THE ROLE OF ADVOCATES IN STATE-LEVEL COMPETITIVE FOOD LEGISLATION FORMATION: A COMPARATIVE CASE STUDY

by

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ABSTRACT

The Role of Advocates in State-Level Competitive Food Legislation Formation:

A Comparative Case Study

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In the absence of strong federal oversight over competitive foods—those items available in school vending machines, à la carte lines, school stores, and fundraisers—many states have enacted legislation to limit the availability and accessibility of unhealthy competitive foods. Evaluations of these policies show their promise in improving the healthfulness of school food environments, considered an important strategy for reducing childhood obesity. Yet little is known about the decision-making processes by which such legislation is formed and adopted.

Using a comparative case study design, this study describes and analyzes how and why state-level competitive food legislation adopted in 2010 changed during the legislative process, as well as identifies and characterizes the primary stakeholders in support and opposition of these bills and their relative effectiveness in influencing bill language and content. Five retrospective case studies were conducted, analyzed, and written independently using a standard protocol. Primary data from semi-structured key informant interviews were complemented with secondary data obtained through document review. Upon completion of the individual case studies, comprehensive summary tables were compiled and analyzed for recurring and unique themes, enabling conclusions to be drawn across cases.

Cross-case analysis yielded 10 key findings related to the dynamics of the legislative process and the roles played by various stakeholders. Of note, fiscal concerns regarding increased expenditures—but not lost revenues—are influential in the weakening of bill language and content. In addition, strong support from a large and diverse coalition may increase political influence, yet lead to weakened bill language in efforts to appease multiple interests. Examination of decision-making constructs revealed that advocates situated in highly cohesive and minimally constrained policy subsystems are more effective at influencing bill language and content than advocates in less cohesive and highly constrained policy subsystems. Likewise, advocates situated in coalitions characterized by high lobbying activity are not necessarily more effective in influencing bill language and content than advocates in coalitions with low lobbying activity. These and other findings can assist advocates, policymakers, and researchers in identifying potential strategies, barriers, collaborators, and opponents when seeking to create more healthful school food environments within their state.

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TABLE OF CONTENTS

SECTION I: BACKGROUND, THEORY, AND METHODOLOGY 1

Chapter 1: Background and Significance 2
Causes of Increasing Rates of Childhood Obesity 2
Childhood Obesity and School Meals Programs 4
Childhood Obesity and Competitive Foods 6
Regulating Competitive Foods 7
Recommended and voluntary nutrition guidelines 8
Federal, state, and local regulations 10
Financial implications of stricter competitive food policies 13
Study Purpose and Specific Aims 14
Significance 16

Chapter 2: Theoretical Framework 17
Public Policy Process 17
Advocacy Coalition Framework 18
Public Policy Decision-Making 21
The Role of Public Health Advocates in Public Policy Decision-Making 24
Conceptual Framework 33

Chapter 3: Methodology 37
Research Design and Rationale 37
Case Identification and Selection 38
Case identification 39
Case selection 40
Data Collection 43
Documents and archival materials 43
Identification of interview respondents 44
Interview protocol 46
Human subjects' protection 47
Data Analysis 47
Within-case analysis 47
Cross-case analysis 51
Validity and Reliability 51
Construct validity 52
Internal validity 52
External validity 53
Reliability 53

SECTION II: CASE STUDIES 54
National Context 54
Description of Common Legislative Process and Terms 55

Chapter 4: Virginia Senate Bill 414 60
Abbreviations 60
Introduction 60
Methods 61
Bill History and Timeline 62
Changes Made From Bill Introduction to Adoption 69
Tactics Used by Primary Stakeholders to Influence Bill Language and Content 72
Factors Affecting the Success of Stakeholders in Influencing Bill Language and Content 74
Factors Influencing the Decision-Making Process 75
Discussion and Lessons Learned 80

Chapter 5: Colorado House Bill 1335 84
Abbreviations 84
Introduction 84
Methods 87
Bill History and Timeline 87
Changes Made From Bill Introduction to Adoption 95
Tactics Used by Primary Stakeholders to Influence Bill Language and Content 98
Factors Affecting the Success of Stakeholders in Influencing Bill Language and Content 100
Factors Influencing the Decision-Making Process 101
Discussion and Lessons Learned 106

Chapter 6: Ohio Senate Bill 210 109
Abbreviations 109
Introduction 109
Methods 110
Bill History and Timeline 111
Changes Made From Bill Introduction to Adoption 121
Tactics Used by Primary Stakeholders to Influence Bill Language and Content 129
Factors Affecting the Success of Stakeholders in Influencing Bill Language and Content 132
Factors Influencing the Decision-Making Process 133
Discussion and Lessons Learned 142

Chapter 7: Massachusetts House Bill 2092 147
Abbreviations 147
Introduction 147
Methods 148
Bill History and Timeline 149
Changes Made From Bill Introduction to Adoption 154
Tactics Used by Primary Stakeholders to Influence Bill Language and Content 171
Factors Affecting the Success of Stakeholders in Influencing Bill Language and Content 175
Factors Influencing the Decision-Making Process 177
Discussion and Lessons Learned 183

Chapter 8: California Senate Bill 1413 188
Abbreviations 188
Introduction 188
Methods 192
Bill History and Timeline 192
Changes Made From Bill Introduction to Adoption 200
Tactics Used by Primary Stakeholders to Influence Bill Language and Content 204
Factors Affecting the Success of Stakeholders in Influencing Bill Language and Content 206
Factors Influencing the Decision-Making Process 207
Discussion and Lessons Learned 212

SECTION III: CROSS-CASE ANALYSIS AND CONCLUSIONS 218

Chapter 9: Cross-Case Analysis 219
General Overview of Case Studies 219
Changes in the Language and Content of Competitive Food Bills (Aim 1) 219
Stakeholders Supporting and Opposing State-Level Competitive Food Legislation (Aim 2) 228
Roles of Cohesion, Lobbying, and Constraints on Advocates' Relative Effectiveness (Aim 3) 243
Cohesion 244
Lobbying 246
Constraints 249
Lessons Learned Across Cases 251

Chapter 10: Conclusions and Implications 256
Review of the Study 256
Key Findings 257
Revised Conceptual Framework 260
Strengths and Limitations 262
Strengths 262
Limitations 264
Implications for Research 266
Implications for Practice and Policy 268

APPENDICES 273

Appendix A: National Nutrition Guidelines for Competitive Foods 274
Appendix A.1: Institute of Medicine: Nutrition Standards for Foods in Schools 274
Appendix A.2: Alliance for a Healthier Generation: School Beverage and Competitive Food Guidelines 277

Appendix B: Catalog of Competitive Food Bills Introduced in 2009-2010 279

Appendix C: Interview Invitation Letter 285

Appendix D: Interview Guides 287
Appendix D.1: Legislative Sponsor/Legislative Staff Interview Guide 287
Appendix D.2: Non-Governmental Advocate Interview Guide 290

Appendix E: Informed Consent Form 294

Appendix F: State-, Legislature-, and Bill-Level Factors Across Case Studies 296
Appendix F.1: State- and Legislature-Level Factors Across Case Studies 296
Appendix F.2: Bill-Level Factors Across Case Studies..... 297

REFERENCES..... 299

LIST OF TABLES

Table 2.1 Summary of decision-making models 22

Table 2.2 Typology of decision-making styles 23

Table 2.3 Overall impact of interest groups by state, 2006-2007 25

Table 2.4 Top 40 most influential interests in the 50 states, 2006-2007 26

Table 2.5 Roles of selected participants in the three stages of public health advocacy 28

Table 2.6 Description of variables used to assess legislative influence of advocates 32

Table 3.1 Summary of bills included in the study sample 43

Table 3.2 Distribution of interview respondents 46

Table 3.3 Ranking criteria for the level of conceptual framework constructs during the policymaking process of the competitive food bill 50

Table 3.4 Comparative case study tactics for four research design concepts 51

Table II.1 Summary of legislative characteristics across the five case states 58

Table 4.1 Differences between competing Virginia bills as introduced 65

Table 4.2 Timeline of major legislative actions and changes to Virginia SB414 68

Table 4.3 Ranking of conceptual framework constructs in terms of their levels during the policymaking process of Virginia SB414 76

Table 4.4 List of organizations registered or known to have lobbying activity around Virginia SB210, SB414, and/or HB1067; and their respective campaign contributions in Virginia, 2009-2010 78

Table 5.1 History of state-level legislative attempts to require improvements in the healthfulness of competitive food in Colorado public schools, 2004-2009 89

Table 5.2 Timeline of major legislative actions and changes to Colorado HB1335 94

Table 5.3 Ranking of conceptual framework constructs in terms of their levels during the policymaking process of Colorado HB1335 102

Table 5.4 List of organizations registered to have lobbying activity around Colorado HB1335, the number of months of lobbying records reported on their behalf, and their lobbyists' respective campaign contributions in Colorado, 2009-2010 104

Table 6.1 Timeline of major legislative actions and changes to Ohio SB210 119

Table 6.2 Ranking of conceptual framework constructs in terms of their levels during the policymaking process of Ohio SB210 133

Table 6.3 Organizations registered as lobbying around Ohio SB210 and/or HB373, the number of four-month periods of lobbying records reported on their behalf, affiliations with various Ohio groups, and state political contributions, 2009-2010 137

Table 7.1 Differences between competing Massachusetts bills as introduced 152

Table 7.2 Timeline of major legislative actions around Massachusetts HB2092 154

Table 7.3 Summary of selected changes to Massachusetts HB2092 language and content 155

Table 7.4 Ranking of conceptual framework constructs in terms of their levels during the policymaking process of Massachusetts HB2092 178

Table 7.5 Organizations registered with lobbyist activity around Massachusetts HB2092 or later versions, and their respective lobbyists' state campaign contributions, 2009-2010 182

Table 8.1 Comparison of California AB2704 and SB1413 at introduction and enrollment 197

Table 8.2 Timeline of major legislative actions and changes to California SB1413 199

Table 8.3 Ranking of conceptual framework constructs in terms of their levels during the policymaking process of California SB1413 208

Table 8.4 Organizations in support of California SB1413, number of three-month periods each organization reported lobbying for the bill, and state political contributions, 2009-2010 211

Table 9.1 Summary of major changes to bill language and content across cases 222

Table 9.2 Effect of bill language and content changes, by category, on adopted bills 224

Table 9.3 Examples of bill stakeholders across cases, by category 230

Table 9.4 Five prominent arguments made in support and opposition of competitive food bills across cases and the stakeholder categories that made the arguments 232

Table 9.5 Summary of legislative support and opposition, by political party, across cases 237

Table 9.6 Summary of key non-legislative stakeholders and the main tactics used to influence bill language and content across cases 241

Table 9.7 Rankings of conceptual framework constructs and cumulative effect of language and content changes on adopted bill across cases 244

Table 9.8 Summary of estimated fiscal impact and expenditures across cases 249

LIST OF FIGURES

Figure 2.1 Advocacy Coalition Framework diagram (2007) 19

Figure 2.2 Conceptual framework for studying the role of public health advocates on public policy decision-making 33

Figure 3.1 Comparative case study method 38

Figure 3.2 Flow diagram of case sample selection 42

Figure II.1 General process by which a bill becomes a law in each case state 56

Figure 10.1 Revised conceptual framework 261

LIST OF BOXES

Box 4.1 Virginia's competitive food policies prior to 2009 61
Box 5.1 Colorado's competitive food policies prior to 2009..... 85
Box 6.1 Ohio's competitive food policies prior to 2009 110
Box 6.2 Member organizations of the Ohio Business Roundtable..... 112
Box 6.3 Member organizations of the Healthy Choices for Healthy Children Coalition..... 114
Box 8.1 California's competitive food policies prior to 2010 189

SECTION I

BACKGROUND, THEORY, AND METHODOLOGY

This section begins with the study background, significance, and specific aims in Chapter 1. Chapter 2 describes the theoretical frameworks and constructs that serve as the foundation of the study, as well as provides a conceptual framework to guide the research and analysis. Chapter 3 outlines the study's research design, case selection strategy, and data collection and analysis techniques.

CHAPTER 1

BACKGROUND AND SIGNIFICANCE

Childhood obesity is a leading public health concern in the United States, currently affecting one in six (17%) American children and adolescents aged 2 to 19 years.[1] Despite a plateau in prevalence rates over the past decade,[1] childhood obesity (body mass index [BMI] $\geq$ 95th percentile for age and sex) continues to pose an increased risk for high blood pressure and dyslipidemia.[2] In addition, obese children often become obese adults,[3] thereby contributing to a growing burden of cardiovascular disease, diabetes, and certain cancers later in life.[4] Without immediate and effective solutions, today's children are likely to be the first generation to live shorter, less healthy lives than their parents.[5] This chapter provides a background on the causes of childhood obesity, followed by the study's purpose, specific aims, and significance.

Causes of Increasing Rates of Childhood Obesity

While energy imbalance is frequently cited as a main driver for obesity, differences in opinion remain as to the most important causes of this imbalance. There are at least three sides to this debate. The first identifies biology as playing a significant role, since a proportion of BMI variance has been attributed to genetic factors.[6] Studies of identical twins reveal that genetic predisposition is important in susceptibility to weight gain, though researchers are often quick to mention that the recent and rapid increases in childhood obesity have occurred in too short a time for population-wide genetic changes to explain the trends.[7] Another biological argument claims that humans are genetically predisposed to prefer sweet foods, and children quickly develop a preference for foods high in fat; these preferences are thought to have served an evolutionary purpose, as sweet and fatty foods signal high energy density.[8] Although these food preferences aided survival in times of famine, the current overabundance of food—

especially foods high in sugar and fat—makes this physiological preference both unnecessary and harmful.[8]

The second side of the debate emphasizes changes in individual food and fitness behaviors. In this view, it is an individual's (or parent's) responsibility to choose healthy foods, limit unhealthy foods, and engage in adequate physical activity; thus, rising obesity prevalence is a result of poor personal choices. For example, several lines of research in children have found positive associations between BMI or weight gain and fast food intake,[9] sugar-sweetened beverage consumption,[10] and television viewing and other sedentary behaviors.[11]

While public health experts do not deny the roles of biology and behavior in childhood obesity, there is growing evidence within the field that blames what Brownell[12] has called the "toxic environment," one that fosters inactivity and excess food consumption, thus leading to positive energy balance and weight gain. (Another term commonly used to describe the same phenomenon is "obesogenic" environment.[13]) For example, national trends, such as increased "screen time" as a result of new media forms, encourage more sedentary lifestyles. And with an ever-growing focus on academics, the percentage of students participating in daily school-based physical education has dropped considerably since the early 1990s.[14] The food environment has also changed over the past several decades; increases in portion sizes,[15] advances in food and beverage marketing,[16] and ubiquitous access to unhealthy snacks and sweetened beverages,[17] together with declines in the relative price of food—especially energy-dense items[18]—promote over-consumption.

The school food environment can be particularly influential as children spend roughly 180 days in school each year and often have the opportunity to consume two or more meals and snacks during the school day. Students participating in the United States Department of

Agriculture (USDA) school meal programs receive on average 31% of their daily caloric intake from lunch and 22% from breakfast.[19] Most students who eat school breakfast also eat school lunch and therefore consume more than half of their daily calories from school food.[20] Between-meal snacks obtained from vending machines, school stores, classrooms, and fundraisers may increase this amount. Ensuring the healthfulness of the school food environment is thus one strategy that could have a population impact.

Childhood Obesity and School Meals Programs

School-based food programs began as local efforts during the early 20th century in response to several concerns: childhood hunger, the learning abilities of malnourished students, and the nutritional quality and safety of foods sold to students.[21-24] During the Great Depression in the 1930s, problems of hunger and malnutrition increased and farm prices plunged, and the USDA began to formulate policies to address these issues. What resulted was a seemingly win-win strategy for both children and farmers; the federal government purchased surplus agricultural commodities and donated them to local school lunch programs.[21-24] By 1941, school lunch programs were operational in all 50 states, the District of Columbia, and Puerto Rico.[21]

During World War II, however, both labor and agricultural surpluses declined sharply in order to support the United States military and its allies.[21] Reports at this time revealed large numbers of young men who were failing draft physicals as a result of childhood malnutrition, calling attention to the importance of a "well-fed citizenry"[23(pg 50)] and warning that malnutrition threatened domestic and military security.[22] As the war ended, school lunch advocates sought a permanent federal program to ensure both an outlet for agriculture surpluses and a well-nourished defense system.[22,23] What resulted was the National School Lunch Program (NSLP), officially established in 1946 "as a measure of national security, to safeguard the health and well-

being of the nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other food."[21-24] This dual nature of the NSLP has been a topic of debate, especially as earlier concerns around hunger and undernutrition have more recently been trumped by interest in hunger and overnutrition.[22-24]

Today, the NSLP provides low- or no-cost lunches to more than 31 million children each school day.[25] Public and non-profit private schools may participate in the program as long as they comply with nutritional requirements and offer free or reduced-price lunches to income-eligible students. In return, schools receive cash subsidies and agricultural commodities for each lunch they serve.[25] Operating in a similar manner (with one main exception—no provision of agricultural commodities), the School Breakfast Program (SBP) provides breakfasts to over 11.6 million children daily at participating schools.[26] The NSLP and SBP are authorized under federal legislation and administered by both the USDA and the State Departments of Education or Agriculture.[25,26]

Recent analysis of the effects of school meals participation on food and nutrient intakes is primarily based on the third School Nutrition Dietary Assessment Study (SNDA-III), a nationally representative, cross-sectional study of the NSLP and SBP in 2005. (Data from SNDA-IV, collected in 2010, has not yet been released.[27]) Overall, no significant difference in lunchtime caloric intake was found between NSLP participants and non-participants.[28] In fact, NSLP participants are significantly more likely than non-participants to consume low- or non-fat milk, fruits, and vegetables, and significantly less likely to consume desserts and snack foods, juice drinks, and carbonated soda at lunch.[29] Results of the SBP are mixed; participants are significantly more likely than non-participants to consume low-fat milk and 100% fruit juice, and significantly less likely to consume juice drinks and carbonated soda at breakfast. However,

participants are also more likely than non-participants to consume high-sugar and high-fat grains, such as sweet rolls, doughnuts, biscuits, and croissants.[29]

Studies of weight-related outcomes are conflicting. Those that did not control for poverty (an important confounder as income is associated with both school meal participation and obesity) or focused on only one school grade found NSLP participants more likely than non-participants to be overweight.[24] Studies that controlled for poverty and included all school-age children found no significant relationship between NSLP participation and obesity or BMI.[24,30] In addition, analysis of breakfast data indicates that SBP participation is associated with significantly lower BMI, specifically among non-Hispanic White students.[30] These results, together with the observed dietary behavioral outcomes, do not support a positive relationship between school meals programs and obesity, and may instead point to an overall dietary benefit.

Childhood Obesity and Competitive Foods

In addition to breakfast and lunch meals, schools may sell additional foods and beverages, known as competitive foods. Competitive foods are any items sold in competition with the NSLP and SBP to children in food service areas during meal periods.[31,32] Often found in vending machines and cafeteria à la carte lines[i], competitive foods have been scrutinized for their ubiquity and unhealthfulness. In fact, results from the SNDA-III reveal that the most commonly consumed competitive foods are juice drinks, cookies/cakes/brownies, candy, and soda, all considered low nutrient and energy dense (defined as including all candy, cakes/cookies/brownies and other baked desserts, pies, muffins, donuts, sweet rolls, toaster pastries, frozen desserts, snack chips, French fries, and caloric beverages other than milk or

[i] À la carte items are those that are sold separately, including foods and beverages that are components of NSLP and SBP meals, as well as snack items such as cookies, potato chips, and ice cream.

100% juice).[33] On average, students who eat school lunch consume about 160 calories daily from low-nutrient, energy-dense competitive foods, while those students who do not eat school lunch take in about 200 calories from such items.[33] If these calories are not compensated for through dietary intake or physical activity, students could gain eight or more pounds in a single school year.[ii]

In fact, research indicates that the availability and consumption of competitive foods are associated with increased calorie, fat, and sugar consumption and decreased fruit, vegetable, and milk intake.[34,35] Additionally, studies suggest that exposure to competitive food is associated with higher BMIs in adolescents.[35,36] Yet it appears these relationships are reversible when tighter controls are placed upon competitive food. A recent review of the literature found that policies that restrict competitive food and beverage offerings and place limits on calories, fat, sugar, and portion sizes are associated with reducing students' caloric intake.[37] Likewise, policies that prohibit or restrict unhealthy competitive foods are associated with lower rates of overweight and obesity among students, or lower rates of increase in student BMI.[37] Such results have, in part, led to calls for increased federal regulation of competitive foods.[34,35]

Regulating Competitive Foods

In contrast to the highly structured NSLP and SBP, the standards for competitive foods have historically been quite loose. Prior to December 2010, federal rules restricted the sale of only a subset of competitive foods—foods of minimal nutritional value (FMNV)[iii]—from being sold in food service areas during mealtimes. Items considered FMNV include sugar-sweetened

[ii] This number was determined by multiplying 160 calories by 180 days per school year and dividing the result by 3500, the number of calories per pound of body fat. The result is 8.2 pounds per school year.

[iii] A food which provides less than 5% of the Reference Daily Intake (RDI) for eight specified nutrients per 100 calories and per serving. The eight nutrients are protein, vitamin A, vitamin C, niacin, riboflavin, thiamine, calcium, and iron.[31,32]

carbonated beverages, water ices that do not contain fruit or fruit juices (such as Snow Cones), chewing gum, and certain candies (such as mints, jaw breakers, lollipops, jelly beans, gum drops, marshmallows, candy corn, cotton candy, candy coated popcorn, and licorice).[31,32] However, many energy-dense foods do not fall into the FMNV category, such as non-carbonated sweetened beverages, ice cream, chips, French fries, doughnuts, cakes, and chocolate bars. In addition, federal regulations do not prohibit selling FMNV outside of the cafeteria at any time during the day. Rather, with the exception of the FMNV regulation, states and school districts have been granted the authority to oversee the sale of competitive foods inside and outside the lunchroom.[31,32]

Recommended and voluntary nutrition guidelines. Concerns over the narrow definition of FMNV have led to calls for updated federal standards for competitive foods.[38] As such, in 2005, the United States Congress directed the Centers for Disease Control and Prevention (CDC) to initiate a study with the Institute of Medicine (IOM)[iv] to review the evidence and make recommendations about nutrition standards for competitive foods.[38] In 2007, the IOM published their findings and recommendations in a comprehensive report titled, *Nutrition Standards for Foods in Schools: Leading the Way Toward Healthier Youth*.[38] The nutrition standards recommended in this report were primarily derived from the *2005 Dietary Guidelines for Americans*,[39] as well as from supplementary literature reviews and relevant sources.[38] Three categories of competitive foods and beverages are defined: 1) foods and beverages that may be offered throughout the school day at all school levels (Tier 1); 2) foods and beverages available at limited times of the day for specified school levels (Tier 2); and 3) all other items not meeting

[iv] The CDC, part of the United States Department of Health and Human Services, is the primary federal agency focused on public health in the United States.[245] The IOM is an independent, non-governmental, non-profit organization that provides unbiased and authoritative advice to decision-makers and the public.[163]

Tier 1 or Tier 2 standards, which may not be made available during the school day or at after-school activities for students.[38] Allowable amounts of calories, total fat, saturated fat, trans fat, sugar, and sodium are specified for Tier 1 and Tier 2 food and snack items; allowable beverages are based on beverage type (i.e., water, low-fat and nonfat milk, 100 percent fruit juice, and other caffeine-free beverages). The report also includes a set of 13 standards that expand upon and provide rationales for the Tier 1 and Tier 2 definitions. Appendix A.1 lists the IOM nutrition standards for competitive foods, as well as the definitions for foods and beverages meeting Tier 1 and Tier 2 standards.

In the attempt to avoid stronger legislation, industry groups have also responded to the emerging concerns over competitive foods and beverages through self-regulation.[40] Most notably, in May 2006, the American Beverage Association and three major beverage companies, together with the Alliance for a Healthier Generation[v], announced a national agreement to reduce sugar-sweetened beverages in public schools.[41] This agreement includes voluntary guidelines for beverages in schools, as well as implementation goals and reporting requirements.[41] A similar agreement for snack foods was announced in October 2006 between the Alliance for a Healthier Generation and five leading food companies.[42] These guidelines were developed by the Alliance for a Healthier Generation[43] based on the *2005 Dietary Guidelines for Americans*,[39] as well as the American Heart Association's *Dietary Guidelines for Healthy Children*[44] and *2006 Diet and Lifestyle Recommendations.*[45] Like the IOM standards, the Alliance for a Healthier Generation guidelines set limits on calories, saturated fat, trans fat, sugar, and sodium for foods, while beverage guidelines are based on beverage type. Guidelines for beverages differ based on school level, and additional provisions describe where and when the food and beverage guidelines shall

[v] The Alliance for a Healthier Generation is a partnership between the William J. Clinton Foundation and the American Heart Association.

apply. Appendix A.2 provides the Alliance for a Healthier Generation competitive food and beverage guidelines.

Although the American Beverage Association reports that 98.8% of schools and districts served by 12 bottlers (representing nearly 90% of the market) are in compliance with the beverage guidelines,[46] public health law researchers have criticized the guidelines for several reasons: 1) the guidelines are less restrictive than many existing state and local policies; 2) the agreements do not bind beverage companies to any specific actions other than reporting data; 3) the agreements have long phase-in periods and do not amend existing contracts; and 4) the guidelines are voluntary for schools and districts, and determination of vending contracts remains within local control.[40,47] Despite these concerns, the American Heart Association, beverage groups, and others have attempted—and in many cases succeeded—to codify the Alliance for a Healthier Generation guidelines into state law or school district policy.[vi]

Federal, state, and local regulations. About every five years, the United States Congress reviews the federal child nutrition programs (including the NSLP and SBP) through a reauthorization process, allowing the opportunity to improve these programs and address new needs. As a result of the 2004 reauthorization (Public Law 108-265, The Child Nutrition and WIC Reauthorization Act of 2004), each local educational agency participating in the NSLP or SBP must have established a local school wellness policy as of July 1, 2006.[48] Wellness policies are required to include, among other things, nutrition guidelines for all foods available on the school campus during the school day.[48] Research has found, however, that these policies are not always comprehensive or powerful, as many districts recommend or encourage, rather than

[vi] Other national organizations and agencies have also recommended nutrition standards for competitive foods,[246,247] however these recommendations are often derivations from, or combinations of, the IOM and Alliance for a Healthier Generation guidelines.

require, competitive food guidelines.[49-51] Those that do mandate stricter guidelines may actually be maintaining the status quo by including regulations already mandated by other entities, such as a State Board of Education.[49,50] In fact, a recent study by Taber et al.[52] found that, in 2008-2009, strong district policies governing competitive foods were more prevalent in states with strong policies than in states with weak policies ("strong" policy provisions were those that were required, specified an implementation plan, and included words like "shall," "must," "will," "comply," and "enforce"). Likewise, analysis by Kubik et al.[53] reveals that state-level, but not district-level, nutrition policies targeting "junk foods" (defined by the researchers as foods or beverages providing calories primarily from fats or added sugars, and having minimal amounts of vitamins and minerals) are associated with less of these items offered in vending machines and school stores, thus supporting the need for strong state-level policies.

Although the wellness policy mandate improved competitive food environments at a small percentage of schools,[54] child nutrition and school food advocacy groups and researchers[54-56] continued their calls for—and were successful in obtaining—increased federal oversight during the most recent child nutrition reauthorization in 2009-2010. The legislation, the Healthy, Hunger-Free Kids Act of 2010 (Public Law 111-296), requires the Secretary of Agriculture to establish nutrition standards for all foods sold "(i) outside the school meal programs; (ii) on the school campus; and (iii) at any time during the school day."[57] These standards must be consistent with the most recent version of the *Dietary Guidelines for Americans*, while also considering authoritative scientific recommendations; existing voluntary, state, and local standards; the practical application of the nutrition standards; and special exemptions for school-sponsored fundraisers.[57] As of September 12, 2012 (nearly two years after the bill was enacted), the USDA had not yet released the nutrition standards for competitive foods. Of note, these new

standards will not apply to foods or beverages served at no cost to children (such as those provided at parties and field trips), nor will they apply to foods sold or served before or after the school day. However, states and districts with stricter standards than those established by the USDA will be able to continue enforcing them, as the revised federal law does not include preemption[vii] (Geri Henchy, Director of Nutrition Policy and Early Childhood Programs, Food Research and Action Center, written communication, December 2010).

In the absence of stricter federal rules, states have adopted their own policies to more tightly regulate competitive foods. A 2010 report by the Trust for America's Health has categorized these policies into two main groups: those that set nutrition requirements for competitive foods and those that set limitations on where and when competitive foods can be sold.[56] As of May 31, 2010, 28 states had adopted nutritional requirements for competitive foods and 29 states limited their access,[56] though the breadth and rigor of these policies vary. State competitive food policies have been evaluated for their impact, and findings reveal that these policies are associated not only with the availability of fewer unhealthy competitive foods,[53,58-62] but also with a reduction in student consumption of unhealthy foods and beverages, sugar, fat, and total calories in school.[62-64] Likewise, recent longitudinal analysis shows that state competitive food laws are associated with smaller BMI increases in students and lower risk of remaining overweight or obese over time.[65] Still, the vast majority of school district competitive food and beverage policies do not align with the *2010 Dietary Guidelines for Americans*,[66,67] like the federal standards must as required by the Healthy, Hunger-Free Kids Act of 2010.[57] Authors

[vii] In legal terms, preemption refers to the displacement of state law by federal law (or local law by state law) when both governments have made laws on the same subject. For example, in the event that a conflict exists between state and federal law (i.e., it is impossible to comply with both laws simultaneously), federal law supersedes, or preempts, state law. In the absence of conflict or an explicit preemption clause within the law or regulation, the courts seek to follow lawmakers' intent.[248]

of these studies offer several recommendations for advocates and others seeking to contribute to the policymaking processes of competitive food policies, including: 1) considering policy strength (i.e., requiring comprehensive nutrition standards or access restrictions, rather than recommending them), since more rigorous policies are associated with reduced availability of unhealthy competitive food and smaller gains in student BMI;[53,61,65] 2) supporting stronger nutrition guidelines at the middle school and high school levels, where availability of unhealthy competitive foods remains the highest;[53,60,65,67] and 3) promoting competitive food policies that not only restrict unhealthy foods, but also increase access to healthy items, such as fruits, vegetables, and whole grains.[63,67]

Financial implications of stricter competitive food policies. Few would disagree that the nutritional quality of competitive foods can and should be improved. Yet requests for updated definitions and stricter nutrient standards by some parents and child nutrition advocates are most frequently met with fears from school officials and food service directors around decreased revenues resulting from drops in student purchasing when unhealthy foods are replaced with healthier items.[68] These stakeholders are understandably concerned, given that competitive foods are often credited with allowing foodservice operations to break even[viii] and/or provide much needed discretionary funds for school activities, student organizations, and music or athletic programs.[23,33,34] It is feared that a reduction in revenues from competitive food would create a financial hardship for schools and districts.

[viii] For a variety of reasons—poor food quality, time constraints, unpleasant cafeteria environments, enrollment difficulties, and stigma generated by the income eligibility system—about 30% of students attending NSLP schools do not participate in the program on a regular basis (three or more days a week).[23,30,34] By offering similar (and often unhealthy) foods to those that students purchase outside of school, some foodservice operations can recoup financial losses from low lunch participation and ensure that school meals programs continue for those who most need them.[34] However, it should be noted that competitive food revenues do not always accrue to the foodservice operation.[23]

Yet research does not support these fears. Studies show that, while there may be an initial drop in competitive food revenues, the implementation of nutrition standards for competitive foods leads to either no change, or an overall increase in revenues as a result of increases in NSLP participation.[68,69] Likewise, evaluations of interventions that increased the availability and/or decreased the price of healthier competitive foods have found greater sales of these items with no negative impact on overall school food service revenues,[68] further suggesting that schools can implement strong nutrition standards without risking financial loss.

