar programs or efforts in other states. The analysis, including any findings and recommendations, must be completed and submitted to the SPI and the education committees of the House of Representatives and the Senate by December 1, 2026.

#### School-related Farm Programs.

The OSPI, to the extent funds are appropriated for this purpose, is authorized to coordinate with the WSDA to promote and facilitate new and existing regional markets programs, including farm-to-school initiatives and small farm direct marketing assistance. In coordinating with the WSDA, the OSPI is encouraged to provide technical assistance, including outreach and best practices strategies, to school districts with farm-to-school initiatives. Additionally, school districts and other institutions may coordinate with the WSDA to promote and facilitate new and existing farm-to-school initiatives.

Subject to the provision of funding for this purpose, the regional markets programs of the WSDA must be a centralized connection point for schools and other institutions for accessing and sharing information, tools, ideas, and best practices for purchasing Washington-grown food.

The regional markets programs, to the extent funds are appropriated for this purpose, may also support school districts in establishing or expanding farm-to-school initiatives by providing information and guidance to overcome barriers to purchasing Washington-grown food.

The OSPI, to the extent funds are appropriated for this purpose, may award grants to school districts to collaborate with community-based organizations, food banks, and farms or gardens for reducing high school dropout occurrences through farm engagement projects. Projects established by school districts that are eligible for grants must comply with specified criteria.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony (Education):**

(In support) This bill represents current efforts to address the problem of kids coming to school hungry. Some provisions of this bill were considered in previous legislation that passed the House of Representatives and was supported in the Senate. The lack of food is a barrier to the learning success of students. The goal is to further the conversation as to what the Legislature can do help kids be ready to learn.

The BAB portion of the bill is a legislative priority for the Washington State Parent Teacher Association for many years. Some children have very little time to eat breakfast after their bus arrives, but before the school day begins. Some districts have piloted BAB programs, and breakfast participation rates have increased. Additionally, BAB programs make a big difference in the lives of children.

The bill should be revised to include technical changes in section 9.

Eating breakfast at schools improves academic performance and behavior. Students also show improved attendance, decreased tardiness, and fewer disciplinary referrals.

Some schools and private entities are working together to pilot BAB programs, but absent a mandate, the school-by-school approach to the program is not equitable. These programs work across grade levels and schools of different sizes. They also produce better outcomes for kids, increase breakfast participation, and leverage additional dollars for schools.

The farm-to-school provisions in the bill deserve support. The opportunity to gain institutional buyers, such as schools, will help to make farms viable. The WSDA farm-to-school programs referenced in the bill should be supported, and funding and staff capacity for these programs should be restored. The funding should be adequate and reliable.

Children need consistent access to food for full development of their bodies and minds, but many families are struggling with food insecurity and many children are not getting the food they need to grow and thrive. Children who have regular access to school meals have better educational outcomes, and kids who skip meals are at greater risk of obesity and related health problems. The bill also includes resources so that schools can improve their child nutrition programs.

During the school year, school meals play an important role in providing kids regular access to meals. Fighting hunger requires public/private partnership. Private organizations are supplementing food needs for students through backpack programs at schools. Safety net food is provided to high-needs students for weekends, but the students without access to meals at school sometimes eat this food during the week. The farm-to-school and small farm direct marketing programs in the bill are also important and funding for them should be restored.

(Opposed) None.

(Other) The Board of Health performed a health impact review on the bill. According to the review, the bill has the potential to increase the number of low-income and children of color who eat breakfast and lunch. There is also evidence that participation in BAB programs has potential to improve students' diet quality and improve educational outcomes. The bill has the potential to narrow educational opportunity gaps and decrease educational disparities.

There is support for the increased breakfast participation that would result from this bill and the amended definition of instructional hours.

The BAB programs should, if feasible, give preference to Washington-grown food. The implementation schedule called for in the bill should be changed, as the schedule might be difficult. In addition, reduced-price students should be considered in the bill, too.

#### **Staff Summary of Public Testimony (Appropriations):**

(In support) Children learn better and are more successful students when they are fed and have a proper breakfast. This bill will allow children to have breakfast without missing class and gives districts implementation flexibility to design their own BAB programs. The farm-to-school provisions in the bill foster community outreach partnerships and learning opportunities. Hunger does not discriminate—it is boundless and the child is not at fault. This legislation can improve student outcomes and equity.

Washington is forty-fifth in the nation in participation of breakfast programs for low-income students. The states that have increased breakfast participation have moved to BAB programs because they feed students and leverage millions of federal dollars. Enacted BAB programs are the equitable way to feed school children. Districts have the option to offer

BAB programs, but most do not. The provision clarifying the definition of "instructional hours" is helpful and would allow more schools to implement BAB programs. The BAB programs are not new—they use existing school breakfast programs, which are designed to address hunger, and move the time the food is available. There are one-time start-up costs associated with BABs, but the state can leverage millions of dollars for BAB programs through federal reimbursements. Implemented BAB programs in other states have resulted in better attendance, fewer nurses' visits, and better test scores.

(Opposed) None.

(Other) The amendments adopted by the Education Committee related to the preference for Washington-grown foods and the implementation of the copay elimination schedule are appreciated and will impact the neediest students. The revised definition of "instructional hours" will help districts make access to breakfast more equitable. The amendment related to added sugar would be difficult for school districts to implement, especially small ones, as school districts would need to contact food manufacturers to obtain the necessary sugar content information.

The farm-related provisions in section 10 of the bill are supported. During the recession, two-thirds of the funding at the WSDA for direct marketing farm-to-school programs was cut. Now is the time to restore this funding and the associated staff. The program provides connections between schools and the local farms that grow the nutritious and healthy foods.

**Persons Testifying** (Education): (In support) Representative Stonier, prime sponsor; Michael Steffen, Washington State Parent Teacher Association; Peggy Carlson; Donna Parsons, Office of the Superintendent of Public Instruction; Lauren McGowan, United Way of King County; Dan Muir, Pierce County Farm to School; Carrie Glover, WithinReach/Childhood Obesity Coalition; and Laura Titzer, Northwest Harvest.

(Other) Alexandra Montano, State Board of Health; Mitch Denning, Alliance of Educational Associations; and Janis Aikens-Campbell, Washington School Nutrition Association.

**Persons Testifying** (Appropriations): (In support) Corina Pfeil, Washington State Parent-Teacher Association; and Lauren McGowan, United Way of King County.

(Other) Janis Campbell-Aikens, Washington School Nutrition Association; and Tom Davis, Washington Farm Bureau.

**Persons Signed In To Testify But Not Testifying** (Education): None.

**Persons Signed In To Testify But Not Testifying** (Appropriations): None.