

# SENATE BILL REPORT

## SB 5037

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As of January 15, 2021

**Title:** An act relating to establishing transparent school opening metrics tied to COVID-19 prevalence.

**Brief Description:** Establishing transparent school opening metrics tied to COVID-19 prevalence.

**Sponsors:** Senators Braun, Mullet, Brown, Dozier, Holy, King, Schoesler, Wagoner and Wilson, L..

**Brief History:**

**Committee Activity:** Early Learning & K-12 Education: 1/18/21.

**Brief Summary of Bill**

- Directs school districts and charter schools to use certain metrics during COVID-19 to determine the education modality for the schools in each county.
- Requires in-person learning in certain circumstances.
- Requires the Secretary of Health, State Board of Health, and local health officers to act in accordance with the education modality requirements.
- Prohibits emergency orders by the Governor from superseding, waiving, or suspending statutory and regulatory obligations concerning education modalities.

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### SENATE COMMITTEE ON EARLY LEARNING & K-12 EDUCATION

**Staff:** Ailey Kato (786-7434)

**Background:** Metrics. On December 16, 2020, Governor Proclamation 20-09.3

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recommended the use of new Department of Health (DOH) guidance with recommendations for modes of learning based on county-level COVID-19 health metric trends. The DOH guidance provides the following categories and recommendations:

*High COVID-19 Activity:*

- greater than 350 cases per 100,000 over 14 days and test positivity greater than 10 percent; and
- recommends phasing in-person learning for Pre-K through grade 5 starting with the earlier grades and those with the highest need from any grade.

*Moderate COVID-19 Activity:*

- 50-350 cases per 100,000 over 14 days and test positivity between 5-10 percent;
- recommends phasing in-person learning starting with any elementary student not already in-person and middle school students; and
- recommends adding high school after middle school and when rates drop below 200 cases per 100,000 over 14 days.

*Low COVID-19 Activity:*

- less than 50 cases per 100,000 over 14 days and test positivity less than 5 percent; and
- recommends the provision of in-person learning for all students prioritizing full-time in-person learning for elementary students.

Outbreaks. DOH rule requires schools to notify the local health department of cases and outbreaks that may be associated with the school. When there is an outbreak of a contagious disease, the local health officer must take all appropriate actions deemed to be necessary to control or eliminate the spread of the disease within their jurisdiction including:

- closing part or all of the affected school or schools;
- closing other schools;
- canceling activities or functions at schools; and
- excluding from schools any students, staff, and volunteers who are infectious or exposed and susceptible to the disease.

Authority. Under state law, a variety of statutes exist relating to the authority of the Governor and other agencies to make and enforce policies in an emergency or similar situation.

*Governor.* After proclaiming a state of emergency, the Governor may issue an order prohibiting activities that the Governor reasonably believes should be prohibited to help preserve and maintain life, health, property, or the public peace. The Governor may also waive or suspend certain types of statutory and regulatory obligations and limitations with extension by the Legislature.

*Health Agencies.* Local health officers, acting under the direction of the local board of

health or administrative officer, must control and prevent the spread of any dangerous, contagious, or infectious disease that may occur within the jurisdiction. The State Board of Health has the authority to adopt rules for the prevention and control of infectious and noninfectious diseases. The Secretary of DOH has the authority to act in the event that local health officers fail or are unable to do so, or when in an emergency the safety of the public health demands it, or by agreement with the local health office or local board of health.

*School Districts.* School districts have authority to close a school for, among other reasons, an unforeseen natural event, such as an epidemic, that has the direct or indirect effect of rendering one or more district facilities unsafe, unhealthy, inaccessible, or inoperable.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Proposed Substitute):** Metrics. When the governor proclaims a state of emergency in response to COVID-19, school districts must use certain metrics to determine the education modality for the schools by county. Education modality means the type of setting to deliver education services.

School districts that meet any of the following standards must offer in-person learning:

- school districts in counties below a 5 percent positivity standard must offer in-person learning to grades K-12;
- school districts in counties with a COVID-19 case rate below 200 cases per 100,000 over 14 days must offer in-person learning to grades K-12; or
- school districts in counties with a COVID-19 case rate below 350 cases per 100,000 over 14 days must offer in-person learning to grades K-8.

School districts that are above the standards may choose the education modality for their students.

Positivity standard means the percent of individuals testing positive for COVID-19 as reported by DOH or local health departments. It must be calculated by comparing the number of individuals testing positive over the past week to the total number of tests during the week.

If a school district is located in more than one county, a school district must determine the average positivity standard and average number of cases per 100,000 of all the counties in which it is located to determine the education modality.

School districts can meet the in-person learning requirement if school districts offer hybrid or rotating schedules with in-person and distance learning. School districts that offer in-person learning must also offer full-time distance learning as an option.

Outbreaks. If there is an outbreak of COVID-19 at a particular school, a school district and

local health officer must take all appropriate actions deemed necessary to control or eliminate the spread of COVID-19 within the affected school including:

- closing part or all of the affected school;
- canceling activities or functions at the affected school; and
- excluding from the affected school any students, staff, and volunteers who are infectious, or exposed and susceptible to the disease.

Outbreak means the school meets the following criteria:

- two or more cases of laboratory positive COVID-19 among students or staff;
- the cases have symptom onsets within a 14-day period of each other;
- plausible epidemiological-linkage in the school; and
- no other known epidemiological-linkage outside of the school.

Charter Schools. All of the requirements on school districts also apply to charter schools.

Authority. The Governor may not issue orders that supersede, waive, or suspend statutory and regulatory obligations or limitations concerning education modalities during COVID-19. The Secretary of Health, State Board of Health, and local health officers must act in accordance with the requirements regarding education modalities during COVID-19.

This act expires upon the termination of the state of emergency pertaining to COVID-19.

**Appropriation:** None.

**Fiscal Note:** Requested on January 12, 2021.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.