In addition to concerns over school revenues, stronger competitive food policies may increase costs due to policy implementation or enforcement. However these costs will vary depending on policy requirements. For example, competitive food policies that require a state agency to ensure school compliance via site visits will cost more than policies requiring schools to report compliance, and even more than policies that establish nutrition standards but do not enforce compliance. These costs must be considered during local, state, and federal policy development.

Study Purpose and Specific Aims

Although childhood obesity is viewed as a national issue, only recently has there been a response at the federal level, leaving states to take action on their own. Many states have enacted policies addressing competitive foods, and evaluations of these policies show promise in improving the healthfulness of school food environments. Yet there are substantial gaps in knowledge about the decision-making processes by which these policies are formed and adopted, and public health researchers have expressed a need for "studies of policy processes, content, and outcomes that incorporate policy science frameworks and theory."[70(pg 222)] The purpose of this

study is to describe and analyze the decision-making processes of state-level competitive food legislation introduced in 2009-2010. The specific aims of this project are:

Aim 1: To examine changes in the language and content of state-level legislative proposals addressing competitive foods.

Hypothesis 1: Bill provisions that do not threaten a particular stakeholder group are more likely to remain in or be added to a bill than those provisions that do threaten a particular stakeholder group.

Aim 2: To identify and characterize the primary stakeholders in support and opposition of stronger state-level competitive food legislation.

Hypothesis 2: The types of primary stakeholder groups in support and opposition of stronger competitive food legislation will be similar across cases.

Aim 3: To assess the roles of policy decision-making constructs of cohesion, lobbying, and constraints on advocates' relative effectiveness in influencing the language and content of competitive food legislation.

Hypothesis 3.1: Advocates situated in highly cohesive policy subsystems will be more effective than advocates in less cohesive policy subsystems.

Hypothesis 3.2: Advocates situated in advocacy coalitions characterized by high lobbying activity will be more effective than advocates in coalitions characterized by low lobbying activity.

Hypothesis 3.3: Advocates situated in minimally constrained policy subsystems will be more effective than advocates in highly constrained policy subsystems.

Significance

Due to increasing childhood obesity rates, it seems appropriate and necessary to more thoroughly regulate competitive foods or eliminate them altogether. In fact, Crawford et al.[71] argue that schools have an ethical obligation to offer only those foods that support children's nutritional health. Recent changes at the federal level will go a long way in improving the healthfulness of competitive foods, however state and local policies will continue to be important. Not only are state and local nutrition standards being considered in the development of federal standards, but without preemption, any gaps left by the federal policy can be addressed by current and future state and local policies.

While much has been written about competitive food policies at the district level (especially following the mandate for local wellness policies), research at the state level is sparser. In fact, little is known about how competitive food policies are formed at the state level, including the process by which public health advocates and others—policymakers, governmental employees, industry groups, etc.—influence the content of these policies. This project seeks to fill this gap by examining how and why state-level competitive food legislation introduced in 2009-2010 was formed and amended prior to adoption. Understanding the competitive food policy decision-making process will assist advocates, policymakers, and researchers in identifying potential strategies, barriers, collaborators, and opponents when seeking to create a more healthful school food environment within their state.

CHAPTER 2

THEORETICAL FRAMEWORK

Creating public policies that address food and physical activity environments is a key strategy for reducing obesity among populations, and public health researchers have called for "substantial involvement of and investment by government at all levels" in order to "achieve significant population-wide behavior change."[72(pg 19)] It is therefore important for public health advocates to understand and engage in the policymaking process in order to maximize beneficial health outcomes and minimize unintended consequences. This chapter describes the public policy, decision-making, and public health advocacy frameworks and constructs that serve as the foundation for this study.

Public Policy Process

The public policy process is often discussed in policy textbooks as a series of successive stages: *problem identification and agenda setting*, the process of how problems come to the attention of governments; *policy formulation*, the formation of policies within government; *policy adoption*, the decision-making process around a particular course of action or non-action; *policy implementation*, how governments put policies into effect; and *policy evaluation*, the monitoring of policy results and impact.[73-75] As a basis for research and teaching, however, the stages model has been criticized for its lack of causal mechanisms, inability to provide a clear basis for empirical hypothesis testing, descriptive inaccuracy, and top-down focus, leading researchers to call for new policy process frameworks.[76] Nevertheless, Jenkins-Smith and Sabatier[76] acknowledge that the stages model provides "a useful conceptual disaggregation of the complex and varied policy process into manageable segments."[76(pg 2)] Such separation allows for the analysis of one or more stages alone or in relation to other stages of the policy process. In

order to better understand the role of public health advocates in the policy decision-making process, this study is primarily focused on the policy formation and adoption stages of state-level competitive food legislation.

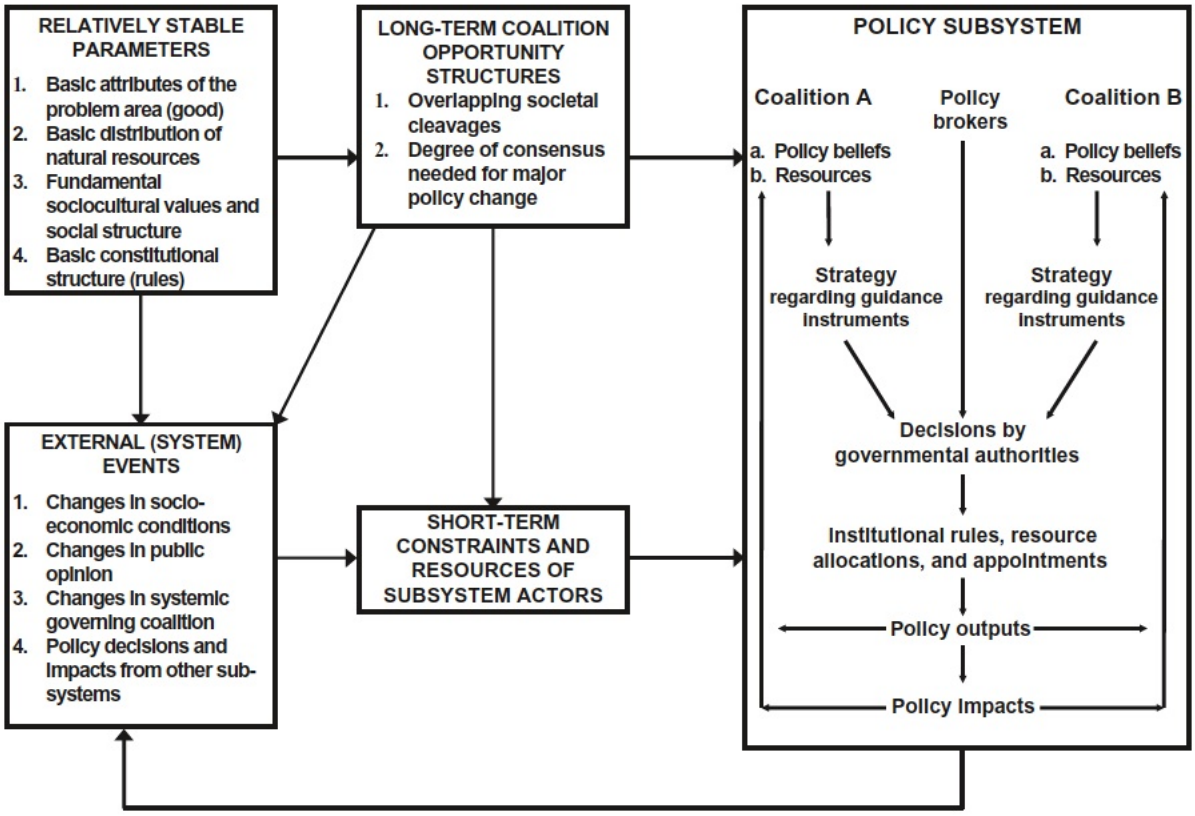
Advocacy Coalition Framework

In response to theoretical debates and limitations identified in the policy process literature, Sabatier and Jenkins-Smith[77] introduced the Advocacy Coalition Framework (ACF) in the late 1980s. Specifically, the ACF emerged in response to three limitations identified by Sabatier and Jenkins-Smith: 1) the inadequate causal theory advanced by the stages model; 2) the need for systems-based, rather than top-down and bottom-up, theories to policymaking; and 3) the lack of theory and research on the role of scientific and technical information in the policy process.[78] Researchers have applied the ACF to a variety of public health policies, such as emergency contraception,[79] pediatric vaccination,[80] and tobacco control.[81-84]

The ACF (Figure 2.1) is based on a series of assumptions: 1) a central role of scientific and technical information in policy processes; 2) a time perspective of 10 years or more to understand policy change; 3) policy subsystems as the primary unit of analysis; 4) a broad set of subsystem actors that include officials from all levels of government, consultants, scientists, and members of the media; and 5) a perspective that policies and programs are best thought of as translations of beliefs. Of note among these assumptions, the ACF specifies policy subsystems as the unit of analysis because "political systems involve many topics over broad geographical areas that compel actors to specialize in a topic and locale to understand its complexity and to be effective in producing change."[78(pg 123)] As the right-hand box of Figure 2.1 indicates, policy subsystems consist of "advocacy coalitions," groups of people from a variety of positions (e.g., elected and agency officials, interest group leaders, researchers, journalists, etc.) who share a

particular belief system and show coordinated activity over time. Multiple advocacy coalitions may exist within a policy subsystem, potentially creating a polarized and adversarial environment for policy decision-making. In addition, subsystems also include "policy brokers" whose main concerns are to keep the level of political conflict within acceptable limits and to reach some "reasonable" solution to the problem.[77]

Figure 2.1 Advocacy Coalition Framework diagram (2007)



SOURCE: Weible CM, Sabatier PA, McQueen K. Themes and variations: taking stock of the advocacy coalition framework. *Policy Stud J.* 2009;37(1):123. Reprinted with permission from John Wiley and Sons.

These policy subsystems operate within a larger political context defined by four relatively stable parameters: 1) basic attributes of the problem area, such as the ability of markets to address a problem or a problem's susceptibility to quantitative measurement; 2) basic

distribution of natural resources, which affects the feasibility of many policy options; 3) fundamental sociocultural values and social structure, which affect the distribution of political power; and 4) basic constitutional structure, which impacts the types of policy options available.[77] These factors may constrain policy options or the resources and beliefs of subsystem actors because of their stability over time. Likewise, dynamic external events, including 1) changes in socio-economic conditions; 2) changes in public opinion; 3) changes in systemic governing coalitions; and 4) policy decisions and impacts from other subsystems, alter the constraints, resources, and opportunities confronting subsystem actors. Subsystem actors must anticipate and respond to these changes, posing a constant challenge over time.[77]

Within the policy subsystem, advocacy coalitions utilize their resources—authority, expertise, money, supporters, and time—in order to translate their beliefs into public policies. The ACF recognizes that these beliefs may take one of three forms: *deep core beliefs*, *policy core beliefs*, and *secondary beliefs*.[77,78,85] At the broadest level are *deep core beliefs*, which involve general and normative values and assumptions. These include the relative priority of fundamental values (e.g., freedom, security, power, knowledge, health, etc.) and basic criteria of distributive justice (e.g., relative importance of self, primary groups, all people, future generations, non-humans, etc.). Deep core beliefs span most policy subsystems, and because they are very difficult to change, they are the most stable among the belief types. *Policy core beliefs*, those in the middle of the belief system hierarchy, are applications of deep core beliefs that span the substantive and geographic range of an entire policy subsystem, making them ideal for forming coalitions and coordinating activities among members. Examples include the role of government versus markets, the proper distribution of authority among various government levels, and orientation on the substantive policy conflicts in a particular policy area. Though

they are difficult to change, policy core beliefs are more likely to adjust in response to new information and experiences than deep core beliefs. At the final level are *secondary beliefs,* which are narrower in scope and more empirically based. These beliefs address problems, policies, or programs that deal with only a subset of the entire policy subsystem, such as administrative rules, budgetary allocations, and the seriousness of the policy problem. Because of their limited scope, secondary beliefs are the most likely of the three belief types to change over time.[77,78,85] In fact, the ACF hypothesizes that advocacy coalition actors (or the coalition itself) will give up secondary beliefs before admitting weaknesses in policy core beliefs.[77]

Within the ACF subsystem framework, this study is particularly interested in the decision-making process of governmental authorities—both during formation and adoption of state-level competitive food legislation—and the role of public health advocates and other interest groups in influencing these decisions.

Public Policy Decision-Making

To elucidate how decisions are made around state-level competitive food legislation and inform the conceptual framework for the current study, it is necessary to consider the broader public policy decision-making literature. At least five different—and at times incompatible—models of the decision-making process have been developed and studied since the 1950s. These include the *rational model*, *incremental model*, *mixed-scanning model*, *garbage can model*, and *decision accretion model*. Table 2.1 summarizes the main assertions, strengths, criticisms, and theorists of each of these decision-making models.

Table 2.1 Summary of decision-making models

Model Name	Main Assertion	Strengths	Criticisms	Major Theorists
Rational Model	Decision-makers pursue strategies that are technically desirable, maximizing expected outcomes at the least cost	Provides an idealized conceptualization of how decisions are made (the most effective and efficient means to a given end)	Fully rational decisions are often not achievable due to abstract problems and numerous possible solutions	Developed to aid economic analysis of consumer choice
Incremental Model	Decision-makers pursue strategies based on what is politically feasible and often only marginally different from those that already exist	Stresses the need for political agreement and learning by trial and error; utilizes limited analysis to yield practical and acceptable decisions	Does not describe decisions that significantly alter the status quo or those made during unusual circumstances, such as a crisis or novel issue	Advanced in the late 1950s by Charles Lindblom
Mixed-Scanning Model	Decision-makers perform a cursory scan for alternatives, followed by a detailed exploration of the most promising solutions	Essentially combines the rational and incremental models, drawing on their strengths while addressing their criticisms	Unclear how this model differs from or advances those it was designed to replace	Advanced in the late 1960s by Amitai Etzioni
Garbage-Can Model	Decision-makers define goals and choose solutions in a highly ambiguous and ad-hoc fashion; recognizes that solutions already exist and are looking for problems	Highlights the roles of contingency and unpredictability in decision-making not addressed by previous models; widens the debate beyond just rationalists versus incrementalists	Does not represent decisions made by more centralized and integrated institutions, where the number of participants is limited and their participation is highly structured and predictable	Advanced in the late 1970s by Michael Cohen, James March, and Johan Olsen
Decision Accretion Model	Decisions are accrued in a piecemeal fashion by multiple decision-makers in multiple locations over a relatively lengthy period of time	Highlights the significance of multiple arenas and multiple rounds of decision-making	Does not represent decisions made by a single institution at a single point in time	Advanced in the 1980s by Carol Weiss

SOURCE: This table draws on Anderson JE. *Public Policymaking*. 5th ed. Boston, MA: Houghton Mifflin Company; 2003:120-125; Birkland TA. *An Introduction to the Policy Process: Theories, Concepts, and Models of Public Policy Making.* Armonk, NY: M. E. Sharpe, Inc; 2001:208-216; and Howlett M, Ramesh M, Perl A. *Studying Public Policy: Policy Cycles and Policy Subsystems.* 3rd ed. Ontario, Canada: Oxford University Press; 2009:142-154.

Taken together, these five models suggest a range of possible decision-making styles that depend on several factors: the nature of the policy problem; the number, type, and cohesion of actors involved; the informational, temporal, and institutional constraints within which actors operate; and actors' pre-existing sets of ideas and decision-making routines.[73] In the absence of a comprehensive model that predicts or explains all decision-making processes, Howlett et al. suggest a typology of decision-making styles based on two constructs: 1) the cohesion of the policy subsystem involved in the decision (i.e., the level of agreement within the subsystem and among decision-makers); and 2) the severity of the institutional and cognitive constrains that decision-makers face in making their choices.[73] Table 2.2 illustrates this typology.

Table 2.2 Typology of decision-making styles

		Cohesion of Policy Subsystem	
		Low	*High*
Severity of Policy Constraints	*Low*	**Ad-hoc** (non-linear change)	**Rational** (linear and non-linear change)
	High	**Incremental** (linear change)	**Negative** (status quo)

Note: Cells provide examples of instruments in each category.

SOURCE: Howlett M, Ramesh M, Perl A. *Studying Public Policy: Policy Cycles and Policy Subsystems.* 3rd ed. Ontario, Canada: Oxford University Press; 2009:158. Reprinted with permission from Oxford University Press.

According to Howlett et al., in cohesive policy subsystems that face low constraints, decisions will follow a rational decision-making style that seeks to find the most efficient possible means of achieving policy goals. On the other hand, cohesive policy subsystems that face high constraints will adopt a negative decision, one that deliberately maintains the status quo. In subsystems that lack cohesion but are highly constrained, the result is likely an

incremental approach whereby decisions do not stray far from the status quo. Finally, in situations of low constraints and low cohesion, decisions are likely to vary between different alternatives over fairly short periods of time in an ad-hoc, non-linear manner, as suggested by the garbage-can model.[73]

The Role of Public Health Advocates in Public Policy Decision-Making

While the typology described by Howlett et al. identifies two important dimensions of decision-making, it does not describe how various subsystem actors influence the decision-making process. Of interest in this study is the role of various interest groups, defined as associations "of individuals or organizations or a public or private institution that attempts to influence government decisions."[86(pg 99)] In general, interest groups have significant influence in state politics, though their level of influence and impact varies. For example, the overall impact of interest groups differs by state. One study categorized states as either 1) *dominant*, those states where interest groups have an overwhelming and consistent influence on policymaking; 2) *complementary*, those states where interest groups work in conjunction with, or are constrained by, other aspects of the policymaking process; and 3) *subordinate*, those states where interest groups are consistently made inferior to other aspects of the policymaking process.[86] States may also fall between two categories, or be in the process of moving from one category to another due to shifts in the legislature, executive branch, and/or competition between groups.[86] More than half of the states are considered dominant/complementary, while no state has been classified as subordinate, illustrating the power interest groups have in state policymaking. Table 2.3 provides the classification of the 50 states according to the overall impact of interest groups in 2006-2007.

Table 2.3 Overall impact of interest groups by state, 2006-2007

Dominant	Dominant/ Complementary	Complementary	Complementary/ Subordinate	Subordinate
Alabama	Alaska	Colorado	Kentucky	
Florida	Arizona	Connecticut	Michigan	
Hawaii	Arkansas	Indiana	Minnesota	
Nevada	California	Maine	South Dakota	
	Delaware	Massachusetts	Vermont	
	Georgia	Montana		
	Idaho	New Hampshire		
	Illinois	New Jersey		
	Iowa	New York		
	Kansas	North Carolina		
	Louisiana	North Dakota		
	Maryland	Pennsylvania		
	Mississippi	Rhode Island		
	Missouri	Washington		
	Nebraska	Wisconsin		
	New Mexico			
	Ohio			
	Oklahoma			
	Oregon			
	South Carolina			
	Tennessee			
	Texas			
	Utah			
	Virginia			
	West Virginia			
	Wyoming			

SOURCE: Adapted from Nownes AJ, Thomas CS, Hrebenar RJ. Interest groups in the states. In: Gray V, Hanson RL, eds. *Politics in the American States: A Comparative Analysis.* 9th ed. Washington, D.C.: CQ Press; 2008:121.

The same study also ranked the 40 most influential interests in the 50 states (based on the opinions of public officials and political scientists), and found that the most influential interest groups are general business organizations (e.g., state chambers of commerce), schoolteachers' organizations (e.g., unions), utility companies and associations (e.g., electric, gas, water), and manufacturers (companies and associations), whereas public interest groups and other social issue groups (e.g., anti-smoking, child welfare) ranked 36 and 38, respectively.[86] Table 2.4 lists interest groups in order of their influence.

Table 2.4 Top 40 most influential interests in the 50 states, 2006-2007

1	General business organizations	21	K-12 education interests
2	Schoolteachers' organizations	22	Agricultural commodity organizations
3	Utility companies and associations	23	Tourism, hospitality interests
4	Manufacturers	24	Retailers
5	Hospital and nursing home associations	25	State and local government employees
6	Insurance: general and medical	26	Sporting issues, hunting and fishing
7	Physicians, state medical associations	27	Religious interests
8	Contractors, builders, developers	28	Liquor, wine, and beer interests
9	General local government organizations	29	Individual cities and towns
10	Lawyers	30	Pro-life groups
11	Realtors' associations	31	Mining companies and associations
12	General farm organizations	32	Oil and gas
13	Bankers' associations	33	Taxpayers' interest groups
14	Universities and colleges	34	Pharmaceutical interests
15	Traditional labor associations	35	Forest products companies, associations
16	Individual labor unions	36	Liberal causes, public interest groups
17	Gaming interests (e.g., casinos, lotteries)	37	Truckers and private transport interests
18	Individual banks and financial institutions	38	Miscellaneous social issue groups
19	State agencies	39	Senior citizens
20	Environmentalists	40	Pro-tobacco interests

SOURCE: Adapted from Nownes AJ, Thomas CS, Hrebenar RJ. Interest groups in the states. In: Gray V, Hanson RL, eds. *Politics in the American States: A Comparative Analysis.* 9th ed. Washington, D.C.: CQ Press; 2008:117-118.

Of particular interest in this study is the role of public health advocates, those falling into the liberal causes/public interest/social issue groups ranked as having much less political influence than manufacturers and other food industry groups. According to Cristoffel,[87] advocacy is "the application of information and resources (including finances, effort, and votes) to effect systemic changes that shape the way people in a community live."[87(pg 722)] Public health advocacy is "advocacy that is intended to reduce death or disability in groups (overall or from a specific cause) and that is not confined to clinical settings."[87(pg 722-723)] To better understand the public health advocacy process, Cristoffel proposes a three-stage conceptual framework: 1) information, the activities involved in the gathering and processing of data related to the public health problem; 2) strategy, the activities involved in using the available information to determine what needs to change to improve public health; and 3) action, the activities involved in implementing specific strategies.[87] Different groups play different yet complementary roles in each of these three stages. Table 2.5 provides a partial list of groups and their roles at each stage.

Table 2.5 Roles of selected participants in the three stages of public health advocacy

Participant	Information	Strategy	Action
Coalitions	Request data	Public education Policy focus identification Bring stakeholders together Work with legislators Amplify group efforts Coordinate group efforts	Lobby Testify Get out the vote
Community groups	Tap resident knowledge Request data	Public education Join coalitions Work with legislators Mobilize residents	Lobby Testify
Individual health service providers	Case studies/series Research studies Define clinical issues	Clinical perspective Public education Build coalitions	Counsel Lobby Testify Vote
Health provider organizations	Identify needed data Some research	Policy statements Model bills Clinical guidelines Join/support coalitions Public education	Lobby Testify
Legislators	Request data Authorize data work Fund data work	Hold hearings Draft legislation Draft regulations	Pass laws Fund enforcement
Researchers/ academicians	Conduct research and evaluation	Develop data-based and theoretical concepts to guide prevention planning and education curricula for students	Publish papers Write editorials Testify Media interviews Determine course/ exam questions Vote
Research funding agencies	Fund research Peer review	Funding priorities Consensus statements	Testify
Victims/those affected	Bear witness Participate in research	Victim perspective Public education Join coalitions	Lobby Testify Vote

SOURCE: Adapted from Cristoffel KK. Public health advocacy: process and product. *Am J Public Health.* 2000;90(5):724.

It is important to note that lobbying is only one of many actions taken by public health advocates, yet it is a common and powerful tactic used by most, if not all, interest groups to influence state lawmakers and officials. In fact, in 2005, more than $1 billion was spent on state-

level lobbying, with 40,000 registered lobbyists paid to represent nearly 50,000 companies and organizations.[88] Lobbying is legally defined by federal law and can take one of two forms: *direct lobbying* and *grassroots lobbying*. According to the Internal Revenue Service (IRS), *direct lobbying* is any attempt "to influence a legislative body through communication with a member or employee of a legislative body, or with a government official who participates in formulating legislation," whereas g*rassroots lobbying* "attempts to influence legislation by attempting to affect the opinion of the public with respect to the legislation and encouraging the audience to take action with respect to the legislation."[89] In both types of lobbying, the communications must refer to and reflect a view on a specific piece of legislation.[89] In addition, grassroots lobbying must also include a "call to action" that encourages the public to contact a legislator or other government official involved in the formation of legislation.[90,91] Non-profit organizations, including many public health advocacy organizations, are legally allowed to lobby as long as "no substantial part" of the organization's activities consists of lobbying.[90] For-profit organizations are not held to this restriction.

Lobbying plays an important role in the policymaking process, as it provides elected officials with policy expertise and practical insight into policy impacts, connects citizens and communicates their concerns to decision-makers, raises public awareness of legislation and public policy changes, and holds decision-makers accountable for their actions.[92] However, while any interest group may lobby elected and appointed officials, not all groups have equal power and access to decision-makers, and interest group influence may vary by policy issue. Mahoney[93] explains that interest groups with more financial resources are able to engage in more tactics and devote more staff to an issue, and thus will likely have more influence than groups with fewer resources. For example, food and beverage trade associations (which represent

manufacturers, distributors, retailers, and others) have significantly larger budgets than public health advocacy organizations, and thus can commit more resources to political campaigns, meeting with legislators, submitting written testimony and drafting bill language, speaking with the media, and other lobbying techniques. Group size is also important; larger groups convey a greater sense of legitimacy to decision-makers because of their representation of a larger group of citizens.[93] Again, food and beverage trade groups often represent hundreds of member companies who together employ thousands of people and provide products to millions. In contrast, public health advocacy organizations may partner with only a handful of groups, though they may speak on behalf of large segments of the population. Mahoney[93] also notes that group type may be influential, as decision-makers in democratic societies are expected to be more responsive to citizen groups than business interests[93] (though, as seen in Table 2.4, this is not necessarily the case in practice). Additionally, not all interest groups engage in more specialized lobbying techniques—such as hiring a consultant, working in a coalition, or utilizing outside lobbying to affect public opinion—which may increase lobbying effectiveness.[93]

The policy problem itself can also affect interest group influence. For example, the larger the scope and implications of a policy issue, the less likely individual interest groups will succeed in their lobbying goals because of the large number of vested interests involved.[93] Likewise, issues that are highly controversial will garner opposing perspectives, making it more difficult to reach lobbying goals compared to issues where only one perspective is promoted.[93] Additional issue-related factors that may affect lobbying success include the salience of the policy issue (i.e., the public's perception and interest in the problem), the technicality of the policy issue (i.e., the amount of input and information decision-makers need to understand the problem and possible solutions), and whether a focusing event occurred on the issue.[93,94]

Smith[95] expands on these insights, arguing that the strength of an advocate's influence depends on the interpretation process. That is, decision-makers "must discover who will be affected by the legislative decision, in what ways, to what extent, and with what reaction."[95(pg 44)] But because the quantity and complexity of information, time, and expertise are usually too large to make a completely informed decision, decision-makers simplify the task by constructing interpretations of a decision's consequences. Once an interpretation is formed, decision-makers must then determine how the consequences affect the attainment of their personal goals, such as implementation of their views of good public policy or representation, or the development of their own careers. According to Smith, it is by offering an alternate interpretation and showing how this new position may better accomplish the decision-maker's goals that advocates (and opponents) can influence the decision-making process. However, Smith notes that time and cognitive constraints often lead decision-makers to rely on cue taking from trusted colleagues who may have a formal position in the legislature or expertise in the policy area. While this may reduce or remove the interpretation process for cue takers, interpretations are likely to be especially critical in the decisions of cue givers and thus indirectly influential for cue takers.[95]

Smith offers that "the probability that advocates can demonstrate the superiority of their desired positions to members depends significantly on two variables: the level of resource advantage (i.e., the quality and quantity of resources committed to the advocacy effort compared to what opposing parties have committed) and the amount of time available for the advocacy effort."[95(pg 49)] Due to the complexity and difficulty in measuring resource advantage, Smith suggests an indirect measure of priority allocation. He argues that the more important a legislative proposal is to an advocate, the higher the likelihood that the appropriate resources are allocated to fully develop and implement the advocacy strategy that will aid the passage of the

bill. As long as there is not a strong positive correlation between the priorities of advocates and opponents, the level of priority represents resource advantage. However, Smith notes that the influence of an advocate's resource advantage is conditional upon the length of time available for advocacy efforts. This is because advocates must appeal to both regular and irregular supporters. As a result of their similar goals, advocates can quickly develop interpretations that their regular supporters will find attractive. On the other hand, advocates require much more time to gain the support of irregular supporters because of the relative difficulty in formulating appealing and superior interpretations to those already held. Smith identifies additional contextual variables to consider when studying the legislative influence of advocates, a selection of which is described in Table 2.6.[95]

Table 2.6 Description of variables used to assess legislative influence of advocates

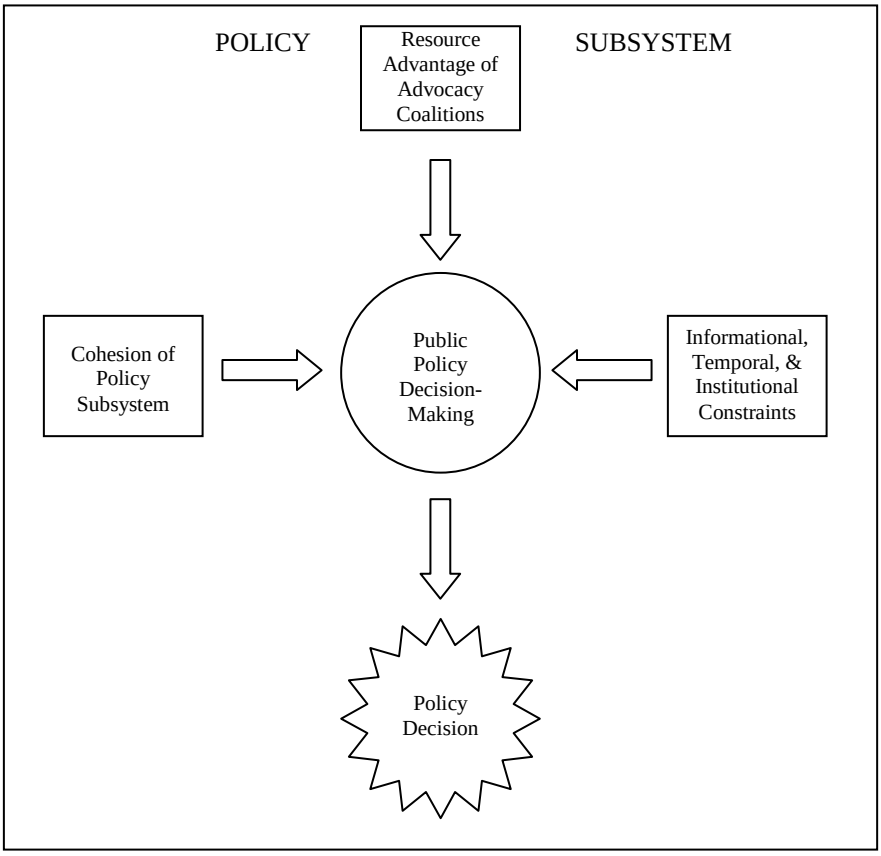
Variable	Description
Change in Support	The extent to which legislative support for a proposal is resistant to amendments or motions which threaten to weaken or kill the proposal. It is calculated by subtracting the proportion of decision-makers who support an advocate's position on the legislative proposal from the percentage of decision-makers who vote in support of the advocate's position on the weakening amendment or motion to recommit the legislative proposal. A negative difference indicates a loss of support in the face of a threatening amendment or motion.
Advocate Interest	The extent of the advocate's interest in all aspects of the legislative proposal.
Voting Margin	The proportion of votes in support of the advocate's position minus the proportion needed to pass the proposal.
Executive Interest	The interest of the executive (President, Governor, etc.) in the legislative proposal. Interest is deemed present if the executive announces a position on the legislative proposal.

SOURCE: Adapted from Smith RA. Advocacy, interpretation, and influence in the U.S. Congress. *Am Polit Sci Rev.* 1984;78(1):53.

Conceptual Framework

Taken together, this review identifies at least three factors influencing the public policy decisions made by governmental authorities: the cohesion of the policy subsystem, the severity of subsystem constraints, and the resource advantage of advocacy coalitions. Other factors may exist, however these three have either been recognized by multiple researchers and/or via a synthesis of multiple decision-making models. In order to investigate the role of public health advocates in influencing changes to legislative bills during the decision-making process, this study proposes a conceptual framework consisting of these three constructs, shown in Figure 2.2.

Figure 2.2 Conceptual framework for studying the role of public health advocates on public policy decision-making



Cohesion reflects the level of agreement within a policy subsystem and among decision-makers, and is influenced by the number and type of actors and settings involved in the decision-

making process, as well as the policy beliefs held by those in the policy subsystem. As Howlett et al.[73] describes, "the complexity of the policy subsystem affects the number of venues, the nature of dominant policy ideas and interests, and the level of agreement or opposition to an option within the subsystem and among decision-makers."[73(pg 157)] Decisions made within a cohesive policy subsystem are less likely to resort to bargaining strategies and incremental changes than decisions made in subsystems lacking cohesion. Likewise, policy options may or may not reflect the core values of subsystem members; "easy" choices are broadly understood and familiar while "hard" choices are more challenging and contested.[73]

The extent of a policy subsystem's cohesion regarding a specific legislative bill can be determined by considering the following variables: 1) the number of legislative committees assigned to review the bill; 2) the number of legislators within the committees reviewing the bill; 3) the total number of legislators in the House/Assembly and Senate; 4) whether the executive branch (i.e., Governor, state governmental agencies) takes a public position on the bill; 5) the presence of opposition to the bill; 6) the number of sponsors and co-sponsors of the bill; 7) the percentage of legislators voting in favor of the bill; 8) the proportion of votes in support of the bill compared to the proportion of votes needed to pass the proposal; 9) any change in support of the bill over time by individual legislators; and 10) the willingness of stakeholders to compromise on bill language and content.

As Smith[95] indicates, the quality and quantity of resources devoted to the advocacy effort are major factors in an advocate's ability to develop appealing interpretations that will influence decision-makers. Resources include those needed to acquire information about the consequences of various positions on a proposal; the presence of creative, experienced people who can transform information about consequences into interpretations that are appealing to policy

makers; and the amount of time available for the advocacy effort. For advocates, the probability of developing appealing interpretations depends on whether they devote more and higher quality resources to the advocacy effort than their opponents. This "resource advantage" can be established by increasing the overall quantity and quality of resources available for advocacy efforts, or, given an existing set of resources, advocates can choose those proposals on which they want to establish their greatest advantage and assign their most experienced and creative personnel. Yet the extent to which resource advantage influences legislative outcomes is conditional upon the length of time available for advocacy—the shorter the length of time available, the smaller the likelihood that a resource advantage will impact legislative decisions.[95]

Measures of these resources include the overall priority given to a legislative proposal by an advocate and the amount of time between the date the bill was introduced to the first legislative chamber and the date the Governor signed the bill. However, determining the overall priority given to a legislative proposal by each group in support and opposition of a specific legislative proposal is difficult if a key informant is unwilling or unavailable to provide the information, or if the information is not available from another source. Rather, the amount of time, manpower, and money spent on lobbying—a common and influential tactic employed by interest groups during the policy formation and adoption stages—is more easily measured because of state lobbying laws requiring lobbyists to register and report on their activities. In addition, all but three states (Idaho, Michigan, and Vermont) require state legislators to file personal financial disclosures, and most states require that sources of legislators' income (including from interest groups) be reported.[96]

Finally, there are informational, temporal, and institutional constraints on the decision-making process. The nature of the policy problem—whether the problem is new or old, whether

the problem is well defined and understood (in terms of scope, time, values, and consequences), and the "wickedness" or intractability of the problem—will affect the decision-making process.[73] Depending on the nature of the problem and when in the legislative session the proposal is considered, decision-makers may not have enough information or time to fully understand or address the issue, leading them to rely on cue taking from trusted colleagues.[95]

Measures of informational and temporal constraints include the length of time the problem has been on the public and political radar, the proportion of people affected by the problem, the degree to which stakeholders agree on the problem definition, the number and success of prior attempts to solve the problem, and whether the bill is considered during peak legislative activity. Cue taking may also be directly determined if decision-makers reveal cues they received and the source of the cues. Political and social institutions can also constrain the policy process. Rules usually set out which decisions can be made by a government agency or official, as well as the procedures that must be followed.[73] Likewise, organizational rivalries, competition, power struggles, and pre-existing political relationships may limit the ability of a particular legislative proposal to become adopted. Institutional constraints are harder to measure than informational and temporal constraints, but may be disclosed during stakeholder interviews or documentation review.

The outcome of the public policy decision-making process is the policy decision, be it a positive decision such as the adoption of the original or revised proposal; or a negative decision, such as a permanent tabling of the proposal or the failure of the proposal to receive enough votes for adoption.

CHAPTER 3

METHODOLOGY

Since the purpose of this study is to understand the process by which competitive food legislation is developed at the state level, this study follows a qualitative research design. Qualitative methods are most appropriate for exploring a concept or phenomenon that has had little prior research, either because the topic is new, the topic is not well understood within a certain sample or context, or existing theories do not apply to the sample or context under study.[97] Due to the finite location and time period within which state-level legislative decisions around competitive food are made, this study utilizes the case study approach. This chapter describes the methods used to conduct the study, including the research design, case selection strategy, and data collection and analysis techniques.

Research Design and Rationale

This study employs a retrospective, comparative case study design. The case study is particularly well-suited for in-depth exploration of a contemporary set of events within their real life context,[98] and the method has been used to analyze a range of public health policies.[99-112] This approach was selected as the most appropriate research design because the study satisfies three conditions identified by Yin:[98] 1) a "how" or "why" research question is being asked; 2) the cases under study involve contemporary events (i.e., phenomena are directly observable or individuals involved can be interviewed by the investigator); 3) and the investigator has little or no control over behavioral events.

Comparative case studies, also referred to as cross-case or multiple case designs, are often considered more compelling than single case studies as they allow for more robust findings.[98,113] Like multiple experiments, multiple cases offer multiple replications and therefore

provide a stronger test of a theory and the conditions under which it may or may not hold.[98,114] Once cases are chosen and study protocols are determined, each case study is conducted and analyzed individually, as if it were a single experiment or complete study. After each individual case report is written, conclusions can then be drawn across cases.[98] Figure 3.1 illustrates Yin's replication approach, and the design used for this study.

Figure 3.1 Comparative case study method

SOURCE: Yin RK. *Case Study Research: Design and Methods.* 4th ed. Thousand Oaks, CA: SAGE Publications; 2009:57. Reproduced with permission from COSMOS Corporation.

Case Identification and Selection

In the current study, a case is defined as the policy formation process surrounding a single state-level competitive food bill introduced in 2009 or 2010. Cases are limited to this two-year time span to both allow for better recall from those involved in the policymaking process and to compare cases within the same national context. Additionally, the federal government defines competitive foods as those items sold in competition with the National School Lunch Program (NSLP) and School Breakfast Program (SBP) to children in food service areas during

meal periods.[31,32] Yet research and state-level legislation often expand upon the federal definition of competitive foods to include all items sold and/or served in schools outside of the federal meal programs.[24,33,59,65] This study utilizes this broader characterization of competitive foods in order to widen the pool of potential cases, as well as to acknowledge the need to consider food and beverage availability, both for sale and for free, in all locations on school campuses. It should be noted that availability of healthy items—such as fruits, vegetables, and water—can still compete with school meals. Therefore, competitive foods may be healthy or unhealthy.

Case identification. To determine the universe of cases, a catalog of all state-level competitive food bills introduced between January 2009 and August 2010 was developed (see Appendix B) using three Internet legislative databases, searched on August 11, 2010:

- Yale Rudd Center for Food Policy and Obesity, Legislative Database.[115] Led by Yale University faculty, the Rudd Center is a leading non-profit research and public policy organization concerned with improving diet and physical activity patterns, preventing obesity, and reducing weight bias.[116] One of the many resources the Rudd Center makes available to the public is an online database of state and federal food policies and obesity legislation. Bill status is monitored and updated regularly, and the database is searchable by location and issue. To identify the bills addressing competitive foods, a search was performed for all states using the issue of "school, nutrition." As school nutrition is a broad topic that also includes school meals and nutrition education, only those bills that specifically addressed competitive foods were included in the catalog. It should be noted that some bills are comprehensive, encompassing requirements around competitive foods as well as school meals, nutrition education, physical activity, or other provisions. As

long as competitive foods were mentioned in the bill text, the bill was included in the catalog. This identification method was used for all three database searches.

- National Conference of State Legislatures, Healthy Community Design and Access to Healthy Food Legislation Database.[117] The National Conference of State Legislatures (NCSL) is a bipartisan organization that serves state and territorial legislators and staff, providing them with research, technical assistance, and opportunities to exchange ideas.[118] Like the Rudd Center, NCSL offers an online legislative database of state-level bills addressing food, nutrition, and obesity. The database is searchable by location and bill topic area. To identify the competitive food bills, a search was performed for all states using the topic areas of "nutrition" and "obesity-childhood."
- National Association of State Boards of Education, State School Healthy Policy Database.[119] The National Association of State Boards of Education (NASBE) is a non-profit organization representing state and territorial boards of education. NASBE provides its members with research, technical assistance, and a national forum to study and discuss state education issues and trends.[120] Among their resources is an online database of policies from all 50 states on more than 40 school health topics. The topics used to search for competitive food policies were "school meals program" and "school food environment."

A total of 29 bills from 18 states were identified from these three databases, and the status and text of each bill were obtained from the respective state's legislative website.

Case selection. Case selection followed a criterion sampling approach, whereby all cases that meet a predetermined criterion of importance are included in the study.[121] This study applied two inclusion criteria to select cases. First, the bill must have resulted in adopted

legislation that addresses competitive food. This criterion ensures that bills of similar scope and legislative status are compared. Second, changes must have been made to the language of the bill prior to its adoption. The purpose of this criterion is to elicit areas of controversy and concurrence within the policy formation and decision-making processes. Figure 3.2 provides a flow diagram of the sample selection for this study.

Of the 29 bills originally identified, only 8 were eventually adopted as of November 1, 2010 (criteria #1). Three of these were excluded as cases because they do not meet the inclusion criteria: legislation adopted in Alaska does not contain the competitive food section included in the original bill (criteria #1). (However, Alaska's policy formation process was used as a pilot case study to help refine relevant field questions and procedural logistics.) In Louisiana, the adopted legislation does not differ from the original, introduced bill (criteria #2). A third bill in Mississippi was originally thought to meet the inclusion criteria, however upon further investigation and discussion with a key informant, it was determined that the intent of the bill was not to affect competitive foods (in fact, competitive food regulations had already been established several years before), but rather to encourage schools to meet other school food and physical activity guidelines. The Mississippi bill does not meet criteria #1, and was therefore excluded as a case. The five remaining bills, summarized in Table 3.1, serve as the final sample for this study.

Figure 3.2 Flow diagram of case sample selection

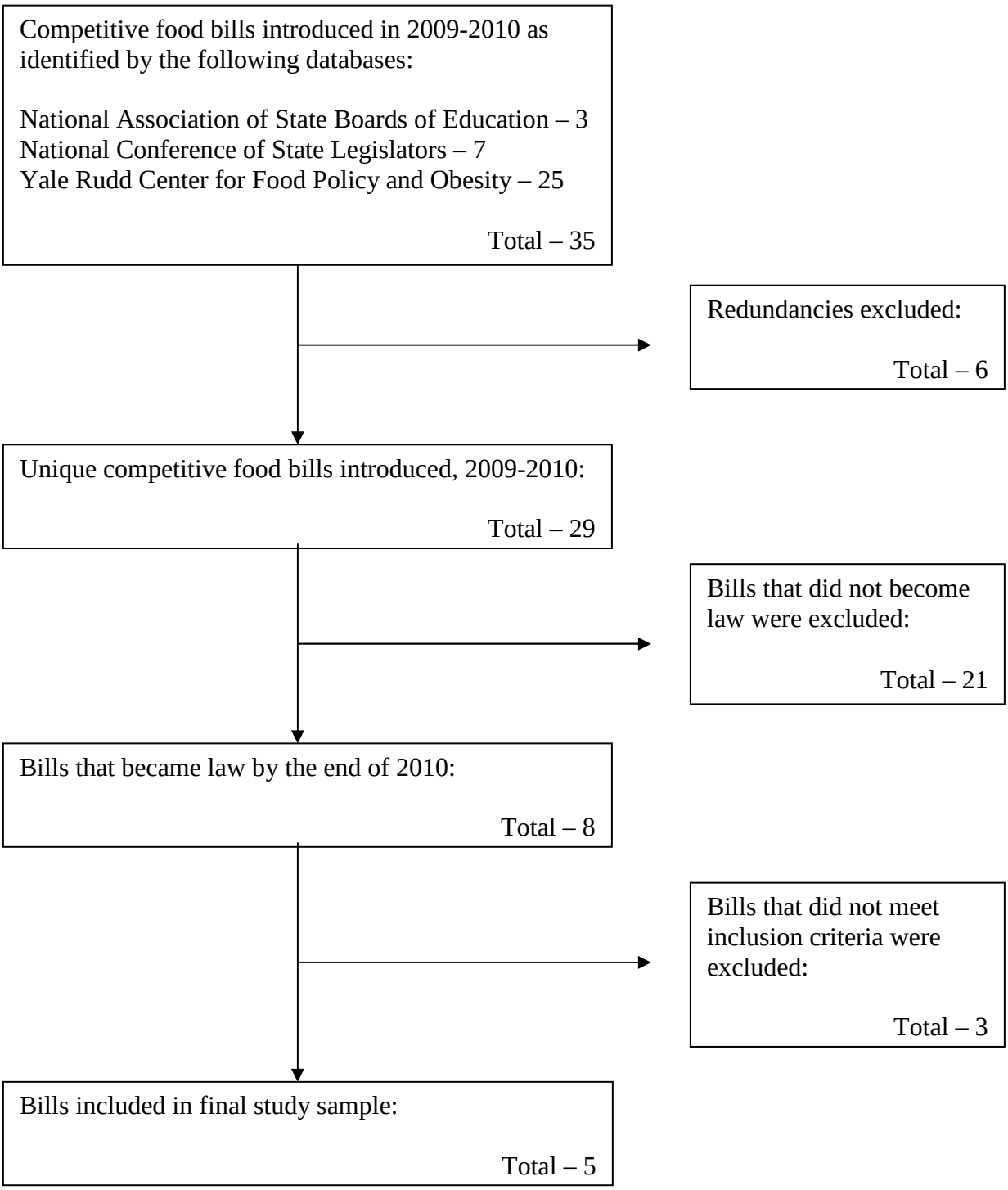


Table 3.1 Summary of bills included in the study sample

State	Bill #	Date Filed	Bill Summary (as introduced)	Date Adopted
Virginia	SB414	01/13/10	Requires the Board of Education, in cooperation with the Department of Health, to develop nutritional guidelines for all competitive foods sold or served to students during regular school hours.	04/13/10
Colorado	HB1335	02/10/10	Among other things, creates the Board of Cooperative Educational Services (BOCES) Healthy Food Grant Program, which requires recipients to procure and distribute to schools only foods and beverages that satisfy certain nutritional standards.	05/27/10
Ohio	SB210	11/17/09	Among other things, establishes nutritional standards for à la carte foods and beverages sold in public and chartered non-public schools.	06/18/10
Massachusetts	HB2092	01/20/09	Among other things, requires development of nutritional guidelines and standards for the sale or provision of competitive foods or beverages in public schools; requires public schools to offer for sale fresh fruit and non-fried vegetables at any location where food is sold; and requires public schools to make plain, potable water available free to all students during the school day.	07/30/10
California	SB1413	02/19/10	Requires school districts to provide access to free, fresh drinking water in school food service areas.	09/30/10

Data Collection

In order to construct comprehensive case studies for the five state-level policy formation processes, data were collected from relevant documents and archival materials, as well as from interviews with legislators, legislative staff members, advocates, and/or researchers in each state. For each case, a data file was created to collect and organize the evidence. The collection of documents and archival materials, identification of interview respondents, and the interview protocol are described below.

Documents and archival materials. For each case, publicly available documents and archival materials were obtained either through Internet and computer-based research strategies

(e.g., Google for general searches, LexisNexis databases for media and legislative information, state legislative websites for bill analyses and hearing recordings, etc.), or from direct contact with interview respondents, legislative offices, or state agencies. Such evidence includes legislative bills; official bill analyses, voting records, and fiscal impact reports; legislative hearing and committee meeting recordings, summaries, and written testimonies; legislative chamber journals; advocate, opponent, legislator, and state agency websites, reports, statements, and fact sheets; state lobbying and political finance databases; scholarly publications; local news articles; and other mass media sources. Documents were collected until saturation was reached (i.e., searches provided no more relevant hits and/or repeats of documents already obtained). Documents and archival materials were used to corroborate interview data, establish sequences of events, provide state-based contextual information, supply data not available from other sources, and verify details, such as spellings, names, and titles.

Identification of interview respondents. Potential interview respondents were identified in two stages: 1) targeted respondents based on preliminary documentation review; and 2) additional respondents recommended through a snowball approach of asking each interview respondent to identify other primary stakeholders involved in the policy process. Targeted respondents were identified based on their public involvement with the bill, as determined through legislative documents, advocacy reports, and news coverage. Potential interview respondents were classified into one of three categories: policymakers (i.e., legislative sponsors), government employees (i.e., representatives from the State Departments of Health or Education), and non-governmental advocates and opponents.

During all interviews, a snowball approach was used to determine additional interview respondents who may not have been identified through the initial documentation review.

Specifically, respondents were asked to identify the primary stakeholders involved in advocating for and against the bill, as well as other individuals they recommended that could provide additional information or offer a different perspective on the policy process. These stakeholders were then added to the list of potential interview respondents. This technique identified individuals that may not have been mentioned in public accounts of a particular state's competitive food bill.

For each case, a minimum of three semi-structured telephone interviews was conducted, and interviews were sought with at least one respondent from each of the three categories: policymakers, governmental employees, and non-governmental advocates and opponents. However, attempts to interview the legislative sponsor were unsuccessful in three of the five cases (California, Colorado, Massachusetts). To obtain the policymaker's perspective as closely as possible in these three cases, interviews were sought with legislative staff members who had strong working knowledge of the bill and its progression through the legislative process. Yet only in Massachusetts did the legislative staff member respond and consent to an interview. Thus, a legislative representative was not interviewed in California or Colorado. In addition, despite multiple attempts to contact government employees and non-governmental opponents in each case, representatives from these categories either declined to participate or did not respond to interview requests. Instead, at least two advocates were interviewed for each case. Finally, in order to gain a different perspective in California, a researcher with knowledge of the bill's origin was interviewed. Table 3.2 summarizes interview respondents by category in each case state.

Table 3.2 Distribution of interview respondents

	Virginia	Colorado	Ohio	Massachusetts	California
Legislators and staff	1	0	1	1	0
Advocates	2	3	2	4	2
Other	0	0	0	0	1
Total	**3**	**3**	**3**	**5**	**3**

Interview protocol. Potential interview respondents were contacted via letter or email to request participation in a one-hour telephone interview (see Appendix C for the invitation letter). This contact was followed by one or more phone calls and/or emails to describe the project, elicit involvement, answer questions, obtain written informed consent, and schedule the interview. All interviews were conducted by the Primary Investigator and followed a semi-structured interview guide, though slightly different questions were asked of legislators and non-governmental advocates based on their distinct roles in the policymaking process (see Appendix D for sample interview guides). During the interviews, additional questions were asked for clarification purposes or to expand upon relevant or emerging themes or issues.

The average length of each telephone interview was 49 minutes, ranging from 23 minutes to 1 hour and 19 minutes. Respondents were sent an informed consent form describing the purpose of the study, the risks involved in participating in the interview, and the option of confidentiality through remaining anonymous and/or providing specified information "off the record" (see Appendix E for the informed consent form). Written consent was obtained from all interview respondents. All interviews were audio-recorded with the respondents' consent, and verbatim transcripts were prepared by the Primary Investigator. The Primary Investigator also took field notes during interviews. All interview transcripts and field notes were included in the case data file, and any additional documentation made available by respondents was also considered evidence and added to the data file.

Human subjects' protection. This study, protocol number 11-02-037-0135, was approved by the Institutional Review Board of the Graduate Center, City University of New York, prior to research commencement.

Data Analysis

Within-case analysis. For each case, analysis began with a comparison of the different bill versions over time. To organize the changes made from one bill version to the next, a timeline of the policy formation process was created, starting with the date the bill was introduced and ending with bill adoption. Each bill version was reviewed line-by-line and compared to the previous version, so as to identify the language and content changes made between versions. Changes were highlighted and coded based on the type of change (e.g., addition, deletion); the content of the change; and the impact of the change on the newer bill version. Changes in language or content were then added to the bill timeline. Since a change in one bill version is not necessarily permanent (for example, a provision is added in one version and deleted in the next), the same procedure was used to compare the introduced bill to the adopted bill for an overall examination of change from the bill's original language.

With regard to a change's impact on the bill, each change in language and content was qualitatively assessed for its potential, as written, to make the school environment more healthful relative to the prior bill version. Factors such as implementation, enforcement, and compliance were not considered in this assessment (unless the subject of the change itself) because case studies focused only on the policy formation and decision-making process. Rather, each change was labeled as strengthening, weakening, or having negligible impact on the bill based on its intent to make healthy food more available, unhealthy food less available, or to improve the health of students in some other way. For example, a provision was added to Massachusetts

House Bill 2092 requiring that all foods meet state and federal food safety guidelines. This change strengthened the bill because it increases the bill's potential to improve the safety of foods served in school, relative to the prior bill version that did not include the provision. On the other hand, a change to Virginia Senate Bill 414 limited the application of nutrition guidelines from all competitive foods *sold or served* to students to only those competitive foods *sold* to students. This change weakened the bill because it allows competitive foods provided to students at no cost to remain unregulated, thereby permitting unhealthy foods to be served.

Once the timeline was completed, all interview transcripts and documents from the case data file were uploaded to ATLAS.ti, version 6.2 (ATLAS.ti GmbH, Berlin, Germany) and analyzed in a process adapted from Zimmerman et al.[122] in their comparative case study of AIDS prevention projects. This strategy involved:

- Preparing data chunks: during a line-by-line review of an interview transcript or document, responses to a particular question or details regarding a specific topic were segmented based on the distinct key points made.
- Coding data chunks into categories: eight broad categories of codes were predetermined based on the specific aims of the study: 1) contextual factors; 2) bill changes; 3) policy strength; 4) primary stakeholders; 5) advocacy tactics used; 6) facilitators of stakeholder success; 7) inhibitors of stakeholder success; and 8) recommendations/lessons learned. Each of these categories gave rise to subsequent subcategories originating from the data, and additional categories were iteratively developed as evidence was collected and reviewed. Each data chunk was coded into one or more categories and subcategories.

- Double-checking the data chunks and coding: a research assistant repeated the prior two steps for accuracy. Any discrepancies in data chunk designation or coding were discussed and agreed upon by both researchers.
- Organizing coded data chunks into a single document: categorized data chunks from all interviews and documents within a case were combined into a single document, organized by category and subcategory. Thus, all data chunks coded as contextual factors were placed together (and separated by subcategory), followed by all details regarding bill changes, etc.

Once all interview transcripts and documents were coded, the case was analyzed through the lens of the conceptual framework of factors influencing public policy decision-making, described in the previous chapter. For each case, the constructs of cohesion, lobbying, and constraints were objectively ranked as low, medium/moderate, or high in terms of their levels during the policymaking process. Category rankings were determined using the criteria outlined in Table 3.3, and ranking criteria were established for this study to maximize variability among cases (i.e., so that cases would not all be ranked the same in any given category).

Table 3.3 Ranking criteria for the level of conceptual framework constructs during the policymaking process of the competitive food bill

	Low	Medium/Moderate	High
Cohesion	More than 25% dissenting votes None in executive branch took a neutral or supportive position Presence of strong opposition to bill Stakeholders willing to compromise on few or no language and content changes	Between 15% and 25% dissenting votes Some in executive branch took a neutral or supportive position Presence of moderate opposition to bill Stakeholders willing to compromise on some language and content changes	Up to 15% dissenting votes All in executive branch took a neutral or supportive position Presence of little or no opposition to bill Stakeholders willing to compromise on most or all language and content changes
Lobbying	Presence of 10 or less registered and active lobbyists in favor or opposed to the bill	Presence of 11 to 20 registered and active lobbyists in favor or opposed to the bill	Presence of 21 or more registered and active lobbyists in favor or opposed to the bill
Constraints	Presence of 1 or no informational, temporal, or institutional constraints	Presence of 2 informational, temporal, or institutional constraints	Presence of 3 or more informational, temporal, or institutional constraints

A single case study was written for each case based on the bill timeline, consolidated coding document, field notes, conceptual framework analysis, and any additional documentation obtained for the case. All case studies followed a standard outline: introduction, methods, bill history and timeline, changes made from bill introduction to adoption, tactics used by primary stakeholders to influence bill language and content, factors affecting the success of stakeholders in influencing bill language and content, factors influencing the decision-making process, and discussion and lessons learned. Case studies were written one at a time; though due to scheduling conflicts and time constraints, there were instances where interviews for one case study occurred while another case study was being written.

Cross-case analysis. Following the writing of the five single case studies (Chapters 4-8), comprehensive summary tables were compiled to display data from each case, including state- and legislative-related contextual factors; bill-related details; characteristics of primary stakeholders; and information regarding emergent themes and issues. These tables were then analyzed for recurring and unique themes and common patterns, enabling conclusions to be drawn across cases. The results of this cross-case analysis are included in a final comparative case study report, found in Chapter 9.

Validity and Reliability

A common goal for all research is to minimize measurement error so that useful inferences can be drawn about the relationships between underlying constructs. At least four concepts are fundamental to research design: construct validity, internal validity, external validity, and reliability. These concepts are not properties of a single research method, but rather are characteristics of causal knowledge claims.[123] In order to ensure case study quality and guard against measurement error, this study utilized several tactics identified by de Vaus[114] and Yin[98] to address these four concepts, summarized in Table 3.4 and described below.

Table 3.4 Comparative case study tactics for four research design concepts

Concept	Case Study Tactic	Phase of Research in Which Tactic Occurs
Construct validity	Use multiple sources of evidence	Data collection
	Establish a chain of evidence	Data collection
	Have key informants review the case study report	Composition
Internal validity	Use a retrospective study design	Research design
	Use unobtrusive data collection methods	Data collection
	Use pattern matching	Data analysis
	Use explanation building	Data analysis
External validity	Use replication logic in selecting multiple cases	Research design
Reliability	Follow a case study protocol	Data collection
	Develop a case study database	Data collection

SOURCE: Adapted from Yin RK. *Case Study Research: Design and Methods*. 4th ed. Thousand Oaks, CA: SAGE Publications, 2009;41.

Construct validity. Construct validity, a common criticism of case study research, is the extent to which a measure corresponds to the theoretical concepts under study. To minimize threats to construct validity, this study used multiple sources of evidence to allow for the triangulation of data and provide different measures of the same phenomenon, increasing the likelihood that the underlying construct was measured. In addition, these data sources were individually coded by the Primary Investigator and a research assistant, and any discrepancies were discussed and agreed upon by both researchers. This investigator triangulation allowed for an additional check of the study's construct validity. As another tactic, the study maintained a chain of evidence to ensure that the original evidence can be followed from the initial research questions to the final comparative case study conclusions. Lastly, Yin[98] recommends that key informants review the draft case study report in order to confirm the facts and evidence, provide additional evidence if available, and identify various perspectives as needed. This process increases the accuracy, and therefore the construct validity, of the case study. For this study, at least one interview respondent from each case was asked to review the respective single case study.

Internal validity. Internal validity is the extent to which study findings accurately represent the causal relationship between an independent variable and a dependent variable in the face of plausible potential alternative explanations. For this study, a retrospective study design and unobtrusive data collection methods were used to reduce the likelihood of reactive effects—effects or changes in the case that result from actually doing the study.[114] In addition, this study employs pattern matching and explanation building tactics, which Yin[98] recommends to strengthen the causal inferences, and thus the internal validity, of a study.

External validity. External validity is the extent to which study findings can be generalized beyond the particular circumstances (e.g., population, setting, time, etc.) of the original study. Replicating findings under similar and different conditions is necessary for determining the range of generalization. This study analyzed five cases and utilized Yin's[98] replication logic for selecting cases. Each case represented a different region of the United States, and cases varied on several correlates of bill introduction and adoption,[124-126] such as state obesity rate, political control of legislature, political party of Governor, and bill-related predictors. Appendix F provides a summary of these and other state-, legislature-, and bill-level factors across the five cases.

Reliability. The final concept, reliability, is the extent to which a measure or protocol produces consistent results when the true value is the same. To determine reliability, it is necessary for the measure or protocol to be clearly defined and documented so that others can easily repeat the study. With case studies, two ways of defining and documenting—and thus increasing reliability—are to use a case study protocol and develop a case study database.[98] This study followed a case study protocol—including field procedures, interview questions, and a case study outline—to guide the Primary Investigator in data collection and reporting. Likewise, this study maintained a case study database: a formal, organized, categorized, and complete collection of the evidence that can be reviewed by others at a later time.

SECTION II

CASE STUDIES

This section begins with an overview of the common national context, legislative process, and terms across the five cases, followed by the five single case studies in Chapters 4-8. Cases are presented in the order of bill adoption.

National Context

The five bills analyzed in the following case studies were all introduced and adopted in 2009-2010, and thus share the same national context. From public health and public policy perspectives, the 2008 election of President Barack Obama brought a renewed federal focus to the areas of food (including school food), nutrition, and childhood obesity. For example, in March 2009, First Lady Michelle Obama broke ground on the White House Kitchen Garden, the first White House vegetable garden since Eleanor Roosevelt's victory garden in World War II. In addition to providing organic vegetables for the White House, the garden is used to educate children about the importance of eating healthy and locally-grown foods.[127] The following year, President Obama signed a Presidential Memorandum creating the Task Force on Childhood Obesity, helping to launch the First Lady's *Let's Move!* initiative dedicated to solving obesity within a generation. Among the five pillars of the *Let's Move!* initiative is providing healthy food in schools.[128,129]

Revisions of several important federal food and nutrition policies were also taking place in 2010, including the *2010 Dietary Guidelines for Americans*[66] (released January 31, 2011) and its visual counterpart, *MyPlate*[130] (released June 2, 2011). Perhaps most significant to the area of school food was the passage of the Healthy, Hunger-Free Kids Act of 2010,[57] an omnibus bill reauthorizing all federal school meal and child nutrition programs. This legislation requires that

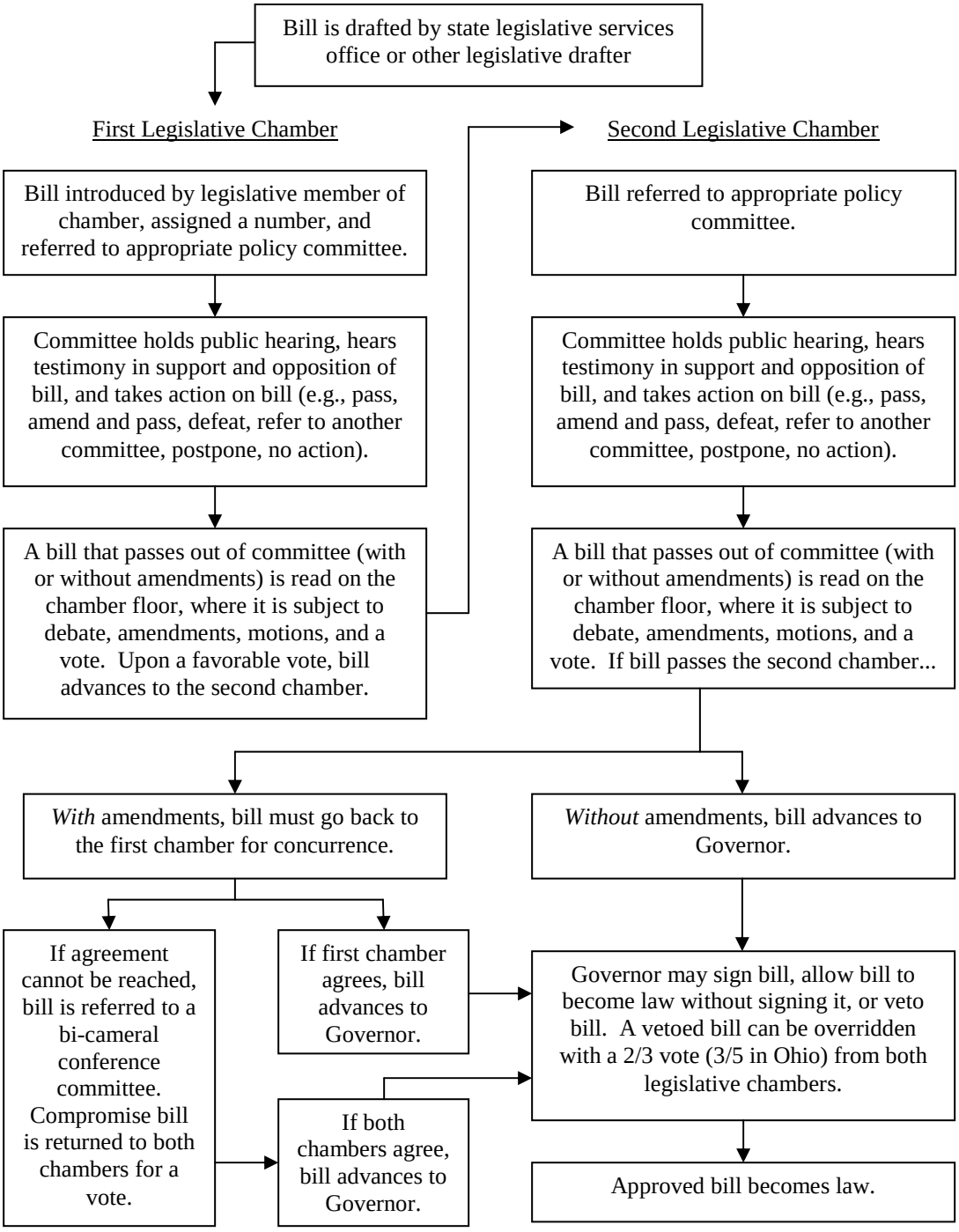
the United States Department of Agriculture (USDA) update nutrition standards for the National School Lunch Program (NSLP) and School Breakfast Program (SBP), as well as establish nutrition standards for all foods sold in schools outside of these programs during the school day. In addition, schools participating in the NSLP must offer free, potable water wherever meals are served during mealtime.[57]

During this time, the United States was in the midst of an 18-month economic recession (referred to as the Great Recession, the longest recession since World War II), determined by the National Bureau of Economic Research to have started in December 2007 and lasting until June 2009.[131] According to the Center on Budget and Policy Priorities, the Great Recession "caused the largest collapse in state revenues on record."[132] Despite evidence of an economic recovery since June 2009, states were far from fully recovered by the end of 2010. State revenues remained below pre-recession levels as high unemployment rates, fallen property values, and reduced consumption inhibited tax intake.[132] However, temporary aid to states was provided through the American Recovery and Reinvestment Act of 2009[133] to help prevent harmful cuts to the most necessary services, such as education, healthcare, and housing.[134]

Description of Common Legislative Process and Terms

Each of the five case states has a bi-cameral legislature, consisting of a Senate and either a House of Representatives, House of Delegates, or Assembly. Although each state conforms to slightly different procedures for how a bill becomes a law, they follow the same overall legislative process, summarized in Figure II.1.

Figure II.1 General process by which a bill becomes a law in each case state



SOURCE: This figure draws on the following, accessed June 19, 2012: California Legislative Information. Overview of legislative process. Available at: http://www.leginfo.ca.gov/bil2lawx.html; Colorado General Assembly. How a bill becomes Colorado Law. Available at: http://wccmesa.org/resources/legislative-process/how-a-bill-becomes-colorado-law/at_download/file; The General Assembly of the State of Ohio. The legislative process. Available at: http://www.legislature.state.oh.us/process.cfm; The General Court of the Commonwealth of Massachusetts. How an idea becomes a law. Available at: http://www.malegislature.gov/Engage/HowIdeaBecomesLaw; and Virginia General Assembly. How a bill becomes a law. Available at: http://legis.virginia.gov/1_cit_guide/HowABill.htm.

The legislator(s) who originally introduces the bill is referred to as the primary bill sponsor, author, or patron, depending on the state. In several states, it is common for other legislators to add their names as co-sponsors to show their support for the bill. In addition, identical or similar bills may be introduced to both legislative chambers simultaneously. Bills may contain a single provision, such as California Senate Bill 1413 that requires free, fresh water to be available in school food service areas; or they may include multiple provisions, such as Massachusetts House Bill 2092 that requires free, potable water to be available to all students during the school day, as well as establishes requirements for competitive foods and beverages, nutrition and exercise education in schools, local food procurement by state agencies, farm-to-school programs, and a state commission on school nutrition and childhood obesity, among other things. Bills may also be written so that requirements are specific and detailed within the legislation, or they may be written more broadly, directing state agencies to determine the particulars through a regulatory process. For example, Ohio Senate Bill 210 lists the à la carte beverages that may be served during the school day, including the type of beverage (i.e., water, juice, milk), maximum number of ounces per container, and maximum calories per ounce. In contrast, Virginia Senate Bill 414 requires the Board of Education, in cooperation with the Department of Health, to develop regulations setting nutrition guidelines for all competitive foods sold to students during the school day.

Once introduced, a bill is referred to the appropriate policy committee based on the bill's subject area and the committee's jurisdiction. Legislative chambers often have multiple standing committees that oversee broad topics, such as agriculture; commerce and labor; public safety; transportation; and veterans' affairs. For example, competitive food bills in these five states were either referred to the education or health committees of each chamber, with the exception of

Massachusetts, which has a joint public health committee composed of legislators from both chambers. Committees may also consist of sub-committees that further focus on particular issues, adding an additional level of bill review. The role of these committees and subcommittees is to thoroughly examine the bill, receive public comment, and determine whether or not the bill should go forward in the legislature—either as-is or with amendments.

Bills in each state are also analyzed for their fiscal impact—how much money the bill is expected to cost the state and local governments. Based on this analysis, a fiscal impact statement, fiscal note, or fiscal summary may be written to quantify and describe the bill's impact on state and local revenues and expenditures. The fiscal analysis report is later revised if the bill is amended. Bills that require an expenditure of government funds are referred to the chamber's fiscal committee, often called the appropriations or ways and means committee. Fiscal committees generally review a bill after it passes the appropriate policy committee. Table II-1 summarizes the various legislative characteristics across the five case states.

Table II.1 Summary of legislative characteristics across the five case states

	Virginia	Colorado	Ohio	Massachusetts	California
Legislative chambers	House of Delegates; Senate	House of Representatives; Senate	House of Representatives; Senate	House of Representatives; Senate	Assembly; Senate
Member introducing bill	Bill patron	Bill sponsor	Bill sponsor	Bill sponsor	Bill author
Policy committee(s) that reviewed the current bill under study	House Education; Senate Education and Health	House Education; Senate Education	House Health; Senate Health, Human Services, and Aging	Joint Public Health	Assembly Education; Senate Education
Fiscal committee(s) that reviewed the current bill under study	House Appropriations	House Appropriations; Senate Appropriations	N/A	House Ways and Means; Senate Ways and Means	Senate Appropriations
Name of fiscal analysis report	Fiscal impact statement	Fiscal note	Fiscal note and local impact statement	Fiscal note	Fiscal summary

Bills may be amended while in committee or during a full-chamber review, and generally require a majority vote to move to the next stage of the legislative process. However, in order for a bill to advance to the Governor, it must pass both legislative chambers in identical form. If the bill becomes a law, it becomes effective by the date specified in the bill.

CHAPTER 4

VIRGINIA SENATE BILL 414

Abbreviations

ACS-VA	American Cancer Society, Virginia Chapter
AHA-VA	American Heart Association, Virginia Chapter
BOE	Virginia Board of Education
DOE	Virginia Department of Education
HB1067	Virginia House Bill 1067 (Athey)
IOM	Institute of Medicine
SB210	Virginia Senate Bill 210 (Barker)
SB414	Virginia Senate Bill 414 (Vogel)
SNA-VA	School Nutrition Association of Virginia
USDA	United States Department of Agriculture
VA-AAP	American Academy of Pediatrics, Virginia Chapter
VAMA	Virginia Automatic Merchandising Association
VBA	Virginia Beverage Association
VDH	Virginia Department of Health
VWDA	Virginia Wholesalers and Distributors Association

Introduction

Following unanimous, bipartisan support from both legislative chambers, Virginia Governor Bob McDonnell signed Senate Bill 414 (SB414) into law on April 13, 2010. This law—Chapter 718 of the Virginia Acts of Assembly[135]—requires the Virginia Board of Education (BOE), in cooperation with the Virginia Department of Health (VDH), to promulgate regulations setting statewide nutrition guidelines for all competitive foods (excluding beverages) sold to students on school grounds during regular school hours. These guidelines must be periodically reviewed to ensure that they remain current and science-based, and are initially to be

based on either the Alliance for a Healthier Generation's Competitive Food Guidelines or the Institute of Medicine's (IOM) Nutrition Standards for Foods in Schools. Provisions also identify specific nutrients that the regulations must include, as well as a list of professional and industry stakeholder groups that the BOE must work with in the development and dissemination of the guidelines. Finally, each local school board is required to adopt the nutrition guidelines as part of their existing local wellness policy to ensure compliance. This bill updates and strengthens Virginia's rather vague and loose competitive food standards, summarized in Box 4.1.

Box 4.1 Virginia's competitive food policies prior to 2009

Title 8, Section 20-290-10 of the Virginia Administrative Code[136] requires that any foods or beverages sold during the lunch period must be limited to only those identified as components of the school lunch program's Type A lunch and breakfast, such as sandwiches, soup, salads, fruit, fruit juice, desserts, and chocolate milk. The income from the sale of foods and beverages must accrue to the school lunch account. The code also strongly recommends high schools only sell items that are of recognized nutritional value, in keeping with the federal requirements.

Title 8, Section 20-580-60 of the Virginia Administrative Code[137] requires that all foods sold from 6am until after the close of the last breakfast service period must be of sound nutritional value and contribute significantly to students' nutritional needs as identified in current Recommended Dietary Allowances. The income of food sales during this time must accrue to the school food service.

In 2005, Virginia Governor Mark Warner issued recommended nutrition guidelines for foods sold in schools:

- 30% calories from fat
- 10% calories from saturated fat
- 35% weight sugar
- Less than 300 calories per serving
- Reduce trans fats[138]

Methods

Evidence for this case study is drawn from three stakeholder interviews and a variety of documentary sources. Interviews were conducted between November 28, 2011 and December

14, 2011 with Virginia State Senator George Barker (bill patron[ix]); Cathleen Grzesiek, Senior Director of Government Relations at the American Heart Association, Virginia Chapter (AHA-VA, advocacy group); and Aimee Perron Seibert, contract lobbyist for the School Nutrition Association of Virginia (SNA-VA, advocacy group). Interviews were also sought with four other potential respondents representing the Virginia legislature and other advocacy groups, however none of the four responded despite up to seven invitation attempts. In addition, bill-related information was obtained via the Internet from the Virginia legislature, state regulatory agencies, advocacy organizations, industry groups, lobbyist registration records, and media reports.

Bill History and Timeline

Although introduced in January 2010, the idea for SB414 was not new. Two years prior, Senator Barker introduced a similar version of the bill drafted by SNA-VA, the state affiliate of the School Nutrition Association, a national non-profit organization of school food service professionals. SNA-VA specifically approached Senator Barker about filing the bill because of his educational and professional background in public health, health policy, and healthcare issues: Senator Barker has an undergraduate degree in economics and public health, a master's in health policy and management, and for 30 years worked at the Health Systems Agency of Northern Virginia, a "nonprofit organization established under Virginia law to plan for the balanced and orderly development of healthcare facilities and services in Northern Virginia."[139] In addition, Senator Barker was a strategic choice given his seat on the Senate Committee on Education and Health, where the bill was referred shortly after its introduction. Plans to

[ix] In Virginia, bill sponsors are called patrons.

introduce a House version of the bill came to a halt when the Delegate patron missed the filing deadline.

The 2008 bill passed unanimously through the Senate with one significant change. Due to pressure from the beverage industry, the bill was amended to specifically exclude beverages from the definition of competitive foods. Rather, the Virginia Beverage Association (VBA)—the statewide industry group representing non-alcoholic beverage producers, distributors, and support businesses—pointed to the Alliance for a Healthier Generation's voluntary School Beverage Guidelines that they were willing to implement and enforce. Senator Barker noted that in Virginia, there is a legislative willingness to accept this type of self-regulation, though policies could later be sought if voluntary standards are not enforced. With this change, the bill was sent to the House, where it died for political reasons unrelated to the bill: three days after Senator Barker's committee defeated a number of House bills related to abortion, higher education, and health records, House members reacted by blocking Senator Barker's bill.

In 2009, improving school nutrition standards became a priority for the American Heart Association, a national voluntary health organization dedicated to reducing cardiovascular disease and stroke. As such, the organization's state chapters began working on improving school nutrition policies at the state level, and AHA-VA approached SNA-VA about introducing an updated version of their bill in 2010. AHA-VA also partnered with the Virginia chapters of the American Cancer Society (ACS-VA), a national voluntary health organization committed to eliminating cancer as a major health problem; and the American Academy of Pediatrics (VA-AAP), a national professional organization of pediatricians. Although representing different interests, all four of these groups support policy efforts aimed at preventing childhood obesity and/or improving children's health and nutrition.

Together, the four groups identified two new patrons—Senator Jill Vogel and Delegate Clifford Athey—in an effort to distance the bill from any political awkwardness that may have remained from the 2008 session. Senator Vogel's passion for children's issues made her a great supporter of the bill, but advocates also strategically approached her because of her political party affiliation. In 2010, the House was primarily Republican (59 Republicans, 39 Democrats, and 2 Independents) while Democrats held the majority in the Senate (22 Democrats, 18 Republicans). Anticipating the House as the more challenging of the two chambers for successful passage, advocates felt the bill would have a better chance in the House if a Republican Senator, such as Senator Vogel, introduced it instead of a Democrat, like Senator Barker. Delegate Athey, also a Republican and supporter of children's health issues, was strategically chosen for his chairmanship of the House Education subcommittee that heard his and Senator Vogel's bills.

Senator Vogel's bill, SB414, and Delegate Athey's bill, House Bill 1067 (HB1067), were introduced in their respective chambers on January 13, 2010. In addition, Senator Barker re-filed his 2008 bill, renumbered Senate Bill 210 (SB210). Although these three bills shared much of the same language, Senator Vogel's SB414 was the strongest of the three bills introduced. Differences between the three bills are outlined by section in Table 4.1.

Table 4.1 Differences between competing Virginia bills as introduced*

	SB210**[140]	SB414[141]	HB1067[142]
Section 1A	"shall promulgate regulations setting nutritional guidelines for all competitive foods sold during regular school hours."	"shall promulgate regulations setting nutritional guidelines for all competitive foods sold or served to students during regular school hours."	"shall promulgate regulations setting nutritional guidelines for all competitive foods sold during regular school hours."
Section 1B	"shall periodically review the nutritional standards for competitive foods to ensure that they remain current and science-based."	"shall periodically review the nutritional guidelines for competitive foods to ensure that they remain current and science-based,"	"shall periodically review the nutritional guidelines for competitive foods to ensure that they remain current and science-based."
	No provision	"and shall also review the nutritional guidelines upon changes to federal law or regulations for competitive foods."	No provision
Section 1C	No provision	"The regulations promulgated pursuant to this section shall include, but are not limited to, calorie, fat, sugar, and sodium content."	"The regulations promulgated pursuant to this section shall include, but are not limited to, calorie, fat, sugar, and sodium content."
CF Defined	"For purposes of this section, 'competitive food' means any food, excluding beverages, sold on school grounds that is not part of the school breakfast or school lunch program."	"For purposes of this section, 'competitive food' means any food, excluding beverages, sold or served to students on school grounds during regular school hours that is not part of the school breakfast or school lunch program."	"For purposes of this section, 'competitive food' means any food, excluding beverages, sold on school grounds during regular school hours that is not part of the school breakfast or school lunch program."
Section 2	"shall adopt the Governor's Nutrition and Physical Activity Scorecard's nutritional guidelines as the statewide standard for competitive foods."	"shall adopt either the Alliance for a Healthier Generation's Competitive Food Guidelines or the IOM's Recommended Standards for Competitive Foods in Schools as the initial statewide standard for competitive foods."	"shall adopt the Alliance for a Healthier Generation's Competitive Food Guidelines as the initial statewide standard for competitive foods."
Section 3	"shall report to the General Assembly on the status of the final regulations by 12/1/12."	"shall report to the General Assembly on the status of the final regulations by 12/1/11."	"shall report to the General Assembly on the status of the final regulations by 12/1/11."

Table 4.1 Continued

	SB210[140]	**SB414**[141]	**HB1067**[142]
Section 4	"Each local school board shall develop and implement a plan to ensure compliance"	"That each local school board shall develop and implement a plan to ensure compliance"	"Each local school board, in cooperation with the school health advisory board, shall develop and implement a plan to ensure compliance"
	"and submit the plan to the DOE no later than 30 days prior to the beginning of the 2013-2014 school year."	"and submit the plan to the DOE no later than 30 days prior to the beginning of the 2012-2013 school year."	"and submit the plan to the DOE no later than 30 days prior to the beginning of the 2012-2013 school year."

*Shading indicates stronger/stricter language as compared to competing bills.
**SB210, as introduced, was equivalent to the 2008 bill that died in the House.
CF: competitive food; **DOE:** Department of Education; **IOM:** Institute of Medicine

Of note, SB414 required that the nutrition guidelines apply to competitive foods *sold or served* to students, whereas the other two bills required the guidelines apply only to competitive foods *sold* to students. Another major difference between the three bills was in the naming of the initial statewide standard. SB414 provided a choice between the Alliance for a Healthier Generation's Competitive Food Guidelines and the IOM's Nutrition Standards for Foods in Schools, while HB1067 named only the Alliance for a Healthier Generation's guidelines and SB210 specified the Governor's Nutrition and Physical Activity Scorecard's nutritional guidelines.[x] One respondent noted that the reason SB414 gave a choice between two standards was because some advocates preferred the Alliance for a Healthier Generation's guidelines to the IOM's:

> IOM is the one that School Nutrition Association supported, because they felt like IOM is what's going to be adopted at the federal level. Which is what I think

[x] Part of the Governor's Healthy Virginians Initiative, the Governor's Nutrition and Physical Activity Scorecard is an evaluation tool for schools to measure their progress towards meeting healthy living best practices. Comparing these three sets of nutrition guidelines for competitive foods and beverages, IOM's standards are the strictest, followed by the Alliance for a Healthier Generation's guidelines and the Governor's Nutrition and Physical Activity Scorecard guidelines.

> actually ended up happening this year, though it still hasn't passed. But they felt like that's probably what's going to go down, and that was just easier for the school nutrition folks…The Heart Association, because they have a relationship with the Alliance for a Healthier Generation, preferred the Alliance standards. So our compromise was let's just put both of them in there and let the guidelines group choose which one is better.

Soon after it was introduced, SB210 was incorporated into SB414 by the Senate Committee on Education and Health and, as amended, passed the Senate floor. The following week, HB1067 was given a fiscal impact statement with an estimated cost of $105,000 a year for two years to cover one additional full-time Virginia Department of Education (DOE) employee needed for bill implementation. Once HB1067 passed the House Committee on Education, the addition of the fiscal impact statement required its referral to the House Committee on Appropriations. Because of a national economic crisis that left states struggling for funds, this fiscal impact statement was a legislative kiss of death. In Virginia, it was known that any bill costing the state money would not pass, and as follows, HB1067 died in Appropriations.

At this point, only one bill remained. SB414 awaited a hearing by the House Education subcommittee chaired by Delegate Athey. Seeing the bill's projected cost as a major threat to its future, advocates worked closely with the DOE to revise the fiscal impact statement. Specifically, the statement identified DOE's concerns about using its federally-funded employees to fulfill state-level mandates. After consulting with the United States Department of Agriculture (USDA)—the federal agency that was providing the funding—it was determined that the DOE could implement the bill using its current employees, and the fiscal impact statement was revised to reflect this new information. No longer costing the state money, SB414 continued on through the legislative process to its ultimate adoption, albeit with some language and content changes, described in the following section. Table 4.2 provides a timeline of these and other major legislative events occurring in 2010, along with a summary of bill changes.

Table 4.2 Timeline of major legislative actions and changes to Virginia SB414

Date	Legislative Action	Bill Changes
Senate		
1/12/10	SB210 (Barker) pre-filed, referred to Senate Committee on Education and Health, assigned to Public Education subcommittee	
1/13/10	SB414 (Vogel) pre-filed, referred to Senate Committee on Education and Health, assigned to Public Education subcommittee	
House		
1/13/10	HB1067 (Athey) pre-filed, referred to House Committee on Education, assigned to Students and Daycare subcommittee	
Senate		
1/28/10	SB210 incorporated into SB414 by Senate Committee on Education and Health (13-Y, 0-N). SB414 reported from Senate Committee on Education and Health with substitute, SB414-S1 (14-Y, 0-N).	SB414-S1 maintained all of SB414, except limited the regulation of competitive foods, from those *sold and served* to students, to only those *sold* to students.
2/2/10	SB414-S1 passed Senate (40-Y, 0-N)	
House		
2/4/10	Students and Daycare subcommittee recommended reporting HB1067 with amendment(s) (10-Y, 0-N)	
2/8/10	House placed SB414-S1 on calendar and referred to House Committee on Education, assigned to Students and Daycare subcommittee. HB1067 assigned a fiscal impact statement estimating $105,000/year for two years.	
2/10/10	HB1067 reported from House Committee on Education with substitute, HB1067-H1 (21-Y, 0-N). HB1067-H1 referred to House Committee on Appropriations, assigned to Elementary and Secondary subcommittee. Subcommittee recommends laying HB1067-H1 on the table by voice vote. HB1067-H1 left in House Committee on Appropriations.	
2/24/10	Fiscal impact statement, also applicable to SB414-S1, revised—estimated costs removed.	
2/25/10	Students and Daycare subcommittee recommended reporting SB414-S1 with amendment(s) (10-Y, 0-N)	

Table 4.2 Continued

Date	Legislative Action	Bill Changes
3/3/10	SB414-S1 reported from House Committee on Education with substitute, SB414-H1 (22-Y, 0-N)	SB414-H1 added a list of nutrition, health, and industry stakeholders that the BOE must work with to conduct any research necessary for the development of the regulations and dissemination of the guidelines. It also required that each local school board adopt the state guidelines as part of their existing local wellness policy, replacing previous language requiring submittal of a compliance plan to the DOE.
3/5/10	SB414-H1 passed House by Block Vote (99-Y, 0-N)	
Senate		
3/9/10	SB414-H1 agreed to by Senate (40-Y, 0-N)	
3/13/10	SB414-H1 enrolled in Senate as SB414-ER	
House		
3/14/10	SB414-ER signed by House Speaker	
Senate		
3/15/10	SB414-ER signed by Senate President	
Governor		
4/13/10	SB414-ER signed into law by Governor – Acts of Assembly, Chapter 718.	

Changes Made From Bill Introduction to Adoption

During the 2010 legislative session, three changes were made to the language and content of SB414, at least one of which weakened the final bill. Upon introduction, SB414 required that nutrition guidelines be set for all competitive foods *sold or served* to students during regular school hours; however a change by the Senate Committee on Education and Health removed the words, *or served*. As a result, the final bill limits application of the nutrition guidelines to only those competitive foods available for student purchase. According to respondents, the reason for this change was “to avoid having to be seen as killing cupcakes.”

Specifically, elementary school students were accustomed to celebrating birthdays at school by bringing in cupcakes, and the future of this tradition was threatened with SB414's original language requiring *served* foods to meet nutrition guidelines. While it is unclear whether schools or legislators originally identified this potential issue, advocates decided not to oppose the change because "it wasn't worth potentially losing the whole bill over." Ultimately, this amendment weakened the final bill because it allows competitive foods provided to students—during birthday parties, classroom snacks, or other food-related activities—to remain unregulated.

Two additional changes were made in the House Education subcommittee. The first added a list of health, nutrition, and industry stakeholders that the BOE must work with in developing the regulations. Respondents described two reasons for this change. One was a misunderstanding on the part of either the Virginia Automatic Merchandising Association (VAMA) or the Virginia Wholesalers and Distributors Association (VWDA), statewide associations representing the vending industry and convenience product industry, respectively. The lobbyist representing these groups expressed his client's concern that the choice between following the Alliance for a Healthier Generation's Competitive Food Guidelines or the IOM's Nutrition Standards for Foods in Schools would be made at the truck driver level. Once legislators and advocates clarified that the BOE would develop one set of nutrition guidelines for everyone in the state, the industry group dropped their opposition but still wanted to be involved in the regulatory process. Senator Vogel then went back to the lead advocates and asked that they put together a list of stakeholders "from both sides" who needed to be involved. Those who were chosen—SNA-VA, AHA-VA, ACS-VA, and VA-AAP from the health and nutrition side,

and VAMA and VWDA from the industry side—were the groups that had expressed interest in the bill during the legislative process.

One advocate provided a different explanation, stating that the stakeholder group was added as a way to remove the fiscal impact statement. By identifying a list of groups who would help BOE develop the nutrition guidelines, advocates argued that a new full-time staff person would not be needed. In addition to the four lead advocacy groups, VAMA and VWDA were added to the stakeholder list because they had expressed concerns with the bill. Specifically, these groups were concerned that the development of statewide standards would severely limit the types of items they could offer to schools because many foods are manufactured for national distribution. State guidelines that differed significantly from national nutrition recommendations would require the production of special items for Virginia, which would increase the costs of the foods. Advocates felt that including VAMA and VWDA in the regulatory process, and thus providing them a voice in developing the guidelines, would help reduce their opposition during the legislative session. Legislators agreed with this bill change and the fiscal impact statement was revised to reflect no cost.

Regardless of the primary reason for the change, it is unclear whether requiring the BOE to work with a number of interest groups—including two industry groups—during the regulatory process affected the strength of the bill. While this amendment may provide the BOE with additional resources to develop the regulations, it may also introduce powerful, self-serving influence over how the guidelines are written. Still, at least one advocate felt that the addition of the stakeholder group strengthened the bill because it allows for more input, especially from those who work in school cafeterias and know the intricacies of the school meal programs. In fact, Virginia's nutrition guidelines—currently in draft form—are based on the IOM standards,

the stricter of the two options given. If these draft guidelines become adopted, it would appear that industry groups did not influence the BOE despite the bill's language.

The final change to SB414 required that each local school board adopt the state guidelines as part of their existing local wellness policy, replacing original language requiring local school boards to submit a compliance plan to the DOE. This change was the result of pushback from individual school divisions, who are already required to send a number of reports to the DOE and were concerned with having too much paperwork. As a result, several legislators were unwilling to vote for the bill unless the reporting requirement was alleviated, so advocates worked out a compromise. Rather than requiring a separate compliance report for just the competitive food guidelines, schools would have to include their compliance as part of their already reportable local wellness policies. This change does not seem to have affected the strength of the final bill, as compliance to the nutrition guidelines must still be reported, albeit in a different format.

Tactics Used by Primary Stakeholders to Influence Bill Language and Content

Looking back at the 2010 session, advocates identified several tactics used to show their support for SB414, such as testifying at committee hearings, sending action alerts to members, and utilizing high-level volunteers to contact legislators. Yet recommending bill language was arguably the most important in influencing the bill's content. This tactic was used from the very start, when SNA-VA helped draft the original bill introduced in 2008. The following year, the four lead advocacy groups agreed on several language revisions, all of which were included in SB414 and HB1067. During the 2010 session, concerns from industry associations, school groups, and the DOE threatened the bill's passage, yet advocates worked closely with these groups and with legislators to develop the language and content changes described above.

Although one or more of these changes may have weakened the bill, supporters still felt the adopted bill is representative of the bill's original intent. As one advocate stated, "we got what we wanted, so I would say we were pretty effective."

Although there was no overt opposition to SB414, several stakeholders had real concerns that, if not addressed, may have led to their becoming opponents. These stakeholders were able to influence the bill's language and content to better suit their needs by sharing their concerns directly with key policymakers. For example, one advocate explained:

> There was quite a bit of pushback from individual school divisions to legislators about reporting. And it was not just this bill, but in general, we have to send so many reports to the Department of Education. Our bill kind of got swept up into that, so several legislators said, 'We've got to change that reporting requirement or else I can't vote for it.' So we worked through a compromise to come to just putting it in the wellness policy, which met our goals for compliance and also alleviated the reporting requirement, because schools are required to report their wellness policies.

As another example, Senator Barker recalled one of the industry groups speaking with him about concerns over bill implementation, and it was these concerns that led to the addition of the stakeholders list in the final bill.

It should be noted that stakeholders shared other concerns with legislators, however no bill changes resulted. Specifically, schools and principals relied on revenues from vending machines to pay for things not covered by the school budget, such as uniforms. One respondent stated:

> So what they [schools and principals] were worried about was that, if we put healthy food in vending machines, their money would drop because people wouldn't be buying healthy things in the vending machine. That was their opposition to it. They didn't say that publicly, but we know that's what their concern was, which was frustrating. It had nothing to do with whether or not they thought healthy foods should be in the schools—that really wasn't the issue.

Advocates worked hard to convince these groups that vending machines would not be removed from schools, but rather the foods inside them would change. Although fear remained that

healthier items would not be as profitable, no overt opposition to the bill was observed for this reason.

Factors Affecting the Success of Stakeholders in Influencing Bill Language and Content

Following the filing of SB414, no stakeholders lobbied for changes for the sole purpose of strengthening the bill's language. Rather, the impetus for all three changes was to address the concerns of one or more stakeholder groups. Still, all proposed language and content changes to SB414 were included in the final bill, and stakeholders seeking these changes were most likely successful because they either: 1) provided a convincing rationale for the change; 2) worked closely with key legislators to request and/or draft specific changes; 3) recommended cost-neutral, labor-reducing changes; and/or 4) received support, or at least no opposition, from the bill sponsor and other key stakeholders. For example, with regards to the change removing *served* foods from being subject to the nutrition guidelines, it was either a school representative or a legislator who convinced the Senate Education subcommittee about the importance of cupcakes. One advocate recalled:

> It came up during committee, during one of the committee hearings, and I think one of the school folks stood up and said, 'The way we read this, Sally won't be able to bring in cupcakes for her birthday any more to the third grade.' And so all of the legislators said, 'Well that's just, we're just going too far in telling people they can't bring cupcakes.' It got a little dramatic.

As a result, one of the Senators in the Education subcommittee proposed to amend the bill by removing the words, *or served*. Not only did the change allow parents to continue sending cupcakes and other birthday treats to school, but it also eliminated the labor necessary to monitor foods served to students during the school day. The change, supported by committee members, did not receive opposition from advocacy groups even though they disagreed. According to one advocate:

> I think ideally we had it in there because we wanted it to be 'sold and served,' and I think we wanted it to be that you couldn't bring that stuff to school. I mean, I don't think it's necessary for a student to bring all that stuff to school. But, you know, we lost that. I mean, again, you make the compromise. You're like, okay, if we'll just get food sold at school to be more nutritious for kids, then that's a pretty big win. And we knew some day if everything works out fine that we can always come back and add 'served' in later, a couple years down the road.

Another example was the change in compliance reporting. Individual school divisions expressed to key legislators their concern about having too much paperwork, and legislators agreed that the reporting requirement needed to be changed. The Office of School Nutrition Programs within the DOE suggested adding the compliance reporting to the local wellness policies in order to reduce the number of reports schools would have to submit. No stakeholders opposed the new language, likely because it eliminated the need for a new report yet still required compliance reporting to the DOE. As one advocate simply stated, "it was getting the same information in a different way."

Factors Influencing the Decision-Making Process

During the 2010 General Assembly, Virginia decision-makers were situated in a policy subsystem characterized by high levels of cohesion and constraints and low levels of lobbying (Table 4.3).

Table 4.3 Ranking of conceptual framework constructs in terms of their levels during the policymaking process of Virginia SB414

	Low	Medium/Moderate	High	Virginia SB414 Ranking
Cohesion	More than 25% dissenting votes None in executive branch took a neutral or supportive position Presence of strong opposition to bill Stakeholders willing to compromise on few or no language and content changes	Between 15% and 25% dissenting votes Some in executive branch took a neutral or supportive position Presence of moderate opposition to bill Stakeholders willing to compromise on some language and content changes	Up to 15% dissenting votes All in executive branch took a neutral or supportive position Presence of little or no opposition to bill Stakeholders willing to compromise on most or all language and content changes	**High**
Lobbying	Presence of 10 or less registered and active lobbyists in favor or opposed to the bill	Presence 11 to 20 registered and active lobbyists in favor or opposed to the bill	Presence of 21 or more registered and active lobbyists in favor or opposed to the bill	**Low**
Constraints	Presence of 1 or no informational, temporal, or institutional constraints	Presence of 2 informational, temporal, or institutional constraints	Presence of 3 or more informational, temporal, or institutional constraints	**High**

To start, high cohesion with regard to SB414 is evident by at least three factors: 1) the executive branch took a neutral or supportive position; 2) the presence of little opposition to the bill; and 3) stakeholders were willing to compromise on most language and content changes. For example, from the executive branch, the BOE, DOE, and VDH did not take positions on the bill, though there were concerns from school principals that vending machine revenue would decrease if competitive foods were required to meet nutritional guidelines. And while the Governor did not publicly support the bill, advocates were in contact with his staff and felt confident that he

would sign it. Advocates, legislators, and governmental agencies agreed that strengthening nutrition guidelines for competitive foods would go a long way in providing students with healthy options and reducing the presence of unhealthy items, an important step in reducing childhood obesity.

In addition, there was significantly less opposition to the bill in 2010 compared to 2008, due in part to two factors. First, the strategic identification of two new, well-respected and influential patrons removed the bill from any political tension that may have remained from the 2008 session, when the House Committee on Education killed Senator Barker's bill in reaction to his committee's blocking of several House bills. Second, strong opposition to the bill in 2008 came mainly from VBA, whose powerful lobbyist was successful in getting beverages removed from the purview of the bill. Anticipating similar opposition in 2010, advocates decided to re-file the bill with language specifically excluding beverages. As one advocate explained, "We knew there would be pushback from the beverage industry if we included beverages. So we just decided to not take them on; we would just focus on competitive foods first. And they didn't really weigh in at all through the process."

Likewise, advocates were willing to compromise once the bill was introduced, addressing every concern stakeholders conveyed in order to ensure success. In fact, the bill passed unanimously during all subcommittee, committee, and chamber floor votes. One advocate described why she believed there was no legislative opposition to the bill:

> We talked to everybody in the subcommittee and the committees. And I think all the changes that you see were all changes that made everybody happy…I think being flexible and coming up with flexible solutions, like thinking up the idea to do the stakeholders group instead of having to have a whole new staff member, we were able to come up with creative ideas to make the bill be okay with everybody.

Language changes that loosened provisions or alleviated a potential burden on industry groups, schools, or government agencies made it difficult for these stakeholders to oppose the bill. And because of Virginia's short legislative session (30 to 60 days, depending on the year), bills like SB414 that are not regarded as highly controversial often pass uncontested on the chamber floor.

With regards to lobbying pressure, five groups registered lobbying activity around SB210, SB414, and/or HB1067, with interview respondents identifying another four groups known to have lobbied on the bills. Although records do not indicate the stance all lobbyists took, supporters and opponents/those with concerns can be presumed from the bill's history, stakeholder interviews, and documentation from advocacy organizations. Table 4.4 provides a list of organizations that employed lobbyists by their position on the bill, along with each organization's campaign contributions in 2009-2010.

Table 4.4 List of organizations registered or known to have lobbying activity around Virginia SB210, SB414, and/or HB1067; and their respective campaign contributions in Virginia, 2009-2010

Supporters[143]	**Campaign Contribution**[144]
American Academy of Pediatrics, Virginia Chapter	$12,050
American Cancer Society, Mid-Atlantic	$0
American Heart Association	$0
School Nutrition Association of Virginia	$0
Virginia Interfaith Center for Public Policy	$0
	Total $12,050
Opponents/Those With Concerns[143]	
Virginia Automatic Merchandising Association	$2,475
Virginia Beverage Association	$114,259
Virginia Manufacturers Association	$6,519
Virginia Wholesalers and Distributors Association	$0
	Total $123,253

Unfortunately, it is unknown how many contacts each lobbyist made with legislators, however interview respondents indicated lobbying as an important part of the overall strategy for successful bill adoption. From a legislator's perspective, Senator Barker noted, "We had very good lobbyists who made sure the issues were addressed and any concerns anybody had, had been resolved. It actually ended up we had it pretty easy." One advocate also stressed the importance of lobbying, stating:

> I think having somebody down there every day made a huge difference. I think it's much harder to do it [advocate for strong policies] on your own if you don't have someone down there for you. I think—it doesn't have to be a huge investment—but I think you need to make that investment if you want things to happen. I mean, I see that every day when I see people at the General Assembly that have really good ideas that come down there, but you just can't have that same level of pressure on legislators and pressure on your colleagues, quite honestly, if you're not down there all the time.

This is especially true given that bill supporters' access to legislators is not nearly as great as that of opponents; in 2009-2010, bill supporters spent only 10% of what those with concerns paid out in campaign contributions (Table 4.4).

Due to the exclusion of beverages from the bill's language, SB414 no longer remained a top priority for VBA. This was significant in terms of removing a powerful lobbying influence over the bill, given that VBA spends a relatively large amount of money on campaign contributions and employs a well-known Virginia lobbyist who has been providing lobbying and public affairs services for many large, well-funded clients since the mid-1970s.

Finally, the decision-making process surrounding SB414 was constrained by at least three different factors. The first was a political constraint. Because of the "inner brawl" between the Senate and House that led to the defeat of the 2008 bill, advocates were concerned that the 2010 bill would again be blocked in the House if Senator Barker remained the chief patron. Choosing

two new patrons helped to alleviate some of the political tension, though Senator Barker remained a co-patron on the bill.

It is also important to recognize the temporal and fiscal constraints upon SB414. Virginia's General Assembly meets for only 30 days in odd-numbered years and 60 days in even-numbered years, starting in January. According to one advocate, bills have to be heard in their chamber of origin by the halfway point of session in order to cross over to the other chamber, a further temporal barrier. Although 2010 was a 60-day session, inclement weather conditions led to the canceling of committee hearings, and Delegate Athey's bill was not heard until right before the session's halfway point. Unfortunately, HB1067 was assigned a fiscal impact statement, stating that the bill would cost the DOE $105,000 per year for two years to pay a full-time staff person for bill implementation. Two days after the fiscal impact statement was released, the House Committee on Appropriations blocked the bill. Luckily, SB414 had already passed the Senate and was scheduled for a hearing in the House Committee on Education several weeks later, giving bill supporters enough time to have the fiscal impact statement revised. This was necessary, given that the bill was introduced during an economic recession. In fact, it was only because of the revision of the fiscal impact statement that SB414 was able to continue through the House and ultimately become adopted.

Taken together, these factors influenced the decision-making process such that the final bill accomplished its underlying goals but became relaxed in certain areas in order to achieve buy-in and ensure adoption.

Discussion and Lessons Learned

Upon introduction, SB414 was a bill that sought to improve the healthfulness of competitive foods available in public schools. Over the course of the 2010 legislative session,

several language and content changes were made as a result of three forces: 1) high cohesion among decision-makers to adopt SB414; 2) lobbying from a few supporters to pass the bill and from opponents to amend it; and 3) at least three political, temporal, and fiscal constraints. While at least one change weakened the application of the nutrition guidelines for competitive foods, the bill as a whole accomplished its overall goal and may have been strengthened with the addition of the list of stakeholders.

Although SB414 was adopted with most of its original language intact, several lessons can be learned from the bill's history. Perhaps most importantly is the ability to neutralize opposition early on, especially from likely groups such as the beverage and vending industries and those who will be implementing the bill. All respondents recommended that advocates understand where concerns might come from and why, and try to work with those groups so they do not become opponents. This may require compromises and lead to a weakening of the bill, but advocates felt that it was better to take an incremental approach than lose the bill entirely. Also, attempting to work with potential opponents may help strengthen advocates' credibility among legislators. According to one advocate:

> So at least if you're out there trying to work with those other folks who might not agree with you, it gives you a lot more credibility in the General Assembly for saying, 'Hey, we came, we approached them, we let them know what we wanted to do. We tried to work with them to make this okay for everybody. They would not, they won't come to the table or give anything.' I think you're able to, you have a much stronger case in the General Assembly.

Another lesson from the SB414 case is the importance of a broad coalition of supporters who spoke with a unified voice. Advocates agreed that having the support of several key health organizations from the very beginning gave the coalition credibility with legislators. Specifically, SNA-VA's buy-in was essential in changing the school food environment, VA-AAP brought a powerful medical voice into the fold, and AHA-VA's involvement was helpful

given their resources as a national organization and similar experiences in other states. And although the four groups did not always agree, they were able to work out compromises with each other and make single recommendations to legislators. One advocate stated:

> We all worked on it [language and content changes] together. Yeah, it was very much a team effort. So as, like when the vending folks wanted to pull the stakeholder group together, we kind of all put our heads together and said, 'Okay. What's the best way to do this?' When the reporting issue came up, we all worked together to come up with alternate language and work with Senator Vogel on that.

Still another lesson for advocates of strong competitive food policies is the importance of lobbying, especially when opposition comes from well-funded industry groups who have strong relationships and frequent contact with legislators. In addition, lobbyists can help ensure that advocate relationships and the coalition's unified voice remain intact. The lobbyist for SNA-VA explained further:

> If I wasn't there [at the General Assembly] all the time, there's a good chance that inadvertently, the people who were on our side could have put some language in there that wasn't going to be helpful to the School Nutrition Association. And you have to think about it from a couple different angles. It's not just lobbying legislators, it's also making sure that your colleagues aren't inadvertently putting something in there that sounds great but really has a huge impact on how you run the school nutrition program.

Advocates offered additional recommendations, such as working on the bill before the legislative session even begins; being strategic about choosing bill sponsors; mirroring national, science-based nutrition guidelines rather than those developed elsewhere; introducing both a House and Senate version of a bill; and staying on message throughout the legislative process. To this last point, advocates elaborated that it was key that they "put this around doing what's best for our kids and making sure our kids have a healthy environment." Staying on this message made it hard for groups to oppose the bill. One advocate reflected:

> It was hard for them to get up and say, 'No, we don't want healthy foods in the schools.' I mean, that's the hard part. That's what was really the biggest benefit that we had. It's very difficult to get up in front of the committee and say, 'No, we think our kids should eat Snickers and chips.' I mean, no one can say that without looking like a jerk.

Advocates of stronger competitive food policies can also learn from the success of supporters and opponents of SB414. Those having the most impact on bill content either: 1) provided a convincing rationale for the change; 2) worked closely with key legislators to request and/or draft specific changes; 3) recommended cost-neutral, labor-reducing changes; and/or 4) received support, or at least no opposition, from the bill sponsor and other key stakeholders. By providing a convincing rationale and working closely with key legislators to request or offer specific language, advocates can clearly communicate the details, extent, and reasons behind a particular bill change. In addition, bill language that increases costs and/or labor is more likely to face opposition than language that reduces or maintains current levels. Finally, support from key legislators may cue other decision-makers to support a particular change, thus increasing the likelihood that the change will be incorporated into the bill.

CHAPTER 5

COLORADO HOUSE BILL 1335

Abbreviations

BOCES	Board of Cooperative Educational Services
CASB	Colorado Association of School Boards
CASE	Colorado Association of School Executives
CCC	Colorado Children's Campaign
CDE	Colorado Department of Education
HB1335	Colorado House Bill 1335 (Massey)
IOM	Institute of Medicine
SBE	Colorado State Board of Education
TABOR	Taxpayer Bill of Rights
TCHF	The Colorado Health Foundation
USDA	United States Department of Agriculture

Introduction

On May 27, 2010, Colorado Governor Bill Ritter signed House Bill 1335 (HB1335) into law. This law—Chapter 326 of the 2010 Session Laws of Colorado[145]—authorizes Colorado Boards of Cooperative Educational Services (BOCES)[xi] to maintain, equip, and operate a food-service facility as a school food authority. In addition, the bill creates the BOCES Healthy Food Grant Program within the Colorado Department of Education (CDE) for those BOCES serving as school food authorities. Grant recipients are required to procure and distribute to their constituent districts and schools only foods and beverages meeting nutritional standards

[xi] In Colorado, BOCES were established to allow two or more school districts to cooperate in providing educational services required by law. Member districts share the costs of these services, which may include, but are not limited to, special education, curriculum and staff development, grant management, and technology support. According to the Colorado BOCES Association, 171 (96%) of Colorado's 178 school districts are members of a BOCES (D McCall, oral communication, May 2012).

recommended by the Institute of Medicine (IOM). The bill does not include appropriations for the grant program, but does establish a fund that may consist of gifts, grants, donations, or other monies allocated by the CDE. Additional sections describe the grant application process, eligibility and selection criteria, permissible uses of grant monies, and reporting requirements. This law builds upon a history of competitive food policies in Colorado, summarized in Box 5.1.

Box 5.1 Colorado's competitive food policies prior to 2009

Title 1, Section 301-3 2202-R-203 of the Code of Colorado Regulations[146] prohibits the operation of competitive food service from ½ hour prior to until ½ hour after the last regular scheduled school lunch and/or school breakfast period on the campus where school lunch and/or breakfast is served. This restriction may be waived for mechanically-vended beverages offered to students at the senior high level.

As a result of adopted Senate Bill 103 (2004),[147] Title 22, Section 32-134 of the Colorado Revised Statute[148] encourages school districts to work with contractors to increase the nutritional value of foods offered to students in school vending machines and to phase in higher nutritional standards as vendor contracts are renewed. School districts are also encourage to adopt a policy that, by the 2006-2007 school year, at least 50% of all items offered in each vending machine or set of adjoining vending machines meet specified nutritional standards. This statute was later repealed in 2008 by Senate Bill 129,[149] which added a stricter provision requiring the State Board of Education and the State Charter School Institute Board to promulgate minimal nutritional standards for beverages served to students in public schools and charter schools, respectively.

As a result of adopted Senate Bill 081 (2005),[150] Title 22, Section 32-136 of the Colorado Revised Statute[151] encourages school districts to adopt policies ensuring that students have access to healthy food choices in the cafeteria, vending machines, and in fundraisers and classroom events. The statute encourages school districts to ensure that every student has access to fresh fruits and vegetables and sufficient water during the school day, as well as provide information concerning the nutritional content of foods sold or available during the school day. School districts are encouraged to establish rules for when and where competitive foods may be sold on school property.

As a result of adopted Senate Bill 127 (2006),[152] Title 22, Section 82.5 of the Colorado Revised Statute[153] established the Fresh Fruits and Vegetables Pilot Program for the 2006-2007 and 2007-2008 school years. Subject to the availability of funds, this pilot program makes free fruits and vegetables available to students throughout the school day in one or more places designated by a participating school. This statute was later repealed in 2009, since the pilot program was only established for the 2006-2007 and 2007-2008 school years.

Box 5.1 Continued

As a result of adopted Senate Bill 129 (2008),[149] the Colorado State Board of Education (supervising public schools) and the State Charter School Institute Board (supervising charter schools) must promulgate rules describing beverages that may be sold to students in school cafeterias, vending machines, school stores, and fundraisers conducted on campus. Beverage standards must satisfy the guidelines developed by the Alliance for a Healthier Generation. Title 1, Section 301-79 of the Code of Colorado Regulations[154] states that, beginning July 1, 2009, beverages sold to students on school grounds during the regular and extended school day shall, at a minimum, meet the following nutritional standards:

<u>Beverages allowed to be sold in elementary school</u>

- Bottled water
- Up to 8 ounces fat-free or low-fat milk. Includes nutritionally equivalent milk alternatives (per USDA)
- Up to 8 ounces fat-free or low-fat nutritionally equivalent flavored milk up to 150 calories per 8 ounces
- Up to 8 ounces 100% juice with no added sweeteners and up to 120 calories per 8 ounces

<u>Beverages allowed to be sold in middle school</u>

- Bottled water
- Up to 10 ounces fat-free or low-fat milk. Includes nutritionally equivalent milk alternatives (per USDA)
- Up to 10 ounces fat-free or low-fat nutritionally equivalent flavored milk up to 150 calories per 8 ounces
- Up to 10 ounces 100% juice with no added sweeteners and up to 120 calories per 8 ounces
- Exception: if the middle and high school students have shared access to areas on a common campus or buildings, the school community can adopt the high school standard

<u>Beverages allowed to be sold in high school</u>

- Bottled water
- No or low-calorie beverages with up to 10 calories per 8 ounces, except diet soda may not be sold in high school
- Up to 12 ounces fat-free or low-fat milk. Includes nutritionally equivalent milk alternatives (per USDA)
- Up to 12 ounces fat-free or low-fat nutritionally equivalent flavored milk up to 150 calories per 8 ounces
- Up to 12 ounces 100% juice with no added sweeteners and up to 120 calories per 8 ounces
- Other drinks up to 12 ounces with no more than 66 calories per 8 ounces
- At least 50% of non-milk beverages must be water and no or low-calorie options

Methods

Evidence for this case study is drawn from three stakeholder interviews and a variety of documentary sources. Interviews were conducted between November 29, 2011 and December 6, 2011 with representatives from three advocacy organizations: Scott Groginsky, formerly the Senior Policy Director at the Colorado Children's Campaign (CCC, advocacy group); Dale McCall, Executive Director and Director of Governmental Relations for the Colorado BOCES Association (advocacy group); and an anonymous advocate representing a lead organization in support for HB1335. Interviews were also sought with two other potential respondents representing the Colorado legislature and an education organization, however neither responded despite up to three invitation attempts. In addition, bill-related information was obtained via the Internet from the Colorado legislature, state regulatory agencies, advocacy organizations, lobbyist registration records, and media reports.

Bill History and Timeline

Introduced in February 2010, HB1335 followed a multi-year effort to improve competitive foods and beverages in Colorado schools. Starting in 2002, then Colorado State Board of Education (SBE) At-Large Member Jared Polis (currently a United States Congressman representing Colorado's 2nd Congressional District) asked his SBE Policy Director, Scott Groginsky, to look into how school food could be improved. Following some early discussions and information gathering, Groginsky identified three main barriers to making competitive foods healthier in public schools: 1) resistance from school districts who feared revenue loss if unhealthy competitive foods were no longer available for sale; 2) resistance from high-level school district officials and their statewide representatives who countered that Colorado is a "local control" state, meaning that school-related decisions should be made at the local level; and

3) resistance from food, beverage, and vending industry groups who believed that limiting what was offered to students would lower profits. As Groginsky summarized, "a lot of adults' needs over kids' needs."

Groginsky focused his research on debunking these claims, along with identifying state- and local-level data (e.g., obesity and diabetes rates, district policies and practices concerning competitive food, etc.) to support the need for healthier food and beverage options in schools. He then created the Committee for Progress in School Nutrition, a committee of advocates, school district officials, and school food service directors who were interested in legislative changes to improve competitive foods. What followed in the years between 2004 and 2009 was a series of legislative attempts—the majority of which failed—to require that schools make more healthy choices available to students. Table 5.1 highlights these attempts, along with their key supporters, opposition, and outcomes.

Table 5.1 History of state-level legislative attempts to require improvements in the healthfulness of competitive food in Colorado public schools, 2004-2009

Year	Bill # and Summary (as Introduced)	Main Supporters	Main Opposition	Outcome
2004	SB103:[155] requires each school district BOE to adopt a policy providing that at least 50% of all items offered in vending machines be healthful; prohibits a school district from entering a new contract that provides for the sale of non-healthful items	Primary Sponsors: Senator Sandoval (D), Representative Cloer (R) Lead Advocates: CSFSD, CPSN	Food industry and school districts pressured Senate President Andrews, who threatened to kill the bill if changes were not made	Bill language amended to "encourage," rather than "require," schools adopt a policy; bill signed into law by Governor Owens (R); CDE, CDPHE, and others produced a guide to implement the bill
2005	SB197:[156] requires each school district BOE to adopt a policy providing that at least 50% of all items offered in vending machines meet nutritional standards (first attempt to change the language of SB103 back to "required")	Primary Sponsors: Senator Hanna (D), Representative Cloer (R) Lead Advocates: AHA, COAHPERD, CPSN	Many House Democrats voted against the bill because Representative Cloer was a sponsor (political reasons unrelated to the bill)	Bill killed in the House floor vote
2006	HB1056:[157] requires each school district BOE to adopt a policy providing that at least 50% of all items offered in vending machines meet nutritional standards (second attempt to change the language of SB103 back to "required")	Primary Sponsors: Representative Madden (D, House Majority Leader) Senator Hanna (D) Lead Advocates: CCC, CPSN	Governor Owens (R) received advice and pressure that the bill violated local control	Bill passed the legislature but was vetoed by Governor Owens (R)
2007	No state legislation due to time constraints			
2008	SB043:[158] requires each school district BOE to adopt minimum nutritional standards for foods and beverages sold à la carte, in vending machines, or school stores; creates the Healthy School Foods and Drinks Grant Program	Primary Sponsor: Senator Romer (D) Lead Advocates: CCC	Senator Romer asked the Senate Education Committee to postpone the bill indefinitely, explaining that the bill would be reintroduced with a new sponsor at a later date	Bill postponed indefinitely by Senate Education Committee

Table 5.1 Continued

Year	Bill # and Summary (as Introduced)	Main Supporters	Main Opposition	Outcome
2008	SB129:[159] requires each school district BOE and the State Charter School Institute to adopt and implement a policy prohibiting the sale of beverages not satisfying minimum nutritional requirements	Primary Sponsors: Senator Gibbs (D), Representative Riesberg (D) Lead Advocates: AHA, CCC	CASB and CASE expressed concerns, and Governor Ritter received pressure from health advocates (support) and school districts (opposition)	Signed into law by Governor Ritter (D); rules developed by the Colorado SBE with input from state-based groups like CCC and TCHF
	SB173:[160] creates the Healthy Schools Grant Program, requiring minimum standards for nutrition, physical education, and physical activity for schools to be eligible	Primary Sponsors: Senator Williams (D), Representative Todd (D) Lead Advocates: unknown	Bill included a blank appropriations clause, and the fiscal note estimated total bill expenditures as $1.0 million per year	Postponed indefinitely by Senate Appropriations Committee
2009	SB046:[161] requires each school district BOE and the State Charter School Institute to adopt and implement a policy prohibiting the sale of snack foods not satisfying minimum nutritional requirements	Primary Sponsors: Senator Sandoval (D) Lead Advocates: CCC	Pushback from school districts	Postponed indefinitely by Senate Education Committee

AHA: American Heart Association; **BOE:** Board of Education; **CASB:** Colorado Association of School Boards; **CASE:** Colorado Association of School Executives; **CCC:** Colorado Children's Campaign; **CDE:** Colorado Department of Education; **CDPHE:** Colorado Department of Public Health and Environment; **COAHPERD:** Colorado Association for Health, Physical Education, Recreation, and Dance; **CPSN:** Committee for Progress in School Nutrition; **CSFSD:** Colorado School Food Service Directors (now Colorado School Nutrition Association); **(D):** Democrat; **HB:** House Bill; **(R):** Republican; **SB:** Senate Bill; **SBE:** State Board of Education; **TCHF:** The Colorado Health Foundation

It was in this context, in 2008, that The Colorado Health Foundation (TCHF) awarded a $135,000 grant to the Children's Health Foundation (a Colorado non-profit that works to prevent childhood obesity, among other things) for the purposes of improving the nutritional quality of foods served throughout the Garfield Re-2 School District, a rural and mountainous area in northwest Colorado. TCHF, one of the largest foundations in Colorado, invests in grants and initiatives encouraging healthy living and access to health insurance and quality healthcare, as well as operates medical education programs to increase the healthcare workforce. Upon completion of the grant period, a presentation about the school district's success was made at TCHF's annual Colorado Health Symposium. In attendance at the conference was State Representative Tom Massey, a Republican representing a rural district in central Colorado. According to one respondent, this presentation inspired the idea for HB1335:

> He [Representative Massey] heard about a grantee in rural Colorado who found some ways to make their school food service more healthy and more efficient, and got the idea that he could legislate efficiencies in the school food system. So TCHF came up with the idea that BOCES could serve in this role since they're already an aggregator for purchasing in the school systems.

Representative Massey also developed the idea for the Healthy Food Grant Program, and under the leadership of TCHF, as well as with the help and input from CCC—a non-profit advocacy organization committed to Colorado children's health, education, and care—and CDE, HB1335 was initially drafted in Fall 2009. Of note was the choice of nutrition standards included in the bill. When asked why the IOM standards were chosen over others, respondents explained that TCHF felt the IOM standards were stronger and more applicable, as they are written on a per-item basis rather than based on total daily intake. This was particularly important for HB1335 since the bill refers to procurement of individual food and beverage items.

Respondents indicated that Representative Massey's interest in HB1335 stemmed from both his experience as a member of the Salida school board and his legislative representation of

rural districts, which often have the most difficulties obtaining supplies and financing school-based programs. As one advocated described:

> Representative Massey is from a rural area. It's called Salida, which is actually a mountain area where there's not that many people, and towns are separated by massive mountain canyons and winding roads. And so they said the school districts and schools in those areas have a hard time getting distributors and suppliers—especially in the winter school months when there's icy roads and gusts of wind and massive snow drifts and stuff like that—getting supplies. And they're just limited: quantity and quality.

Another respondent commented on Representative Massey's dedication to rural communities:

> He's a real advocate for rural school districts. And I think that's the bottom-line and he's the most supportive. He always watches out for rural districts. Almost every bill that's brought before the House Education Committee, even before he was Chair, he would ask the question, 'How does this—if this is required—how can this be done in rural Colorado?' And so I think that was his motivation.

In addition to his interests in healthy schools and rural districts, Representative Massey sat on the House Education Committee and garnered respect from both Republicans and Democrats, making him an ideal bill sponsor for HB1335 in a year when both legislative chambers held a Democratic majority.

During the subsequent drafting stages of HB1335, the Colorado BOCES Association—the group representing Colorado's BOCES—became involved in the negotiations around bill language and content. Of primary concern was language requiring BOCES to meet certain nutritional standards for foods and beverages. However, Dale McCall from the Colorado BOCES Association opposed this requirement, making the case that:

> We [BOCES] weren't getting any state funding to do it. We're locally funded...our position was very clear to make it that it was voluntary based upon the BOCES or that there would be money that goes with this to do this activity. Because the way BOCES are set up in Colorado, they're governed locally and the local people, the local school districts, determine what their funding is and what the BOCES says about using their local money. So my objection was that they were saying that we were going to be required to do this, and the sponsor immediately said, 'No, we're not going to do that. We're going to make it voluntary and go from there.'

With this change, HB1335 was introduced in the House on February 10, 2010. Soon after it was introduced, Representative Christine Scanlan (a Democrat and member of the House Education Committee) and Senator Paula Sandoval (a Democrat and sponsor of several prior attempts to improve school food) were added as co-prime sponsors. A fiscal impact statement was applied to the bill, stating that the BOCES Healthy Food Grant Program would require at least $250,000 per year to pay for a senior consultant and grant awards. However, the statement also indicated that this cost was conditional upon the CDE's receipt of sufficient gifts, grants, and donations, as no specific revenue source had been identified. Since no appropriations were made for the purposes of this bill, the fiscal impact statement did not affect the outcome of the bill despite the state's fiscal constraints. From there, the bill moved relatively easily through the House and Senate committees and floors, though not without some opposing votes coming primarily from House and Senate Republicans. Respondents gave three possible reasons for Republication opposition: 1) an ideological belief that government has no role in school food; 2) a tendency to vote against any type of regulation; and 3) an objection to passing bills with no dedicated funds. Regardless of the reason, HB1335 continued through the legislative session, gaining an additional 28 co-sponsors for a total of 31 sponsors and co-sponsors (nearly 1/3 of the 100-seat legislature). The bill passed both chambers and was signed by the Governor in May 2010, albeit with some language and content changes, described in the following section. Table 5.2 provides a timeline of these and other major legislative events occurring in 2010, along with a summary of the language and content changes made to the bill.

Table 5.2 Timeline of major legislative actions and changes to Colorado HB1335

Date	Legislative Action	Bill Changes
House		
2/10/10	HB1335 (Massey) introduced in House and assigned to Education Committee	
Before 2/21/10		Representative Scanlan added as co-prime sponsor.
2/25/10	Education Committee passed with amendments (12-Y, 0-N) and referred to Appropriations Committee	Removed the word *only* from the provision: "Each BOCES that elects to operate as a school food authority is encouraged to procure and distribute to schools of its constituent school districts only food and beverages that (a) satisfy nutritional standards established by the USDA; and (b) have been locally grown or produced." Added an example of how a BOCES may use grant money by stating that operations of a school food authority "include, but are not limited to, administrative functions relating to its operations as a school food authority."
3/12/10	Appropriations Committee recommended bill be referred to Committee of the Whole (13-Y, 0-N)	
3/17/10	Bill passed House (63-Y, 1-N) and sent to Senate	Senator Sandoval added as co-prime sponsor; 15 Representatives added as co-sponsors.
Senate		
3/19/10	HB1335 introduced in Senate and assigned to Education Committee	
3/31/10	Education Committee passed with amendments (5-Y, 3-N) and referred to Appropriations Committee	Eliminated language outlining specific nutrition guidelines related to the procurement and distribution of food and beverages and replaced these requirements with language that requires BOCES grantees to procure and distribute food and beverages that satisfy nutritional standards established by "a research institution not less than 40 years old that examines policy matters pertaining to the health of the public and is chartered by US Congress to advise the federal government on scientific and technical matters." Added language allowing the CDE to not implement the grant program if sufficient funds are not received on or before June 1, however requires the CDE to implement the program within 90 days of receiving sufficient funds.

Table 5.2 Continued

Date	Legislative Action	Bill Changes
Senate		
4/23/10	Appropriations Committee recommended bill be referred to Committee of the Whole (9-Y, 1-N)	
4/28/10	Bill passed Senate (25-Y, 8-N) and sent to House for concurrence	Nine Senators added as co-sponsors.
House		
5/4/10	House concurred with Senate amendments (53-Y, 11-N) and bill as amended passed House (55-Y, 9-N)	Four Representatives added as co-sponsors.
Senate		
5/25/10	Signed by the President of the Senate	
House		
5/25/10	Signed by the Speaker of the House and sent to the Governor	
Governor		
5/27/10	Signed by the Governor	

Changes Made From Bill Introduction to Adoption

During the 2010 legislative session, two major changes were made to the language and content of HB1335. Upon introduction, HB1335 required that any BOCES receiving a grant from the BOCES Healthy Food Grant Program procure and distribute only foods and beverages meeting fat, sugar, and sodium standards specified in the bill. These standards were akin to several of the nutrition standards recommended by the IOM, though the IOM standards are more comprehensive. However, a change by the Senate Education Committee removed these specific standards and replaced them with language requiring BOCES grantees to procure and distribute only foods and beverages satisfying nutritional standards established by a "research institution not less than forty years old that examines policy matters pertaining to the health of the public and is chartered by the United States Congress to advise the federal government regarding scientific and technical matters."[162]

Although never mentioned in the text of the bill, respondents and documentary sources—including a description of the IOM from the IOM website[163]—confirmed that this definition refers to the IOM.[xii] According to respondents, there were at least two reasons for this change, initiated by TCHF. First, prior attempts at passing statewide competitive food bills were criticized for being too prescriptive. Hearing similar complaints about HB1335 when it was first introduced, advocates agreed that replacing the specific standards with a reference to a set of guidelines would "make this look cleaner" and reduce opposition. Second, the language change allows the standards to be updated over time. As one respondent explained, "If you put something in legislation, it's there forever. But maybe scientists in 10 years will find out that sodium isn't bad for you; it's actually some molecule we didn't know existed. And then the legislation becomes automatically updated over time if you're referring to something that's less set in stone." Ultimately, respondents did not believe this change weakened the bill. And in fact, the amendment may have strengthened the final bill because it requires that grantees meet all of the IOM nutritional standards, not just the selected standards included in the original bill.

The other major change, also initiated by the Senate Education Committee, added permissive language authorizing the CDE to forgo determining and announcing grant recipients if sufficient gifts, grants, or donations are not received on or before March 1 of a given year. However, the amendment does require the CDE to implement the grant program within 90 days

[xii] According to the Colorado Legislative Drafting Manual,[249] non-governmental groups or entities are not to be referred to in a bill for legal or permanency reasons. Rather, general descriptive terminology should be used to reference a specific group.

if sufficient funds are received after March 1. Respondents indicated that this change was common practice for grant-funded legislation at the time.[xiii] According to one respondent:

> The Department [of Education] requested that [change] and we certainly supported that because if that wasn't included, they'd have to try to take money away from something else to fund that and they don't have much discretion anyway because almost all of their money that comes from the federal or state government is specified for particular programs. So there wouldn't be any way that they could fund something. They'd have to be in violation of the law. You can't fund something if you don't have the money and if you don't have a source of money that would allow that funding. So that's why that was put in there.

Another respondent noted:

> The legislators who had been there [in the General Assembly] for even just a few years are starting to feel like the statutes of Colorado are starting to get cluttered up with these hoop dreams, these unfunded hoop dreams. And so they just wanted to make sure that if things didn't get implemented—if ideas or initiatives didn't get funded—that they wouldn't stay in statute forever.

It is unclear whether this change affected the strength of the bill. On the one hand, it permits the grant program to go unimplemented if adequate funds are not received. However, respondents acknowledged that Colorado does not have the funds to support this grant program, and in fact, long-standing education programs have been cut in recent years due to budgetary constraints. Thus, even if the language change was not made, it is very likely that the grant program would go unimplemented if adequate funding were not received.

Additional clarifying changes were made to the bill (see Table 5.2), however these did not affect the strength or substance of the final bill. Overall, respondents felt that the final bill

[xiii] Due to state financial constraints—caused in part by a national recession and Colorado's Taxpayer Bill of Rights (TABOR), which limits the growth of state and local revenues to a highly restrictive formula—bills requiring appropriations were considered non-passable during this time. As a way around this, bill drafters included a clause stating that funds shall rely on gifts, grants, and donations, and many bills passed contingent on grant funding. This was the case with HB1335, for which no funding source was identified. Although there is interest among BOCES in the grant program, the bill has not been implemented due to the lack of funding.

was the same, if not stronger, than the original, introduced bill as a result of the changes described above.

Tactics Used by Primary Stakeholders to Influence Bill Language and Content

During the 2009-2010 session, advocates identified several tactics used to show their support for HB1335, such as testifying at committee hearings, giving presentations to local advocates, writing newsletters and fact sheets, and activating grassroots networks to contact legislators. Yet recommending bill language—either during bill drafting or after the bill was introduced—was arguably the most important in influencing the bill's content. This tactic was used from the very start, when TCHF and CCC helped draft the original bill. After the bill was introduced, TCHF sought an amendment to replace the nutritional standards specified in the bill with a reference to the IOM standards. In fact, respondents do not recall having made any language or content recommendations that were excluded from the bill.

Although there was no overt opposition to HB1335, several stakeholders had real concerns that, if not addressed, may have led to their becoming opponents. For the most part, these stakeholders were able to influence the bill's language and content to better suit their needs by sharing their concerns directly with key policymakers. For example, prior to the bill's introduction, the Colorado BOCES Association spoke directly with the sponsor about concerns over an unfunded mandate requiring BOCES to meet certain nutritional standards. Other education organizations, such as the Colorado Association of School Executives (CASE) and the Colorado Association of School Boards (CASB), shared the same concerns, especially given several years of financial cuts. Dale McCall of the Colorado BOCES Association made the point that:

> Basically, with all these cuts going on in education, we've gone into the legislative session in the last three years saying, 'No more new programs unless

> they're fully funded,' and 'You can't take away from what we currently have to fund new programs.' Because districts are just too strapped to do that. So that was the only [concern]. Once we got that worked out, then we were in support. So when we testified at both the Senate and the House, we were in full support because it was a 'they may do this' rather than a 'required to.'

In addition, advocates were aware of the federal child nutrition reauthorization that was taking place at the time, and were hopeful that strong competitive food standards would be included in the new legislation. Optimistic about the federal law, advocates were agreeable to the language change before HB1335 was even introduced in the House.

As another example, the CDE had concerns that they would be expected to implement the grant program regardless of whether adequate funds were available. Advocates understood that no appropriations were made to fund the grant program, and agreed with allowing the CDE not to implement the grant program unless sufficient funds are received. In both cases, having the education organizations and agencies on board with the bill, or at least in a neutral position, helped the bill pass through the legislature. As one respondent explained, "If you go into a hearing and people, major organizations like BOCES, or the School Board Association, or the school administrators, or other major organizations come forward and say this is not a good bill, usually you're pretty well dead in the water."

It should be noted that not all requested changes were adopted prior to the bill's introduction. Specifically, during the initial drafting of the bill, there was discussion around removing the requirement that grantees meet nutritional standards for the procurement and distribution of foods and beverages. While the Colorado BOCES Association raised concerns over funding, bill advocates explained that the grant program was voluntary and that BOCES would not lose money. According to one respondent:

> One of the areas that I had to hold strong on with the Children's Campaign was in the grant program, the BOCES grant program. We wanted to make sure that those standards, that they included IOM standards. At one point during the

> negotiation, there was talk of getting rid of those, of that requirement, and I said, 'No.' I said, 'This only will take effect if BOCES, if this grant program was funded. So it's not like we're adding an additional unfunded mandate on to BOCES. They only have to meet these standards if they're funded by the grant.'

Once the Colorado BOCES Association was assured that BOCES would not lose money as a result of HB1335, they were less concerned with the bill and even ended up supporting it. Although there remained doubts as to where the grant funds would come from, no overt opposition to the bill was observed once the Colorado BOCES Association expressed their support.

Factors Affecting the Success of Stakeholders in Influencing Bill Language and Content

Following the filing of HB1335, all proposed language and content changes made during the legislative session were included in the final bill, and stakeholders seeking these changes were most likely successful because they either: 1) provided a convincing rationale for the change; 2) worked closely with key legislators to request and/or draft specific changes; and/or 3) received support, or at least no opposition, from the bill sponsor and other key stakeholders. For example, regarding the CDE's proposed language to make implementation of the grant program contingent on receiving adequate funds, one advocate explained:

> And so the Department of Education started a year or two ago to start saying, 'We want specific language in there to say that we're not required to implement this unless there are grant funds available.' Because they would get pressure from somebody that was really interested in this topic going in and saying, 'Why aren't you doing this?' And they'd say, 'Well, we don't have any money.' And they'd say, 'Well, the law says you do it.' And so that's why that needed to be in there. We support that because they, our Colorado Department of Education—just for some background information—is about 75-78% funded with federal funds and they get very few state funds. And those federal funds are very specific as to what they can use those for. They could not use them for a program like this.

Advocates and legislators did not oppose this change, and in fact, similar language was included in other bills during this time because of the financial constraints school districts were facing.

Another example was the change in the nutritional standards. In an effort to avoid the criticism expressed in prior years that bills were too specific, and to allow for updates to the standards over time, TCHF requested that the nutritional standards specified in the original bill be replaced with a reference to the IOM standards. Advocates agreed with the change, mainly because it removed specific requirements without changing the meaning or strength of the bill. As one respondent stated, "And so by substituting IOM standards in there, it didn't have to be in statute but it got the same thing done. They're still strong nutritional standards. It did not weaken it. It just changed it, the way we expressed it."

Factors Influencing the Decision-Making Process

During the 2010 General Assembly, Colorado decision-makers were situated in a policy subsystem characterized by high cohesion and low levels of lobbying and constraints (Table 5.3).

Table 5.3 Ranking of conceptual framework constructs in terms of their levels during the policymaking process of Colorado HB1335

	Low	Medium/Moderate	High	Colorado HB1335 Ranking
Cohesion	More than 25% dissenting votes None in executive branch took a neutral or supportive position Presence of strong opposition to bill Stakeholders willing to compromise on few or no language and content changes	Between 15% and 25% dissenting votes Some in executive branch took a neutral or supportive position Presence of moderate opposition to bill Stakeholders willing to compromise on some language and content changes	Up to 15% dissenting votes All in executive branch took a neutral or supportive position Presence of little or no opposition to bill Stakeholders willing to compromise on most or all language and content changes	**High**
Lobbying	Presence of 10 or less registered and active lobbyists in favor or opposed to the bill	Presence of 11 to 20 registered and active lobbyists in favor or opposed to the bill	Presence of 21 or more registered and active lobbyists in favor or opposed to the bill	**Low**
Constraints	Presence of 1 or no informational, temporal, or institutional constraints	Presence of 2 informational, temporal, or institutional constraints	Presence of 3 or more informational, temporal, or institutional constraints	**Low**

To start, high cohesion with regard to HB1335 is evident by at least three factors: 1) key stakeholders in the executive branch took a neutral or supportive position; 2) stakeholders were willing to compromise on nearly all language and content changes; and 3) the presence of little opposition to the bill. For example, from the executive branch, the SBE and CDE did not take public positions on the bill. And while the Governor did not take a public position on HB1335 prior to signing it, advocates felt that they had good support from the Governor's office with respect to the bill.

In addition, because the bill sponsor and lead advocates were willing to accept nearly all language and content changes—both before and after the bill's introduction—there was no overt opposition to HB1335 during the legislative session. In fact, in five of the eight voting opportunities, 85% or more of the committee or floor voted in favor of bill amendments or passage. As one respondent stated, "The reason [that there was no opposition] was that the process was good and the issues were worked out before it [the bill] went forward." However, several legislators—mostly Republicans—did vote against the bill, especially toward the end of the legislative session. Yet respondents indicated that this opposition was likely a result of ideological differences over the role of government and an objection to passing bills contingent on gifts, grants, donations. To this latter point, one respondent expanded:

> There were a number of those [Republican] legislators that voted against every bill that had that [gifts, grants, and donations] in it. Because they said, 'Why are we even doing this if we're not going to fund it?' And one of them even said during the third reading on the Senate floor, 'I guess the sponsors must have needed to be able to go back home and tell them they passed some bills.' That's how, you know, it gets pretty contentious down there. And they said, 'Well, I guess the reason we have this is that someone needed to go back and say, "Well, I passed this really important bill so I can get re-elected."'

With regards to lobbying pressure, nine groups registered lobbying activity around HB1335 in 2010, with interview respondents identifying one additional organization known to have lobbied on the bill. State records indicate that three groups took a supportive position, while six registered as monitoring the bill. All lobbyists reported at least one month of activity around HB1335, though most lobbied the bill for two or more months over the legislative session. Table 5.4 provides a list of organizations that employed lobbyists by their position on the bill, along with the number of monthly records reported on their behalf and their lobbyists' campaign contributions in 2009-2010.

Table 5.4 List of organizations registered to have lobbying activity around Colorado HB1335, the number of months of lobbying records reported on their behalf, and their lobbyists' respective campaign contributions in Colorado, 2009-2010

Supporters	**# Months Lobbying Activity**[164]	**2009**[165]	**2010**[165]	**Total**[165]
American Heart Association	2	$100.00	---	$100.00
Colorado Children's Campaign	2	$250.00	$50.00	$300.00
The Colorado Health Foundation	4*	$9,307.56	$16,750.00	$26,057.56
Total-Supporters	**8**	**$9,657.56**	**$16,800.00**	**$26,457.56**
Monitoring				
Colorado Rural Schools Caucus	1	---	---	---
Douglas County School District	5	$1,975.00	$8,100.00	$10,075.00
Jefferson County School District	4	$250.00	$700.00	$950.00
Mesa State College	6*	$2,310.00	$2,920.00	$5,230.00
Political Action Trust and Committee (Dairy Farming Industry)	12*	$180.00	$1,095.00	$1,275.00
Rocky Mountain Food Industry Association (Grocery Store Industry)	3	$235.00	$45.00	$280.00
Total-Monitoring	**31**	**$4,950.00**	**$12,860.00**	**$17,810.00**
***** indicates that more than one lobbyist registered activity around HB1335 on behalf of the organization				

Although it is unknown how many contacts each lobbyist made with legislators, interview respondents indicated lobbying as an important part of the overall strategy for successful bill adoption. As one advocate stated, "The keys to legislative success include hiring a well-connected lobbyist who knows the process and the players."

It is important to note that lobbyists not only have influence over legislators, but over other lobbyists, as well. Dale McCall from the Colorado BOCES Association explained further:

> What we do is the lobbyists, the legislative education lobbyists meet every Monday at noon. And during that time we take any bills that are coming up that week and we talk about what's our positions on them. And so I, during that meeting, I conversed with all the people that were there about where the bill was and what we were doing and what changes had been made in drafting and so forth. And many times what we do is we kind of break bills up. And I was kind of the lead person on this bill, and so CASE and CASB and others asked me what

> our position was because that dealt directly with BOCES. And so I think I had some influence on those folks at that level.

When asked if these other education lobbyists took the Colorado BOCES Association's lead on HB1335, Dale McCall confirmed, "Yes. And you know, there's other bills that they take the lead on. And I kind of fall in line with them, or at least, review what their analysis has been because again, 600 bills [are introduced during the session] and some of them 50 pages long."

It is important to note that no lobbyist reported taking an opposing position to HB1335, likely due in part to key stakeholders' agreement on language and content prior to the bill's introduction, as well as the bill's intent. This is significant in terms of the bill's success, as advocates acknowledged that the lack of opposition was an important factor in garnering legislative support. One respondent further explained:

> It's easy for legislators to sign on to something when nobody's opposed. If they don't know a lot about an issue, they'll look to the various stakeholders and say, 'What do you think? What do you think? What do you think?' And if there's no opposition, it's an easy thing for them to sign on to. I mean, and who doesn't want to sign on to a bill that's about healthy food for kids?

However, several organizations' lobbyists reported monitoring the bill. It is likely that these groups—mostly representing food and beverage industries and school districts—were interested in the outcome and implications of the bill, yet did not feel strongly enough to take a position one way or the other. Alternatively, it may be that these groups did not feel threatened by the bill because of the lack of funding for the grant program's implementation.

Finally, the decision-making process surrounding HB1335 was constrained primarily for fiscal reasons. HB1335 was introduced during a national economic recession in a state with a 20-year-old taxpayer-controlled budgeting process. This process, known as Taxpayer Bill of Rights (TABOR), limits the amount of revenue the state and local governments can collect and spend. TABOR is a highly controversial topic: supporters argue in favor of smaller government

and larger voter decision-making power, while opponents maintain that TABOR has created significant revenue shortages, leading to cuts in necessary programs and services and minimal ability for new initiatives. As just one example of TABOR's effect on education, Colorado's average per-student (K-12) funding dropped from $379 below the national average in 1992, to $809 below the national average in 2001, to $998 below the national average in 2006.[166]

As a result of these financial constraints, HB1335 could not have included any appropriations, relying instead on gifts, grants, and donations for funding. As one respondent stated, "Bills that had appropriations in them were considered non-passable in those years." In addition, the Colorado BOCES Association's fear of a new, unfunded mandate led to the weakening of the bill before it was even introduced in the House. Still, the final bill accomplished its underlying goals, albeit without the funding to implement its provisions.

Discussion and Lessons Learned

Upon introduction, HB1335 was a bill that sought to improve school districts' access to quality, healthy, affordable food by allowing BOCES to operate as a school food authority and creating a grant program to help BOCES satisfy nutritional standards for foods and beverages. Over the course of the 2010 legislative session, several language and content changes were made as a result of three forces: 1) high cohesion among decision-makers to adopt HB1335; 2) lobbying from a few supporters to pass the bill with no overt opposition; and 3) a significant fiscal constraint. While a change made during the drafting stages may have weakened the bill before it was introduced, the adopted bill accomplished its overall goal and may have even been strengthened by the replacement of specific nutritional standards with a reference to the IOM Nutrition Standards for Foods in Schools.

Although HB1335 was adopted with most of its original language intact, several lessons can be learned from the bill's history. Perhaps most importantly is the ability to achieve stakeholder agreement and neutralize opposition early on. One respondent elaborated:

> One thing that I've learned is that the earlier you get involved with the bill, the better. Because many times, when the bill gets to the committee hearings, it's either agreed to by the major constituents or it will get killed because, if you go into a contentious hearing where there are a whole bunch of people for and against it, usually what the legislator does, or usually what the committee does is kill the bill. They say, 'You know, if your constituents don't agree on this, then we don't think it's good legislation.' And that happens a lot. You know, they have over 600 bills in Education [Committee] each year in Colorado, so if you don't have the main parties that agree to the concepts of the bill before it goes to hearing, your chances of getting it passed are very, very low.

Obtaining stakeholder support from those who will be affected by the bill is especially important:

> You know, even if they would have put the money in it [the bill], we would have—at the BOCES—would have said we're not interested in that. Then it would have become a compliance issue and that's never good, you know? It's always better to have the people in the field that are going to ultimately implement it that believe in it…if you're a local agency with some authority, it's better not to force them to implement something they don't believe in. So you've got to sell the concepts up front.

Another lesson is the importance of financial support for a bill. In the case of HB1335, no funding source was identified for the purposes of the BOCES Healthy Food Grant Program, greatly diminishing the bill's potential. Respondents felt that, ideally, such programs should be funded by a government entity rather than relying on non-profits or foundations to provide financing.

Still another lesson is to have an understanding of the current landscape of competitive food policies at the district level, both to educate decision-makers and to counter opposition. During his time at CCC, Scott Groginsky surveyed 23 of Colorado's largest school districts—representing nearly 80% of public students in the state—to examine the prevalence of local standards for school snacks. According to Groginsky:

> Anytime we talked to legislators we were able to say, the vast majority—with the exception of just a handful of districts—have requirements. Of the 23 major districts in the state, only 4 of them had nutritional standards for all snacks for all students. So do that research. Look at local policies, and make sure state policymakers are aware of that information. That helped us a lot.

Respondents offered additional recommendations, such as educating decision-makers about the relationship between nutrition and student achievement; building a strong and strategic grassroots network; engaging teachers' unions; and staying on message throughout the legislative process. To this last point, one respondent elaborated:

> So my advice would be, don't fall into this argument that you'll hear from districts that this is a local issue. It's not a local issue. It's an issue for public health and children and education—students achieving. That's the issue. Health and their achievement and that they have to keep the focus on that and not capitulate and say that school districts get to decide these issues—they don't. As you can see, it's within the jurisdiction of the Congress, it's within the jurisdiction of the USDA [United States Department of Agriculture], and the state legislatures and State Boards of Education. All have authority and a legitimate role and responsibility in this area, especially when the locals don't do their job.

He went on to recommend that advocates be brave and bold, and to stay strong "that you're standing up for kids' rights," especially since powerful lobby groups speaking on behalf of children are vastly outnumbered by those representing industry groups and adults.

Advocates of stronger competitive food policies can also learn from the success of supporters and those with concerns around HB1335. Those having the most impact on bill content either: 1) provided a convincing rationale for the change; 2) worked closely with key legislators to request and/or draft specific changes; and/or 3) received support, or at least no opposition, from the bill sponsor and other key stakeholders. By providing a convincing rationale and working closely with key legislators to request or offer specific language, advocates can clearly communicate the details, extent, and reasons behind a particular bill change. In addition, support from key legislators may cue other decision-makers to support a particular change, thus increasing the likelihood that the change will be incorporated into the bill.

CHAPTER 6

OHIO SENATE BILL 210

Abbreviations

BMI	Body Mass Index
BRT	Ohio Business Roundtable
CEO	Chief Executive Officer
HB373	House Bill 373 (Carney and Wachtmann)
HCHC	Healthy Choices for Healthy Children
ODE	Ohio Department of Education
ODH	Ohio Department of Health
OEA	Ohio Education Association
SB210	Senate Bill 210 (Coughlin and Kearney)
STEM	Science, Technology, Engineering, and Mathematics
USDA	United States Department of Agriculture

Introduction

On June 18, 2010, Ohio Governor Ted Strickland signed Senate Bill 210 (SB210) into law. This legislation—the Healthy Choices for Healthy Children (HCHC) Act[147]—restricts the sale of certain foods and beverages to students during the regular school day and before- and after-school programs in public school districts; community schools; Science, Technology, Engineering, and Mathematics (STEM) schools; and chartered non-public schools. These restrictions do not apply to food or beverages sold in connection with a school-sponsored fundraiser, interscholastic athletic event, or other event held outside of the regular school day. The law also requires schools to establish body mass index (BMI) and weight status screening programs for students at certain grade levels (though schools may apply for a waiver), and directs the Ohio Department of Education (ODE) to issue an annual report on the compliance of

districts and schools with the BMI screening requirements. In addition, the law establishes the HCHC Council to monitor student health and wellness and make recommendations. Other provisions include a physical activity pilot program, a requirement that all newly hired physical education teachers be licensed in physical education, and a requirement that the health education curriculum include instruction in nutrition and the benefits of physical activity, among other things. This law updates and strengthens Ohio's prior mandate that each school district adopt and enforce its own food standards (summarized in Box 6.1), and is the first law in Ohio establishing stricter competitive food standards than those required by the United States Department of Agriculture (USDA).

Box 6.1 Ohio's competitive food policies prior to 2009

To comply with section 3313.814 (1979) of the Ohio Revised Code,[167] Ohio Administrative Code 3301-91-09[168] requires each board of education to adopt and enforce standards to be used as the basis for approving all food to be sold in schools. The standards shall include provisions of the types of food sold in schools and whether they contribute significantly to the daily nutritional needs of children and enhance the school district's nutrition philosophy and curriculum; the time of day and place food may be sold to students; and approval of food sales through board resolution.

Methods

Evidence for this case study is drawn from three stakeholder interviews and a variety of documentary sources. Interviews were conducted between January 6, 2012 and February 16, 2012 with former Ohio State Senator Kevin Coughlin (bill sponsor); Nick Lashutka, President of the Ohio Children's Hospital Association (advocacy group); and an anonymous advocate representing a lead organization in support of SB210. Interviews were also sought with four other potential respondents representing the Ohio legislature and other advocacy groups, however none of the four responded despite up to three invitation attempts. In addition, bill-

related information was obtained via the Internet from the Ohio legislature, state regulatory agencies, advocacy organizations and coalition, lobbyist registration records, and media reports.

Bill History and Timeline

Introduced in November 2009, SB210 was the culmination of several years of research and planning. Starting in 2006, the Ohio Business Roundtable (BRT)—a partnership of the chief executive officers (CEOs) of Ohio's major businesses representing a variety of sectors (see Box 6.2 on the next page for a list of BRT member organizations)—was concerned about the rising costs of healthcare for employers. In response, BRT, under the direction of management consulting firm McKinsey and Company (a BRT member), undertook a comprehensive data-driven diagnostic of Ohio's healthcare system to examine healthcare costs, quality, and access; prevalence and incidence of diseases that contribute to healthcare spending, disability, and death; and health risk factors. Based on their findings, 18 priority areas were identified that, if addressed over the following 5 to 10 years, could mitigate healthcare spending growth in Ohio by $50 billion or more by 2018. Among these priority areas was obesity, described in the BRT's 2009 report as one of the most pressing population health issues in the state because of its significant impact on life expectancy, direct healthcare spending, and indirect costs of employee absenteeism and lost productivity.[169]

Box 6.2 Member organizations of the Ohio Business Roundtable[169]

AK Steel	KPMG, LLP
American Electric Power	LexisNexis
American Financial Corporation	Libbey, Inc.
The Andersons	Limited Brands
AT&T Ohio	Longaberger Company
Aultman Health Foundation	Macy's
Battelle Memorial Institute	Marathon Petroleum Company LLC
Bob Evans Farms, Inc.	McKinsey & Company
Bricker & Eckler LLP	Medical Mutual of Ohio
Calfee, Halter & Griswold	Milacron, Inc.
Cardinal Health	The Milenthal Group
The Castellini Group of Companies	Nationwide
Catholic Healthcare Partners	Nationwide Children's Hospital
Chemical Abstracts Service	NetJets
Cincinnati Bell	New Albany Company
Cincinnati Children's Hospital Medical Center	OhioHealth
Cintas Corporation	The Ohio State University
Cleveland Clinic Foundation	Owens Corning
Columbia Gas of Ohio	Owens-Illinois
Convergys Corporation	The PNC Financial Services Group
The Crane Group	PolyOne Corporation
Dana Holding Corporation	Porter, Wright, Morris and Arthur
Deloitte & Touche LLP	Premier Health Partners
Diebold, Incorporated	PricewaterhouseCoopers
Dispatch Printing Company	The Procter & Gamble Company
Dominion Resources	Rockwell Automation
Duke Energy	RPM International, Inc.
Eaton Corporation	Scotts Miracle-Gro
Ernst & Young LLP	Sherwin-Williams
Fifth Third Bancorp	Soin International
FirstEnergy Corp.	Squire Sanders & Dempsey
Forest City Enterprises	State Farm Insurance
Frisch's Restaurants	STERIS Corporation
General Electric	Swagelok Company
The Goodyear Tire & Rubber Company	Time Warner
Honda of America Mfg., Inc.	The Timken Company
Huntington Bancshares Incorporated	TriHealth
Invacare Corporation	Unitedhealth Group, Inc.
The J. M. Smucker Company	University Hospitals Health System
Jones Day	Vorys, Sater, Seymour and Pease
KeyCorp	Western & Southern Financial Group
Kokosing Construction Co., Inc.	

In order to begin addressing obesity in Ohio, BRT formed a steering committee of its members, led by the CEOs of Nationwide Children's Hospital and the Cleveland Clinic. Aiming to stop obesity before it starts, the steering committee's first area of focus was the school setting, where they could directly impact children. The steering committee wanted to take a multi-pronged approach that would address nutrition, physical activity, and education, as well as obtain data to track progress over time. This would be the first legislative attempt toward comprehensive, obesity-related changes in schools; prior efforts focused on only one area—such as nutrition standards for foods and beverages in vending machines or physical education standards—and were unsuccessful. One respondent identified two reasons for the lack of success in prior years: 1) opposition from both sides of the political aisle, whereby Democrats expressed concerns over unfunded mandates on schools and Republicans argued that government should not get involved in matters of personal and parental responsibility; and 2) the concerns of interested stakeholders—namely food industry groups—had not been addressed.

To overcome the latter point, BRT, together with the Ohio Children's Hospital Association—a member-based association of six Ohio children's hospitals—convened the HCHC coalition, whose goal was to prevent and decrease childhood obesity in Ohio. The HCHC coalition comprised more than 80 members representing children's health experts, pediatric researchers, health insurers, nutrition and physical activity professionals, food and beverage associations, businesses, education representatives, and others. A complete list of HCHC coalition members can be found in Box 6.3.

Box 6.3 Member organizations of the Healthy Choices for Healthy Children Coalition[170]

Academy of Medicine of Cleveland & Northern Ohio	Ohio Action for Healthy Kids
Aetna	Ohio Association of Health, Physical Education, Recreation and Dance
Akron Children's Hospital	Ohio Association of Advanced Practice Nurses
American Academy of Pediatrics–Ohio Chapter	Ohio Association of Health Plans
American Cancer Society, Ohio Division	Ohio Association of School Nurses
American Congress of Obstetricians & Gynecologists, Ohio Section	Ohio Athletic Trainers' Association
American Electric Power	Ohio Business Roundtable
American Heart Association	Ohio Children's Hospital Association
American Stroke Association	Ohio Dairy Producers Association
The Andersons	Ohio Dietetic Association
Anthem BCBS	Ohio Grocers Association
AultCare	Ohio Hospital Association
Aultman Health Foundation	Ohio Nurses Association
Barberton Health District	Ohio Optometric Association
Battelle	Ohio Osteopathic Association
Campbell Soup Company	Ohio School Based Health Care Association
Cardinal Health	Ohio Soft Drink Association
CareSource	Ohio State Medical Association
Central Ohio Diabetic Association	The Ohio State University
Children’s Body-Image Foundation	OSU Extension
Children's Hunger Alliance	OSU Extension, Family & Consumer Sciences
Cincinnati Children's Hospital Medical Center	Owens Corning
Cleveland Clinic	PE Fit
Columbia Gas of Ohio	Prescription Assistance Network of Stark County, Inc.
Dayton Children's Medical Center	Porter Wright Morris & Arthur, LLP
Fifth Third Bank	Rainbow Babies & Children's Hospital
Frisch's Restaurants	The Rite Bite Fitness & Nutrition
Healthy Connections Network	RPM International Inc.
Humana	Summa Health System
International Bottled Water Association	Time Warner Cable
The J. M. Smucker Company	The Timken Company
KeyCorp	Toledo Children's Hospital
Limited Brands	Unison Health Plan
Medical Mutual of Ohio	United Healthcare
Midwest Dairy Foods Association	United Way of Central Ohio
Minority Health Roundtable	United Way of Greater Toledo
Molina Healthcare, Inc.	University of Cincinnati
Nationwide Insurance/Nationwide Better Health	University Hospitals Health System
Nationwide Children's Hospital	U.S. Bank
North American Properties	Voices for Ohio’s Children
Ohio Academy of Family Physicians	Western & Southern Financial Group

With the input of the HCHC coalition members, BRT and the Ohio Children's Hospital Association drafted recommendations for what became Ohio SB210 and a companion bill with the same language, House Bill 373 (HB373). Of note was the choice of nutrition standards for à la carte items[xiv]: a modified version of the Alliance for a Healthier Generation's School Beverage Guidelines, and specific categories of foods as determined by a computer software program designed to rate the healthfulness of foods. Although described in detail but never mentioned by name in the bill, this computer software program refers to the Snackwise® Nutrition Rating System.[171] Developed by the Center for Healthy Weight and Nutrition at Nationwide Children's Hospital, Snackwise® calculates the nutrient density of snack foods, and based on this information, rates foods as either: Green-Best Choice, Yellow-Choose Occasionally, or Red-Choose Rarely.[xv]

When asked why these approaches were chosen over others, respondents explained that it was the result of a long negotiation process. For beverages, the American Heart Association pushed the Alliance for a Healthier Generation's guidelines, though the dairy and soft drink industries negotiated some serving size and calories-per-ounce modifications to reflect manufacturing practices at the time. For foods, several school districts were already using a nutrient density approach, and one respondent noted that, "Clinicians that were part of the [BRT] steering committee didn't necessarily all subscribe to the Alliance for a Healthier Generation standards." Nationwide Children's Hospital, a member of both BRT and the Ohio Children's

[xiv] SB210 defines "à la carte items" as individually priced foods or beverages available for sale to students through either a school food service program, vending machine on school property, or school store operated by the school or school-sponsored organization. À la carte items do not include those items sold through school-sponsored fundraisers or events outside of the regular school day, nor do they include items that are part of a reimbursable school meal.
[xv] Additional information can be found at: http://www.snackwise.org/index.cfm.

Hospital Association, had developed Snackwise® and were making it available around the state for free, and this is what was ultimately decided upon for the original bill.

In addition to drafting recommendations for bill content, BRT and the Ohio Children's Hospital Association strategically sought out bipartisan sponsorship for both SB210 and HB373. In 2009-2010, the Senate was overwhelmingly Republican (21 Republicans, 12 Democrats), while Democrats held the majority in the House (53 Democrats, 46 Republicans). And since opposition was anticipated from both sides, having bipartisan sponsorship was important for bill success. One respondent revealed, "At the time, yeah, it was a Democrat-led House and a Republican-led Senate, but we did not want to overlook the importance of making sure that this was being sold, if you will, to both caucuses in both legislative chambers."

Senator Kevin Coughlin (Republican) and Senator Eric Kearney (Democrat) sponsored SB210, and Representative John Patrick Carney (Democrat) and Representative Lynn Wachtmann (Republican) sponsored HB373. Respondents noted that all four sponsors were personally passionate about curbing obesity and improving children's health. In addition, several sponsors were strategically chosen for their leadership positions on their respective chamber's Health Committee (the committees that ultimately heard the bills): Senator Coughlin chaired the Senate Health, Human Services, and Aging Committee; Representative Carney was the Vice Chair of the House Health Committee; and Representative Wachtmann was the Ranking Minority Member of the House Health Committee and had chaired the Senate Health, Human Services, and Aging Committee during his prior service as a State Senator.

During the subsequent drafting stages of the bill, a series of interested party meetings were held with a variety of stakeholders, including the bill sponsors, business community, health

advocates, medical professionals, education groups, executive branch agencies, and others. According to Senator Coughlin:

> We then met with organizations that we thought would be interested parties, both opposed to the bill and in favor of the bill. And we showed them drafts of what we were working on. And we listened to their reactions and we took suggestions and we made some modifications to it. Because I wanted to introduce the bill that was ready to pass when we introduced it. I didn't want to have to do too much amending after it became a bill and got a bill number and it started working through the process. We made a lot of changes. We took a lot of suggestions. We kind of got a preview of some of the opposition in that process. And then finally we introduced it. I would say from the point that we started conceptually to the point where we introduced the bill was probably a year and a half.

After several years of research, planning, and negotiation, SB210 and HB373 were introduced in their respective chambers on November 17, 2009. Soon after, the Ohio Legislative Service Commission released the bill's fiscal impact statement, which described potential costs that the ODE and local school districts might incur as a result of the bill. Although many of the costs were described in vague and indefinite terms, a few were given dollar amounts or ranges. Specifically, the ODE reported that they might need to hire nine additional staff members at an annual cost of $765,000 if site visits to local schools were necessary to measure compliance with nutritional standards. In addition, the physical fitness performance indicator required by the bill could cost the ODE between a minimal amount to $6 million, depending on whether an existing physical fitness assessment could be used or a new one needed to be developed. Following a series of amendments, these estimated costs were drastically reduced.

Despite the revised fiscal note, HB373 was moving slower than SB210 as a result of pressure from teachers' unions, who were concerned about costs, time, and implementation challenges. Advocates decided that the best course of action was to focus efforts on moving SB210 through the Senate and onto the House. Thus, HB373 died in the House Health Committee, while SB210 proceeded through the legislative process. By the end of the session,

39 legislators signed on to SB210 as co-sponsors, for a total of 41 sponsors and co-sponsors (nearly one-third of the 132-seat legislature). The bill passed both chambers and was signed by the Governor in June 2010, albeit with some language and content changes, described in the following section. Table 6.1 provides a timeline of these and other major legislative events occurring in 2009-2010, along with a summary of the language and content changes made to the bill.

Table 6.1 Timeline of major legislative actions and changes to Ohio SB210

Date	Legislative Action	Bill Changes
House		
11/17/09	HB373 (Carney and Wachtmann) introduced, assigned to Health Committee	Fiscal impact statement estimated potential increase in state and local costs, up to over $6 million. (HB373 never passed out of House Health Committee)
Senate		
11/17/09	SB210 (Coughlin and Kearney) introduced, assigned to Health, Human Services, & Aging Committee	Fiscal impact statement estimated potential increase in state and local costs, up to over $6 million.
5/17/10	Reported from Committee with substitute, Sub SB210	(1) Grammatical and clarifying changes made (2) Added that in adopting nutrition standards, each school board consult a dietitian, dietetic technician, or school nutrition specialist (3) Removed requirement that if new USDA regulations for à la carte beverage sales are more restrictive than the current bill, the USDA regulations shall supersede and chartered non-public schools must comply with the regulations regardless if required by USDA (4) Removed requirements that schools report compliance to nutritional standards for food and beverages, and that ODE determine whether schools are in compliance (5) Added that schools may comply with guidelines issued by the Alliance for a Healthier Generation instead of using computer software to determine the healthiness of foods (6) Removed several provisions around physical education (7) Changed language around measuring student success in meeting physical education benchmarks (8) Added that programs or activities occurring before or after school can count towards 30 minutes of required physical activity (9) Defined students exempt from the 30 minute physical activity requirement (10) Allowed schools to apply for a waiver for the 30 minute physical activity requirement (11) Added that the health class requirement include instruction in nutrition and physical activity (12) Changed several provisions around BMI screening/reporting (13) Changed members of the HCHC Council (14) Changed the chairs of the HCHC Council and when they meet (15) Added duties for the HCHC Council Fiscal impact statement revised and reduced to negligible.

Table 6.1 Continued

Date	Legislative Action	Bill Changes
5/18/10	Sub SB210 amended in Senate (29-Y, 2-N) Sub SB210 passed Senate as amended (24-Y, 7-N)	(1) Grammatical and clarifying changes made (2) Added provision allowing districts or schools to apply for a waiver of the requirement to have students undergo BMI/weight status screenings for financial reasons (3) Added that for any district or school granted a waiver for BMI/weight status screenings, ODH shall note that the county data in which the district or school is located is incomplete One Senate co-sponsor added, one removed
House		
5/19/10	Amended Sub SB210 assigned to Health Committee	
6/2/10	Amended Sub SB210 reported from Committee with amendments Amended Sub SB210 passed House as amended (77-Y, 21-N) Amended Sub SB210 sent to Senate for concurrence	(1) Replaced provision around requiring that students receive at least 30 minutes of physical activity every school day with a pilot program to implement the requirement voluntarily (2) Added that a district or school participating in the pilot excuse students in Junior ROTC programs from the daily physical activity (3) Added that ODE issue an annual report describing how districts and schools participating in the pilot program implement the 30 minutes and the financial costs of implementation (4) Added that ODE include whether a district or school is participating in the pilot program as a component of the new report card measure required by the bill (5) Changed process for a school to obtain a waiver from requiring BMI/weight status screenings (6) Changed that the ODH may publish BMI/weight status data rather than requiring them to do so Twenty-five Representatives added as co-sponsors
Senate		
6/3/10	Senate concurred with House amendments (24-Y, 8-N)	
6/9/10	Sent to Governor	
Governor		
6/18/10	SB210 signed by Governor	

BMI: Body Mass Index; **HCHC:** Healthy Choices for Healthy Children; **ODE:** Ohio Department of Education; **ODH:** Ohio Department of Health; **ROTC:** Reserve Officers' Training Corps; **USDA:** United States Department of Agriculture

Changes Made From Bill Introduction to Adoption

During the 2009-2010 legislative session, a number of major changes were made to the language and content of SB210, many of which weakened the final bill's potential to make the school food environment more healthful. Due to the number and extent of modifications made over the course of the legislative session, this case study provides a detailed analysis of the substantive changes made to the nutrition standards language, as well as an overview of other important amendments.

All changes to the nutrition standards provisions were made by the Senate Health, Human Services, and Aging Committee. The first change was a new provision requiring that each school board or governing authority consult with a licensed dietitian, registered dietetic technician, or School Nutrition Association Specialist when adopting the nutrition standards specified in the bill. The provision permits the consultant to be an employee of the school, a volunteer, or to be paid via contract. This addition was driven by the Ohio Dietetic Association over concerns that not every school had access to qualified personnel who could make informed, science-based recommendations. Although a member of the HCHC coalition, the Ohio Dietetic Association lobbied for this change on their own. Nevertheless, the HCHC coalition did not have concerns with the change, and in fact, Senator Coughlin was supportive. The bill sponsor explained:

> I'm kind of like the only one who cared about that. Most of the school districts in Ohio have a licensed dietitian who is making the decisions on food service and menus. A lot of them don't. And so all we're saying—and a lot of school districts have a wellness committee made up of parents. Maybe some of those parents are dietitians. But, at some point in the process, they ought to have a licensed dietitian look over their plan. They can pay somebody to do that, or they can have someone volunteer to do it. It could be a parent who's a dietitian. It could be somebody at the Ohio Department of Education, where there are licensed dietitians on staff. And so, you know, we didn't mandate that they go out and pay anybody to consult with somebody.

As Senator Coughlin noted, a conscious effort was made to ensure that the provision would not cost school districts money. This change strengthened the bill because it increases the likelihood that school districts will appropriately implement the nutrition standards for competitive foods. In addition, school districts may benefit even more to the extent that the consulting dietitian provides sound advice beyond the requirements of the bill.

The second change referred to the anticipated federal regulations for competitive foods. Upon introduction, SB210 stated that if the USDA adopts regulations for the sale of à la carte beverages that are more restrictive than the provisions included in SB210, the USDA regulations shall supersede and every chartered non-public school[xvi] in Ohio must comply with the USDA regulations regardless of whether required to by the USDA. According to Senator Coughlin, chartered non-public schools were included in the original provision because, "As sponsors, we really felt that in order to be fair, that it needed to be applied to all schools, and that if we thought it was good policy for public school kids, then it should be good policy for all kids."

The Senate Health, Human Services, and Aging Committee modified this provision to require that if the USDA adopts regulations for the sale of food or beverages in schools, the HCHC council (as established by SB210 and different from—although with some of the same members as—the HCHC coalition) shall, within 60 days of their adoption, review the USDA regulations and make recommendations for changes to the Ohio nutritional standards. Chartered non-public schools were not mentioned in this new language. One respondent recalled that the

[xvi] According to the Ohio Department of Education, "A Chartered Non-Public school is a private school that holds a valid charter issued by the State Board of Education and maintains compliance with the Operating Standards for Ohio's Schools (Ohio Administrative Code 3301-35-12). These schools are not supported by local or state tax dollars and require the family to pay tuition. Chartered Non-Public schools are eligible for the Administrative Cost Reimbursement Program, Auxiliary Services Program and Transportation services for students."[250]

idea behind this provision was a concern for manufacturers having to comply with a variety of requirements in different states where they might be doing business. He noted, "So if the Feds come up with something, we want to be able to default to that if it was more onerous so there was more uniform requirement." With regards to the removal of chartered non-public schools from the provision, one respondent speculated, "It was probably victim to when we were counting votes and whether or not we were going to be able to have sufficient votes." Although the bill still references the federal standards, this change slightly weakened the bill because it narrowed the scope of schools that must comply with the USDA regulations.

Another change made to the nutrition standards provisions was in reference to compliance monitoring and reporting. Originally, SB210 required the ODE to determine whether each public and chartered non-public school complied with the nutrition standards at least once every five years, as well as issue an annual report on school compliance. In addition, school districts were required to prepare an annual compliance report and submit it to the ODE. Although this latter requirement on school districts remained in the final bill, the requirements originally placed on the ODE in assuring compliance were removed. According to respondents, the ODE requested this change for financial reasons. The ODE estimated that, if site visits had to be made to every school in the state, the provision would require hiring nine additional staff members at an annual cost of $765,000. Since no appropriations were made in the bill for this purpose, the provision was eliminated. Schools must still report compliance, however this change weakened the bill by removing the ODE's direct oversight.

The final change made to the nutritional standards section added that, in determining the à la carte foods to be made available for sale, schools could decide between using the computer software program designed to rate the healthfulness of foods (i.e., Snackwise®) or the most

recent guidelines for competitive foods issued by the Alliance for a Healthier Generation. This latter option was not provided in the original bill. Respondents noted that this change was made to give school districts flexibility in adopting nutrition standards, especially because some school districts were already using the Alliance for a Healthier Generation's guidelines. From Senator Coughlin's perspective, the Alliance for a Healthier Generation's guidelines were appealing because they were developed with the snack food industry's input. He stated:

> And what we did instead was what we thought would be least intrusive to the schools and require—and you can imagine the snack food industry was interested in this bill because they didn't want to have to repackage everything and create new serving sizes and all that. So what we did was we used standards that were already pretty far down the road and voluntarily being adopted by some of the schools out there.

In addition, one respondent mentioned that the American Heart Association was part of the HCHC coalition, and since there was not enough data to determine that one set of nutritional standards was superior to the other, advocates agreed to give school districts the choice.

It is difficult to determine whether this change significantly affected the strength of the bill without a detailed comparison of the two different methods of assessing à la carte foods. Snackwise® and the Alliance for a Healthier Generation's guidelines utilize similar parameters for nutrient content, but the two cannot be readily compared because the Snackwise® program uses arbitrarily chosen cut-off points in determining the rating category of a food. As an example of the differences between the two methods, a General Mills Cocoa Puffs Milk and Cereal Bar is considered a Green-Best Choice food by Snackwise®, but it would not be allowed by the Alliance for a Healthier Generation's guidelines because of its high sugar content. On the other hand, Lance Sunflower Seeds meet the Alliance for a Healthier Generation's guidelines, but are categorized as Red-Choose Rarely by Snackwise®, and thus are not allowed to be sold in

schools as per SB210.[xvii] Additional in-depth comparisons like these are needed to determine whether one method improves the healthfulness of à la carte foods more than the other.

Significant changes were also made to other sections of the bill dealing with physical education, physical activity, BMI and weight status measurements, and the HCHC council. These sections were not related to the nutritional standards provisions, yet they engendered the most controversy within and outside of the legislature. To start, the original bill increased the number of physical education credits required for high school graduation by one-half unit. In addition, the bill included provisions requiring that students engage in at least 30 minutes of moderate to rigorous physical activity each school day, exclusive of recess. Over time, the one-half credit addition was removed and the 30-minute physical activity requirement was changed to a pilot program for voluntary implementation. Respondents reported that both these changes were based on financial considerations, though concerns came from different places. With regards to the extra one-half unit of physical education, Senator Coughlin noted that the concern was an internal, legislative one. He explained:

> We felt that, that was a big burden on the school districts because that would have added major costs. We wanted to take the current half-credit requirement for high school graduation and turn it into a full credit. That would have required added costs. And that would have taken away from, you know, you only have so many credits and you only have so many hours in a day, and you know, we've gone hyper on math and science. And I could make the case for arts and all sorts of other things but the fact is if you add a credit somewhere, you've got to take a credit away from somebody else. So we just extricated ourselves from that issue.

Externally, education groups—such as the Ohio Association of School Business Officials, Ohio Education Association (OEA), Ohio Federation of Teachers, Ohio School Boards Association, and others—were strongly opposed to the 30-minute physical activity requirement.

[xvii] According to the nutritional standards provision in SB210, schools may not sell à la carte food items falling in the lowest rated category as designated by the computer software. In the case of Snackwise®, Red-Choose Rarely is the lowest rated category of foods.

The primary concern expressed by education groups was that money was unavailable to implement the provision (estimated by one district to cost $4 million), especially in light of pending funding cuts or freezes. These groups noted potential implementation challenges, such as the inability of public schools to reach all students and a lack of space or time to accommodate the requirement in career-technical schools. Education groups also argued that the requirement would take time away from core classes, and that physical activity—while important—should not take priority over other, under-funded educational needs of students. Respondents noted that these were uninformed arguments because many districts had already implemented similar provisions prior to the bill's introduction. One respondent stated:

> It's very difficult for me to talk about this without getting slightly animated, but in essence, this [physical activity requirement] wasn't part of a [teachers' union] contract. All of the contracts would need to be renegotiated. They [teachers] couldn't possibly fit this into a day. And then they [the teachers' unions] brought up issues with safety concerns, because we provided examples of activities that teachers were already doing in some classrooms, like stability balls instead of chairs, and activities in the classroom to get kids up and moving. And the long and the short of it is they were afraid that it was going to be something else they had to do and they weren't having it.

Senator Coughlin agreed:

> Our fiscal analysis from the Legislative Service Commission made it very clear that the expense to school districts would be minimal because of the flexibility that we had worked into the bill and the way we had designed the implementation of the requirements. Really, it was more of, they didn't want to be told to do anything from Columbus. If you're a school board member, you don't want any new rules from Columbus. If you're a union, a teachers' union, you don't want your teachers to have to do anything more than they're already doing.

He further explained:

> And what we said was, well, if you look at the school districts that—if this were a rule today—if you look at the school districts and the schools that are doing inventive things and would be in compliance with it, they're working it in throughout the school day. For instance, at Livingston Elementary in Columbus, Ohio, where we kicked off the bill with a press conference, the first five minutes of every class period is spent doing aerobic exercise at your desk, led by a video up on the big screen in front of the classroom that was produced by their own

> principal. Well, you know, tell that to the Ohio Education Association, and then they're like, 'That's five minutes of teaching time. We shouldn't have to do that in our classrooms.' But, you know, we're up against that kind of stuff.

These changes significantly weakened the bill, since provisions that would have increased students' physical activity in schools were removed or made optional.

Both education groups and legislators were concerned with the BMI provision, which originally required that every student in kindergarten, third grade, fifth grade, and ninth grade undergo a screening for BMI and weight status category. Districts were given the option of providing the screenings themselves, contracting with another entity to provide the screenings, or requesting that parents obtain the screening from a medical provider. Parents could opt out of the screening if they signed and submitted a written statement to the school district. All screening results were required to remain confidential, and any reporting of data was to be made in the aggregate.

Over time, a language addition was made allowing school districts to obtain a waiver from the BMI and weight status screenings. This change was made in part because education groups expressed concerns over cost, timing, and both the ability and appropriateness of schools to provide information to parents once BMI and weight status are determined. During a news interview about the bill, one Ohio superintendent acknowledged the significance of childhood obesity, but stated:

> But everything I've read, really the healthcare providers, healthcare professionals are really the ones that are needed to help talk to the students who are getting these results and counsel the families in terms of what healthy choices they need to make, and in a time where funding is being reduced, we cut 50 percent of our elementary nurses this year because of reductions that we're received in our funding. We're just not comfortable with handling it ourselves.[172]

In addition, several legislators were concerned over privacy issues and the potential repercussions if students found out each other's BMI values. One respondent revealed:

> And quite frankly, this piece came down to a personal situation with one legislator who was on the House Committee who was very concerned—had children of her own with [weight] issues—and wanted the option, even though it has always been written into the bill that the parents, the school districts have to allow for the parents to opt out.

This change weakened the bill for at least two reasons. From a student health perspective, a district-wide waiver potentially reduces the likelihood that a child from that school district will be screened for overweight or obesity, unless the child's healthcare provider performs the screening as a standard of care. In addition, allowing school districts to opt out will leave gaps in statewide data available for policy and program evaluation purposes. In fact, one respondent estimated that half of Ohio's school districts have obtained waivers, therefore greatly reducing the ability to accurately track trends in children's BMI and weight status.

Still another major change was in the members of the HCHC council. The original purpose of the council was to provide private sector expertise and resources around student health and wellness to the state. It started out as a relatively small group of 18 members, 3 each from the Ohio Children's Hospital Association, the Ohio chapter of the American Academy of Pediatrics, BRT, Ohio Action for Healthy Kids, American Heart Association, and school districts. However, during the legislative session the council nearly doubled to 32 members, including representatives from the Ohio Parks and Recreation Association, Ohio Soft Drink Association, Ohio Dairy Producers Association, school teachers, school district employees, parents, Ohio Department of Health (ODH), ODE, legislators, and others. Respondents indicated that these changes were purely political. One noted, "It was a matter of interest groups panicking that they didn't have a seat at the table and at the end of the day, if a legislator could give them that and make them feel like they were included in the process, they did. And that's how it became what it did." Senator Coughlin confirmed this, stating, "It was supposed to be a

smaller group and in order to get the support or neutrality of certain organizations; they wanted a seat at the table."

It is unclear how these changes affected the strength of the bill. On the one hand, the broadened membership may provide a greater knowledge base and perspective that can enhance future recommendations. However, a larger and more diverse group ultimately leads to more opinions, which can create complications in decision-making or lead to meaningless compromise. In addition, getting all council members together at the same time might prove difficult, and in fact, one respondent noted that in the year and a half since the bill was enacted, the council still had not met.

Additional clarifying changes were made to the bill, however these did not affect the strength or substance of the final bill. Overall, respondents felt that the final bill was weaker than the original, introduced bill as a result of the physical activity requirement becoming a pilot program, and the BMI waiver described above.

Tactics Used by Primary Stakeholders to Influence Bill Language and Content

During the 2009-2010 session, advocates identified several tactics used to show their support for SB210, such as hosting a media event to introduce the bill, testifying at committee hearings, leading letter-writing and phone-call campaigns to legislators, writing press releases and fact sheets, working with editorial boards to gain media coverage, and developing a coalition website. Yet recommending bill language, sharing concerns with legislators, and threatening candidate endorsements for the upcoming election were among the most important in influencing the bill's content.

To begin, that tactic of recommending bill language was used from the very start, when the BRT steering committee drafted the initial recommendations for the bill. In addition, a series

of interested party meetings was held for stakeholders to negotiate language and content prior to the bill's introduction. After the bill was introduced, stakeholders made recommendations for bill amendments that were incorporated into the final bill. For example, the Ohio Dietetic Association made the recommendation that a licensed dietitian be included on the HCHC council and that school districts be required to consult with dietitians when adopting and implementing the nutrition standards, though the details were slightly modified in the actual bill. As written in one of the Ohio Dietetic Association's electronic newsletters:

> Good news on the school food and beverage standards and including the dietitian as a consultant. SB210 passed the Ohio Senate on May 18th and the Ohio House on June 1st. The Healthy Choices for Healthy Children Council will have a licensed dietitian appointed by the School Nutrition Association. The 'credentialing' addition is not exactly what we proposed, but it states that each school district much consult with a licensed dietitian, a DTR [Dietetic Technician-Registered], or a School Nutrition Association Specialist regarding the nutrition standards.[173]

As another example, a memo written to the bill sponsors by the Ohio Association of School Business Officials and the Ohio School Boards Association stated:

> There is still confusion over the software program districts will use to determine the nutritional values in foods. We would like to continue to work with the bill sponsors and stakeholders to clear up conflicts in this area. Some bill language appears to allow flexibility as we had requested, but the prescriptiveness in other parts of the bill for eligible programs would appear to eliminate all choices except the current Snackwise program. We are working on other options for language that would be more acceptable.[174]

Two months later, the bill was amended to give districts the choice between using the Snackwise® computer software or the Alliance for a Healthier Generation's Competitive Food Guidelines.

There was no overt opposition to the intent of SB210, and in fact, stakeholders agreed that childhood obesity is a major issue that needs to be addressed from many angles. However, several stakeholders had real concerns over implementation and for the most part, these

stakeholders were able to influence the bill's language and content to better suit their needs by sharing their concerns directly with key policymakers. In fact, in a memo from the four sponsors written to all members of the Ohio General Assembly, the sponsors revealed, "We have been working closely with interested parties to ensure that we accommodate the need for flexibility in implementation, while still maintaining the integrity of the legislation. We will soon be introducing substitute bill language that reflects the concerns raised by stakeholders."[175]

As a specific example, education groups voiced their concerns about the 30-minute physical activity requirement. Although reluctant, the bill sponsors agreed to remove the requirement from the bill because they understood schools' concerns over cost and time. Representative Carney, a sponsor of HB373, stated, "I want these groups to come on board and be supporters because they are going to be implementing it, and I want them to be enthusiastic about implementing it."[176] Indeed, a news article indicated that the Buckeye Association of School Administrators "went from foe to supporter" once legislators removed provisions that the organization opposed.[177]

A third tactic used by at least one stakeholder, the OEA, was linking bill change requests regarding the physical activity and BMI screening requirements to candidate endorsements for the upcoming election. This tactic was particularly successful in the House, where Democrats held a slim majority (53 Democrats and 46 Republicans) and were facing a looming election that could cost them the majority (and, in fact, Democrats did lose control of the House after the 2010 election). Senator Coughlin noted that the OEA is a very large contributor to Democratic campaigns, and state campaign finance reports confirm that OEA contributions exceeded $4.5 million in 2008, the previous House election year. According to Senator Coughlin, "So, I imagine the meeting with the Speaker [of the House] went something like this. 'We need to get

these changes or we're not going to be backing you guys.' So I chalk it up to political dynamics. That's the reason it came down the way it did." Indeed, it was in the House that the physical activity requirement changed to a pilot program, and the BMI waiver was made easier to obtain.

Factors Affecting the Success of Stakeholders in Influencing Bill Language and Content

Stakeholders advocating for language or content changes to SB210 were most successful when they: 1) provided a convincing rationale for the change; 2) worked closely with key legislators to request and/or draft specific changes; and 3) received support, or at least no opposition, from the bill sponsor and other key stakeholders. For example, because of concerns that not every school had access to qualified nutrition professionals, the Ohio Dietetic Association proposed language requiring that school districts consult with a registered dietitian when adopting the nutrition standards for à la carte foods and beverages. Several advocates and legislators supported this change, while others were indifferent. One respondent stated, "And so that wasn't something that we drove, but it was also not something that we had concerns with if in fact the legislature wanted to move forward with it."

Another example was the change in the 30-minute physical activity requirement. Education groups contacted legislators to request that the requirement be eliminated, citing a number of reasons, from funding concerns to time constraints. In their memo to the bill sponsors, the Ohio Association of School Business Officials and the Ohio School Boards Association stated, "We appreciate your willingness to listen to our issues and consider changes based on our suggestions. There are a number of improvements to the bill that have resulted from the discussions among stakeholders." Although somewhat reluctant, bill sponsors agreed with changing the physical activity requirement to a voluntary pilot program in order for the bill to pass. As bill sponsor Senator Kearney explained during a Senate floor session, "Colleagues, I

have had an opportunity to review the changes that the House made to SB210. You know, in an ideal world, those changes wouldn't have been made. But we live in a practical world and compromises had to be made."

Factors Influencing the Decision-Making Process

During the 2009-2010 General Assembly, Ohio decision-makers were situated in a policy subsystem characterized by medium/moderate levels of cohesion and constraints and high levels of lobbying (Table 6.2).

Table 6.2 Ranking of conceptual framework constructs in terms of their levels during the policymaking process of Ohio SB210

	Low	Medium/Moderate	High	Ohio SB210 Ranking
Cohesion	More than 25% dissenting votes None in executive branch took a neutral or supportive position Presence of strong opposition to bill Stakeholders willing to compromise on few or no language and content changes	Between 15% and 25% dissenting votes Some in executive branch took a neutral or supportive position Presence of moderate opposition to bill Stakeholders willing to compromise on some language and content changes	Up to 15% dissenting votes All in executive branch took a neutral or supportive position Presence of little or no opposition to bill Stakeholders willing to compromise on most or all language and content changes	**Medium/ Moderate**
Lobbying	Presence of 10 or less registered and active lobbyists in favor or opposed to the bill	Presence of 11 to 20 registered and active lobbyists in favor or opposed to the bill	Presence of 21 or more registered and active lobbyists in favor or opposed to the bill	**High**
Constraints	Presence of 1 or no informational, temporal, or institutional constraints	Presence of 2 informational, temporal, or institutional constraints	Presence of 3 or more informational, temporal, or institutional constraints	**Medium/ Moderate**

To start, medium/moderate cohesion with regard to SB210 is evident by at least three factors: 1) some within the executive branch took a neutral or supportive position; 2) stakeholders were willing to compromise on at least some language and content changes; and 3) the presence of moderate opposition to the bill. For example, from the executive branch, the ODE opposed the provision that would have required them to determine whether schools were complying with the nutritional standards. In addition, one respondent reported that the ODE was concerned with other provisions because of their relationships with local school districts. However, both the ODH and Governor Strickland were supportive of SB210, though they did not take public positions on the bill prior to its passage. Rather, respondents noted that the ODH was included in all interested party discussions before the bill was introduced, and worked closely with advocates during the legislative process because they were interested in taking an active role in several of the bill's provisions. Likewise, Governor Strickland was expected to sign the bill. One respondent indicated:

> Governor Strickland? He, his staff was very supportive. They were encouraging us to continue to work with the opponents, primarily those education groups. But, he was, his agencies were being helpful. And people inside of the Governor's office were being helpful. I don't know that the Governor himself ever came out and said, 'I support this bill' before he signed it. But, we were having regular conversations with his senior policy staff as the bill evolved and none of those were confrontational. They were always helpful.

Next, bill sponsors and lead advocates were willing to compromise on bill language and content changes, even though many weakened the bill. In doing so, groups who opposed sections of the bill—specifically the physical activity and BMI screening provisions—felt more comfortable with the flexibility they were ultimately given. One group in particular—the Buckeye Association of School Administrators—helped quell the pushback from education groups. As one respondent described:

> What really broke it open was the superintendents, who at the end of the day were supportive of what we were trying to accomplish and that was really, kind of broke a log jam. Because a lot of them are already doing this. I mean, when they looked at it, I mean the goals here were too compelling not to get behind. And they're not a group that normally is an excuse-making business about we can't do this, we can't do that, an unfunded mandate. I mean, we worked with them to address the primary concerns they had and that was mostly about the flexibility issue.

Despite the loosened language, there remained a moderate amount of opposition to SB210 from legislators. In three of the four floor-vote opportunities, between 21% and 25% of voting legislators voted against bill amendments or passage. With the exception of two Democrats, all dissenting votes for the bill came from Republicans. Respondents indicated that Republican opposition was likely a result of a resistance to imposing unfunded mandates on schools and to ideological differences over the role of government. Several Republican Senators and Representatives spoke to this latter point during their respective floor sessions. Senator Tim Grendell stated:

> And so I object to any bill, even well intentioned, to deal with childhood obesity that takes from the parent, gives to the government, and then says the parent has to exercise a waiver to use their rights. We've got this backwards. It should be the other way around. Schools should have to opt in. Parents should have to opt in. You know, give me liberty, give me death. Two hundred, thirty years ago, that was talking about the English. Now it's about a Twinkie. Do I have a right to eat what I want to eat? Absolutely. Is it unhealthy for me and should someone educate me on that fact? Absolutely. Should somebody come up and test my body fat index? Not the government. That should be my decision, and if it's my child, that should be my decision.[178]

Representative Kris Jordan agreed:

> But I think that there's a few things that we could do to better solve this problem called obesity. There's something called a mom, a dad, and a lunch box. And I'll be subtle and discrete about this because, you know, that's my nature, but government screws up most of what it touches. And the last thing we need to do is to let them take up the duties and obligations that are there for the parents and should stay with them. Just like welfare. You take away a man's or a woman's responsibilities to work and provide for their family; they become lazier. Also, if you take away responsibilities and obligations of a parent and give it to the

> government—like feeding their children—parents become lazier and the laziness spreads and weakens families.[179]

With regards to lobbying pressure, 87 groups registered lobbying activity around SB210 and/or HB373 in 2009-2010. All groups reported at least one 4-month period of lobbying activity around the bills, though most lobbied the bill for two to four periods over the legislative session. Unfortunately, records do not indicate the position groups took on the bills, however members of the HCHC coalition and BRT were most likely supporters, while at least some of the education groups—especially those not part of the HCHC coalition or BRT—were opponents or had concerns. Table 6.3 provides a list of organizations that employed lobbyists; the number of 4-month lobbying periods reported on their behalf; whether they were affiliated with the HCHC coalition, BRT, and/or represented an education group; and their political contributions in 2009-2010. Together, the 87 groups with registered lobbying activity around SB210 and/or HB373 spent over $8 million in political contributions in 2009-2010. Of note, education groups not part of the HCHC coalition or BRT outspent HCHC coalition and BRT members by four-to-one during this time.[xviii]

[xviii] In 2009-2010, education groups not part of the HCHC coalition or BRT spent a combined $6,201,393.47 in political contributions, while HCHC coalition and BRT members spent a combined $1,555,637.34.

Table 6.3 Organizations registered as lobbying around Ohio SB210 and/or HB373, the number of four-month periods of lobbying records reported on their behalf, affiliations with various Ohio groups, and state political contributions, 2009-2010

	# of 4-Month Reporting Periods[180]	HCHC Coalition Member [170]	BRT Member [169]	Education Group	2009 Political Contribution [181]	2010 Political Contribution [181]	Total Political Contribution [181]
Abbott Laboratories, Inc	2				$21,500.00	$30,500.00	$52,000.00
Aetna, Inc	4	X			$29,900.00	$44,600.00	$74,500.00
Agudath Israel of Illinois	2				$0	$0	$0
Akron Children's Hospital	3	X			$0	$10,000.00	$10,000.00
Alliance for High Quality Education	1			X	$0	$0	$0
American Academy of Pediatrics, Ohio Chapter	3	X			$0	$0	$0
American Cancer Society, East Central Division	1	X			$0	$0	$0
American College of Obstetricians and Gynecologists, Ohio	2	X			$0	$0	$0
American Diabetes Association	3				$0	$0	$0
American Heart Association	3	X			$0	$0	$0
Amerigroup Community Care of Ohio, Inc	3				$14,650.00	$22,300.00	$36,950.00
Association of Ohio Health Commissioners	1				$0	$0	$0
Buckeye Association of School Administrators	3			X	$0	$0	$0
Capitol Consulting Group, Inc	1				$0	$0	$0
Cardinal Health, Inc	4	X	X		$43,500.00	$57,950.00	$101,450.00
CareSource	3	X			$7,550.00	$15,600.00	$23,150.00
Catholic Conference of Ohio	2			X	$0	$0	$0
Children's Hunger Alliance	3	X			$0	$0	$0
Cincinnati Children's Hospital Medical Center	3	X	X		$0	$75,000.00	$75,000.00
City of Columbus	2				$0	$500.00	$500.00
Cleveland Clinic Foundation	4		X		$0	$0	$0
Columbus City School District	3			X	$0	$0	$0
COSI Columbus	2				$0	$0	$0
Department of Education	3			X	$0	$0	$0
Department of Health	3				$0	$0	$0

Table 6.3 Continued

	# of 4-Month Reporting Periods[180]	HCHC Coalition Member [170]	BRT Member [169]	Education Group	2009 Political Contribution [181]	2010 Political Contribution [181]	Total Political Contribution [181]
Governor's Office	3				$0	$0	$0
Humana, Inc and Subsidiaries	2	X			$16,450.00	$36,500.00	$52,950.00
Johnson & Johnson	2				$7,600.00	$31,450.00	$39,050.00
K12, Inc	3			X	$0	$1,000.00	$1,000.00
Lake Hospital System, Inc	1				$0	$0	$0
Lifebanc	2				$0	$0	$0
LifeCenter Organ Donor Network	2				$0	$0	$0
Lifeline of Ohio (LOOP)	2				$0	$0	$0
Mid-Ohio Regional Planning Commission	2				$0	$0	$0
National Heritage Academies	3			X	$0	$0	$0
Nationwide Children's Hospital, Inc	3	X	X		$0	$25,000.00	$25,000.00
Novartis Pharmaceuticals Corporation	1				$5,950.00	$2,500.00	$8,450.00
Ohio Academy of Family Physicians	1	X			$0	$0	$0
Ohio Alliance of YMCAs	2				$0	$0	$0
Ohio Association for Career and Technical Education	3			X	$0	$0	$0
Ohio Association of Justice	1				$17,721.43	$116,095.00	$113,816.43
Ohio Association of Career and Technical Superintendents	3			X	$0	$0	$0
Ohio Association of Health Plans, Inc	4	X			$1,100.00	$2,500.00	$3,600.00
Ohio Association of Health Underwriters	4				$8,700.00	$22,318.90	$31,018.90
Ohio Association of Independent Schools	1			X	$0	$0	$0
Ohio Association of School Business Officials	3			X	$0	$0	$0
Ohio Association of School Nurses	3	X		X	$0	$0	$0
Ohio Athletic Trainers Association	3	X		X	$0	$2,050.00	$2,050.00
Ohio Board of Dietetics	2				$0	$0	$0
Ohio Business Roundtable	3	X	X		$0	$10,000.00	$10,000.00

Table 6.3 Continued

	# of 4-Month Reporting Periods[180]	HCHC Coalition Member [170]	BRT Member [169]	Education Group	2009 Political Contribution [181]	2010 Political Contribution [181]	Total Political Contribution [181]
Ohio Chamber of Commerce	3				$1,500.00	$26,850.00	$28,350.00
Ohio Children's Hospital Association	4	X			$0	$0	$0
Ohio Coalition for Quality Education	1			X	$0	$0	$0
Ohio Council of Retail Merchants	3				$13,185.00	$13,500.00	$26,685.00
Ohio Dental Hygienists' Association	4				$250.00	$1,800.00	$2,050.00
Ohio Education Association	3			X	$561,178.81	$5,155,367.53	$5,716,546.34
Ohio Environmental Health Association	2				$0	$0	$0
Ohio Federation of Teachers	2			X	$37,143.15	$439,903.98	$477,047.13
Ohio Grocers Association	3	X			$18,810.00	$21,450.00	$40,260.00
Ohio Hospital Association	1	X			$1,000.00	$3,000.00	$4,000.00
Ohio Nurses Association	4	X			$116,718.84	$177,698.46	$294,417.30
Ohio Osteopathic Association	3	X			$0	$500.00	$500.00
Ohio Parks and Recreation Association, Inc	2				$0	$0	$0
Ohio Restaurant Association	4				$1,000.00	$9,900.00	$10,900.00
Ohio School Based Health Care Association	2	X		X	$0	$0	$0
Ohio School Boards Association	3			X	$3,750.00	$3,050.00	$6,800.00
Ohio School Facilities Commission	2			X	$0	$0	$0
Ohio School Psychologists Association	2			X	$0	$0	$0
Ohio Soft Drink Association	3	X			$3,547.74	$16,795.90	$20,343.64
Ohio State Medical Association	4	X			$52,150.00	$123,200.00	$175,350.00
Ohio Wholesale Marketers Association	1				$700.00	$500.00	$1,200.00
OhioHealth	3		X		$0	$25,000.00	$25,000.00
Pepsico	1				$6,050.00	$4,000.00	$10,050.00
Procter and Gamble Company	1		X		$16,050.00	$32,900.00	$48,950.00
ProMedica Health System, Inc	3				$0	$0	$0
School Choice Ohio, Inc.	1			X	$0	$0	$0
Summa Foundation	1	X			$0	$0	$0

Table 6.3 Continued

	# of 4-Month Reporting Periods[180]	HCHC Coalition Member [170]	BRT Member [169]	Education Group	2009 Political Contribution [181]	2010 Political Contribution [181]	Total Political Contribution [181]
The Children's Medical Center of Dayton	1	X			$0	$0	$0
The Dannon Company, Inc	4				$0	$0	$0
The Ohio State University	2	X	X	X	$0	$100,046.03	$100.046.03
Time Warner Cable	1	X	X		$109,434.80	$284,181.60	$393,616.40
Towner Policy Group, LLC	1				$0	$150.00	$150.00
United Healthcare Services, Inc	4	X	X		$8,000.00	$20,000.00	$28,000.00
United Way of Central Ohio	3	X			$0	$0	$0
University Hospitals Health System	3	X	X		$0	$37,500.00	$37,500.00
University of Cincinnati	1	X		X	$0	$110,000.00	$110,000.00
Voices for Ohio's Children	1	X			$0	$0	$0
Totals		34 (39%)	11 (13%)	23 (26%)	$1,125,089.77	$7,113,175.40	$8,118,201.14

Although it is unknown how many contacts each lobbyist made with legislators, it is clear that lobbying was an important tactic for both advocates and opponents. For example, one respondent explained that the Ohio Dietetic Association employed a lobbyist who was "very, very strong with members of the legislature" and thus succeeded in getting the additional provision that requires school districts to consult with a dietitian or other nutrition professional when adopting the nutrition standards. Education groups concerned with the 30-minute physical activity requirement also used lobbying with success. One news article reported, "'They were able to pick off members individually,' Rep. John Patrick Carney, D-Columbus, said of the school-board members, teachers-union representatives and superintendents who urged legislators to reject the exercise requirement in Senate Bill 210."[182]

Finally, the decision-making process surrounding SB210 was constrained for political and fiscal reasons. Politically, all seats in the House of Representatives are up for re-election every even-numbered year. Thus, 2010 was an election year, and House Democrats risked losing the majority. In the Senate, however, Democrats were the minority party and the entire chamber was not facing an election. The OEA saw this constraint in the House as an opportunity to exert their influence by tying bill change requests with their endorsements of candidates for the next election. Senator Coughlin further described this political dynamic:

> The unions and the School Board Association came together jointly in front of my Committee [on Health, Human Services, and Aging] in the Senate. And they made an argument that the 30 minutes and BMI should be out of the bill. The ranking Democratic member of my Committee tore them a new one. I mean, I couldn't believe it. And they, I think they were surprised, too. And the Democrats, it never became an issue. They must have had a very, they must have just followed the lead of the Democrats that were on our Committee because their entire caucus voted for this bill without any attempt—no floor amendments at all—from them to walk back those two provisions.
>
> Then it goes over to the House and I think part of it is that the dynamics of the Senate and the dynamics of the House at the time were that the Democrats in the Senate had the freedom to do that because they were not, they were in a very deep

> minority. They had no hope of taking majority of the Senate. It wasn't like they couldn't afford to upset their base a little bit to do what they felt was the right thing. In the House, they had a very slim majority and they were facing a fairly Republican year in 2010. A very Republican year in 2010 where they could potentially lose their majority. And to be very honest, the OEA is a huge funder of their campaigns.

Likewise, SB210 was introduced during a national economic recession in a state with a history of school finance litigation and reform. In fact, the same year SB210 was introduced, Governor Strickland proposed a new school funding formula in his executive budget, which was narrowly adopted for the fiscal year 2010-2011 operating budget. As a result of these financial constraints, school districts and education groups shared concerns over adding a new, unfunded mandate on already-struggling schools and the potential implementation costs associated with SB210, originally estimated at upwards of over $6 million. As just one example, the Cincinnati Public Schools Superintendent, Mary Ronan, was quoted as saying, "Anything that costs additional money is a problem for any district in Ohio. We're all struggling."[183] Although bill sponsors felt these concerns were uninformed given the flexibility provided in SB210 and the fact that many districts already had several of the provisions in place, education groups who touted these concerns were able to wield their influence, leading to significant changes in the final bill.

Discussion and Lessons Learned

Upon introduction, SB210 was a bill that sought to improve the health of Ohio's children by establishing nutritional standards for competitive foods in schools, requiring periodic BMI and weight status screenings, requiring 30 minutes of daily physical activity, and increasing physical education requirements, among other things. Over the course of the 2009-2010 legislative session, several language and content changes were made as a result of three forces:

1) medium/moderate cohesion among decision-makers to adopt SB210; 2) lobbying from a large number of supporters and opponents; and 3) and political and fiscal constraints.

Advocates expressed disappointment that several of the original bill's provisions were removed or made voluntary. When asked whether the adopted bill is representative of the original bill's intent, one respondent said no, explaining:

> I would say it moved the ball in the right direction, but it certainly is going to slow down the process. So now we're not going to have good, comprehensive, statewide data on BMI. We're going to have a good sampling, but we're not going to have statewide information, which means some kids in, quite frankly, from vulnerable areas and their parents, are not going to be made aware of health issues they should be.
>
> The physical activity piece, honestly, I think that we see, while we're moving forward with the physical activity standards and that's a very positive thing, and physical activity assessments, getting kids moving more each day is not happening at the scale that we would have wanted it to. So I mean, the intent was a comprehensive package. I still think in certain pockets of the state we get that. But we wanted a statewide comprehensive package and we don't quite have that.

Although bill sponsors were also hoping for a stronger bill, several were proud that SB210 passed at all given the opposition. Senator Kearney stated, "This bill is a great start for Ohio. Is everything I wanted in the bill? No. But we should be proud of it."[183] Likewise, Senator Coughlin explained:

> You know, I think obviously I would have preferred to keep those two provisions mandatory but I'm very proud of the process overall. I'm very proud that we're able to put together a bipartisan piece of legislation in an impossible session to get things passed. And this is, other than the budget, really the only bill like that, that got passed that had controversy to it.

Despite the bill's changes over time, several lessons can be learned from SB210's history. Perhaps most importantly is the ability to achieve stakeholder agreement and neutralize opposition early on. Prior to the bill's introduction, interested party meetings were conducted to hear feedback and recommendations from supporters and opponents and make modifications accordingly. Of particular note is the need for careful consideration over how education groups

will be affected and how to address their concerns. Senator Coughlin elaborated:

> And to the extent that you can pick off some of the school groups and enfranchise them early, or at least get neutrality, I mean I will just say you're never going to get the teachers' unions, ever. No matter what they say, it's the union process. They are not going to do this. But, you know, there's a case to make to the school boards. There's a case to make to superintendents. And obviously your private school groups—I think you can work with them. It depends on your state and how much regulation you're already doing to private schools.

In retrospect, one respondent reflected:

> We were so cognizant of getting the data correct and trying to make sure that we were working to make this not onerous to the business community and schools. We probably could have done a little more direct outreach to the education folks earlier in the process. We had individual champions: teachers, principals, superintendents in different parts of the state. But, that might have been the only thing I'd do different. I don't know if it would have made a difference or not.

Another lesson is the importance of engaging a diverse coalition and powerful champions to push the bill through the legislative process. In the case of SB210, the HCHC coalition included health advocacy groups, health insurance companies, a range of health professional organizations, food and beverage companies, and universities, among others, and advocates were able to show legislators that over 80 organizations in the state were in support of the bill. However, the main drivers of the bill were the business community and the children's hospitals. One respondent explained, "In our case, CEOs of hospitals and large businesses took a personal interest in this and had made it clear to elected officials—both the Governor and legislative leaders—that this was important to them personally. It was important to their business. It was important to their business organizations." Another noted:

> I think although this issue is a tough issue because of the feeling that there was additional mandates placed on school districts who are taxed already, people understood ultimately that the business community would not be engaged in this issue unless it was ultimately about reducing costs and improving health. And so I think at the end of the day, what made the big difference this time around versus other times when other advocacy groups that tried to push the different pieces of this, was that the voice of the business community was driving the bus. And so I

> think that made it more powerful for some who would have normally had more issue with it.

In light of the business community's power and influence, one respondent questioned whether building a broad coalition was the best strategy, stating:

> I think one of the other things that I'm not quite sure about is whether this whole notion of building a coalition was a right one, either. And the only reason I say that is, when you build a coalition that has a number of different advocacy organizations and interest groups, it waters down the business voice and in Ohio, when the business community stands on its own and pushes something forward, it carries a lot of weight and a lot of significance. And so, I personally am not sure if the coalition-building thing was the right thing or not.

Nevertheless, all respondents stressed the importance of having the hospitals and business community involved in this bill, and that other states should follow Ohio's lead.

Still another lesson is to choose sponsors strategically. For SB210, bipartisan sponsorship was sought in both chambers and was critical to the passage of the bill. For example, one respondent noted, "He [Representative Wachtmann] is one of the most conservative members of the Ohio House and without his support, we wouldn't have been able to get it through, enough of, with the amount of Republicans we got to get it over the hill in the House." In addition, the four sponsors worked well with each other even though their political philosophies did not always align, thereby providing strong legislative leadership on behalf of the bill:

> So those four legislators, we brought in at the very beginning and built up a level of trust with each other, even though they didn't always and still don't always see eye-to-eye. And because of that group of four stayed together from initiation to passage, I think that was really one of the key factors that enabled us to be successful, because they didn't back down in the face of opposition and they had a trust with one another that, you know, whenever one of them was about to make a decision on how the bill might have been changing in their legislative body or on their committee, they didn't act unilaterally. They worked with each other and with the coalition who was behind it. So, again, not something that happens here every day in the state of Ohio or probably in other states.

Respondents offered additional recommendations, such as obtaining data on the population of interest; learning from what has been done in other states; using established nutrition standards that are agreeable to both the school community and the food and beverage industry; and ensuring continued advocacy even after the bill is passed. To this last point, Senator Coughlin elaborated:

> Here's a little bit of my frustration. We put all this effort in to pass the bill. All these organizations put time and money and sweat equity into getting it passed. It got passed. We patted ourselves on the back and said that we passed a comprehensive piece of legislation that's going to make a big difference for generations to come. Well, it doesn't work if not everybody is, you know, if nobody's participating in it. So now, it seems like to me, the mindset of some of the organizations that were behind this and so hawked up on it is, we got it passed, now we're out of it. And I think that the need to back up the investment and back up the effort is there, but nobody seems to be stepping up to that because now there's a new session, you know. They immediately went into the next budget process, a new legislature and a new governor. And they're all focused on what's going on now in the legislature, not what's been done in the past.

He went on to recommend that advocates engage in an organized effort similar to the scale needed to pass the bill because of a concern that future legislatures may try to "gut this bill" or eliminate it all together.

CHAPTER 7

MASSACHUSETTS HOUSE BILL 2092

Abbreviations

ABA	American Beverage Association
AHA	American Heart Association
DAR	Massachusetts Department of Agricultural Resources
DESE	Massachusetts Department of Elementary and Secondary Education
DPH	Massachusetts Department of Public Health
HB2063	House Bill 2063 (Harkins)
HB2092	House Bill 2092 (Koutoujian)
IOM	Institute of Medicine
MBA	Massachusetts Beverage Association
MPHA	Massachusetts Public Health Association
SB861	Senate Bill 861 (Moore)
SNA	School Nutrition Association
USDA	United States Department of Agriculture

Introduction

Following overwhelming bipartisan support from both legislative chambers, Massachusetts Governor Deval Patrick signed House Bill 2092 (HB2092) into law on July 30, 2010. This law—Chapter 197 of the Acts of 2010[184]—requires the Massachusetts Department of Public Health (DPH) to establish statewide nutrition standards for competitive foods and beverages sold or provided in public schools. Plain, potable water must be made available at no cost to all public school students during the day, and fresh fruit and non-fried vegetables must be offered for sale at any location where food is sold—with the exception of non-refrigerated or beverage-only vending machines. Nutritional information must be made available to students for non-prepackaged competitive foods and beverages, and all foods and beverages sold or provided

to students during the school day must meet state and federal food safety guidelines. The nutrition standards must be reviewed every five years and updated as needed. In addition, the bill establishes a commission on school nutrition and childhood obesity, requires the DPH to develop regulations establishing school wellness advisory committees within school districts, and includes nutrition education and exercise into statewide educational goals. The bill also requires the Massachusetts Department of Agricultural Resources (DAR) and the Massachusetts Department of Elementary and Secondary Education (DESE) to facilitate farm-to-school programs, as well as encourages the purchase of local farm products by adding public colleges and universities to the state's local procurement law, among other things. This bill is the first in Massachusetts to establish competitive food standards stricter than those required by the United States Department of Agriculture (USDA).

Methods

Evidence for this case study is drawn from five stakeholder interviews and a variety of documentary sources. Interviews were conducted between August 12, 2011 and September 23, 2011 with one legislative staff person and four representatives from lead advocacy organizations in support of HB2092. Respondents are referred to anonymously in order to respect confidentiality. Interviews were also sought with four other potential respondents representing the Massachusetts legislature and opponent groups, however none of the four responded despite up to five invitation attempts. In addition, bill-related information was obtained via the Internet from the Massachusetts legislature, elected officials' websites, state regulatory agencies, advocacy organizations, industry groups, lobbyist registration records, and media reports.

Bill History and Timeline

Although introduced in January 2009, the idea for HB2092 was not new. In fact, Massachusetts Representative Peter Koutoujian, the bill sponsor, spent nearly a decade working towards bill adoption. A Democratic member of the Massachusetts House of Representatives since 1997, Representative Koutoujian held several leadership positions while in office, many of which were chairmanships of health-related committees. Perhaps most relevant, Representative Koutoujian served as the House Chair of the Joint Committee on Public Health[xix] from 2005 to 2009. During the 2009-2010 legislative session, Representative Koutoujian no longer sat on the Joint Committee on Public Health, yet continued to fight for the adoption of nutritional standards for competitive food in schools. In fact, the passing of HB2092 was Representative Koutoujian's top priority.

Due to the bill's long history, recollection of its origin is a bit uncertain. However, several respondents point to advocates—namely the Massachusetts Public Health Association (MPHA) and the American Heart Association (AHA)—as both laying the groundwork and drafting the initial bill. An affiliate of the American Public Health Association, MPHA is a statewide membership organization for public health professionals and advocates. Over the 10-year life of the bill, MPHA took the lead role in the coalition of supporters, acting as convener of the coalition and one of the primary lobbyists and press contacts for the bill. AHA is a national voluntary health organization whose mission is "to build healthier lives, free of cardiovascular diseases and stroke."[185] AHA works towards its mission through consumer and patient outreach, public policy and community advocacy, research, and professional education. However, it

[xix] In Massachusetts, there are 28 Joint Committees in addition to 7 Senate Committees and 9 House Committees. Joint Committees are bipartisan and comprise members from both chambers. Each committee is headed by both a House and Senate chairperson.

should be noted that, although representing a small fraction of the organization's total revenue in 2010, AHA received several million dollars in donations from snack food and beverage companies likely affected by the bill, such as Frito Lay, General Mills, Kellogg's, PepsiCo, Coca-Cola, and Dr. Pepper Snapple Group.

Despite having consistent legislative and advocacy champions for 10 years, Representative Koutoujian's bill experienced years of debate and stalling. A variety of factors account for the decade-long struggle to pass this bill, including schools' concerns over lost revenue if competitive food sales declined as a result of the legislation; ideological differences over the role of government; and turnover of organizational staff and legislators, requiring constant education. Of particular significance was a history of strong opposition from the beverage and grocery lobbies who instead promoted the Alliance for a Healthier Generation's School Beverage and Competitive Food Guidelines. In addition, the Massachusetts Beverage Association (MBA)—the statewide industry group representing non-alcoholic beverage producers and distributors—had strong legislative allies, including a Representative on the House Speaker's leadership team, blamed by many as a key reason for the bill's multi-year stalemate in the House. By the 2009-2010 legislative session, however, this legislator had lost her leadership position due to a change in the House Speaker, and other previously inhibiting factors were addressed or no longer relevant.

At the same time, a broad coalition of over 100 groups and individual supporters, coupled with increased public attention around childhood obesity and school food, helped build momentum around the bill. In addition, although similar bills introduced in prior sessions specified nutritional standards in statute, HB2092 took a new approach, whereby the DPH would be required to develop the nutritional guidelines for competitive foods and beverages via

regulation. The decision to move from legislation to regulation in HB2092 was a result of at least three factors:

- Legislative opposition to specifying nutrition standards in statute. Many acknowledged that science evolves over time, and amending a law would be a much longer and more arduous process than updating regulations. It was also difficult for legislators to agree on the details of the nutrition standards, but much easier to support the regulatory process.
- Opinion of lead advocates that experts at the DPH—not politicians and lobbyists—should develop the nutritional standards.
- Confidence in the DPH leadership and staff to promulgate strong nutritional standards.

Upon its introduction in January 2009, HB2092 was filed with 1 sponsor and 56 co-sponsors, more than one-quarter of the 200-seat legislature (160 Representatives and 40 Senators). The bill was then referred to the Joint Committee on Public Health, where it was considered with two competing bills, House Bill 2063 (HB2063) and Senate Bill 861 (SB861). Of note, HB2063 and SB861 laid out nutrition standards for competitive foods and/or beverages in statute—as unsuccessful bills from prior sessions had—whereas HB2092 required the DPH to develop the nutrition standards for these items via regulation. In addition, HB2092 required that competitive foods and beverages comply with the Institute of Medicine's (IOM's) Nutrition Standards for Foods in Schools, while nutrition standards specified in HB2063 and SB861 mirrored the looser, voluntary standards developed by the Alliance for a Healthier Generation. This, along with the additional provisions around competitive foods, made Representative Koutoujian's HB2092 the strongest of the three bills introduced. Table 7.1 outlines the differences between these three bills.

Table 7.1 Differences between competing Massachusetts bills as introduced

Provisions Included in the Bill	SB861 (Moore)[186]	HB2063 (Harkins)[187]	HB2092 (Koutoujian)[188]
Establishes nutrition standards for competitive foods	Competitive food and beverage standards specified in statute	Competitive beverage standards specified in statute	Requires the establishment of nutrition standards for competitive foods and beverages via regulation
	Standards based on Alliance for a Healthier Generation guidelines	Standards based on Alliance for a Healthier Generation guidelines	Standards must comply with the Institute of Medicine standards
	Only applies to items sold to students	Only applies to items sold to students	Applies to items sold or provided to students
Requires nutritional information be provided for food items not prepackaged with such information	X		X
Requires schools to offer for sale fresh fruit and non-fried vegetables at any location where food is sold	X		X
Requires schools provide plain, potable water to students at no cost			X
Requires the phase-out and removal of fryolators			X
Establishes exceptions from the nutrition standards	Defines when and where nutrition guidelines do not apply	Defines when and where nutrition guidelines do not apply	Allows regulatory agencies to determine exceptions
Requires education standards include instruction in nutrition and exercise	X		X
Requires study on obesity and eating disorder trends in students	X		X
Establishes a childhood obesity commission	X		X
Requires regulations and guidelines for training of school nurses in behavioral health and eating disorders	X		X Also includes type 2 diabetes
Requires promulgation of rules and regulations setting minimum standards for certification of food service directors and managers	X		

Table 7.1 Continued

	SB861 (Moore)[186]	**HB2063 (Harkins)**[187]	**HB2092 (Koutoujian)**[188]
Requires annual public service campaign to raise awareness on childhood obesity	X		
Requires feasibility study of developing and establishing a farm-to-school program			X
Requires evaluation of the Chef's Pilot Program in Boston Public Schools			X

After a year in the Joint Committee on Public Health, HB4438 was filed to replace the three separate bills. This new version retained the language from HB2092 and included a minor addition. Following the filing of this bill substitute, many language and content changes were made as the bill moved through the House and Senate. During the remainder of the legislative session, the bill was renumbered five more times as both major and minor amendments were made. Table 7.2 provides a timeline of these and other major legislative events occurring in 2009-2010. The final bill retained much of HB2092, though several significant additions and changes were made, described in the following section.

Table 7.2 Timeline of major legislative actions around Massachusetts HB2092

Date	Legislative Action
Joint Committee on Public Health	
1/20/09	SB861 (Moore), HB2063 (Harkins), and HB2092 (Koutoujian) referred to Joint Committee on Public Health.
1/25/10	HB4438 (Sanchez)—a new draft combining and replacing SB861, HB2063, and HB2092—reported favorably by Joint Committee on Public Health and referred to House Committee on Ways and Means.
House	
1/28/10	HB4438 reported to floor by House Committee on Ways Means and recommended ought to pass with an amendment. New draft, HB4441, substituted. Nine amendments adopted, one rejected. HB4441 passed House (152-Y, 4-N). New draft, HB4459, published as amended and transmitted to Senate.
Senate	
2/1/10	HB4459 read and referred to Senate Committee on Ways and Means.
3/9/10	Senate Committee on Ways and Means recommended ought to pass with an amendment. New draft, SB2314, substituted.
3/11/10	Six amendments adopted. SB2314 passed Senate (37-Y, 0-N). New draft, SB2322, printed as amended and transmitted to House.
House	
7/21/10	House concurred in the Senate amendment, SB2322, with a further amendment. New draft, HB4919, printed as amended and transmitted to Senate.
Senate	
7/22/10	HB4919 passed Senate (37-Y, 0-N) and transmitted to Governor.
Governor	
7/30/10	Governor signed bill into law-Chapter 197 of the Acts of 2010.

Changes Made From Bill Introduction to Adoption

During the 2009-2010 legislative session, a number of changes were made to the language and content of HB2092, some of which weakened the final bill and others that strengthened it. Due to the number and extent of modifications made to HB2092 over the course of the legislative session, this case study focuses on the substantive changes made to the nutrition standards language, and, where known, the reasons for their occurrence. Table 7.3 provides a more detailed look at these and two other major changes as they were made with each subsequent bill version.

Table 7.3 Summary of selected changes to Massachusetts HB2092 language and content (changes from previous version underlined)

Bill # (Date) / Provision	HB2092[188] (1/12/09)	HB4438[189] (1/25/10)	HB4441[190] (1/28/10)	HB4459[191] (1/28/10)	SB2314[192] (3/9/10)	SB2322[193] (3/11/10)	HB4919[194] (7/21/10)
Definition of CFB	CFB shall not include foods sold as part of the National SLP and School Breakfast and Child Care and Adult Programs. CFB may include: (1) foods that are (i) non-fried fruits or non-fried vegetables; (ii) whole grains, and related combination products; (iii) nonfat and low-fat dairy products; and (2) beverages that are (i) water without additives or carbonation; (ii) 100% fruit juice; (iii) nonfat and low-fat dairy drinks.		Same as previous	CFB shall not include foods sold or provided as part of the US SBP, SLP, and Child and Adult Care Program. CFB may include: (1) foods that are (i) non-fried fruits or non-fried vegetables; (ii) whole grains and related combination products; (iii) nonfat and low-fat dairy products; and (2) beverages that are (i) water without additives or carbonation; (ii) non-sweetened carbonated water; (iii) 100% fruit juice; (iv) nonfat and low-fat dairy drinks.	CFB shall not include foods sold or provided as part of the SBP, the SLP, and the CACFP of the USDA. All CFB sold or provided in public schools shall be limited to foods or beverages that comply with the nutritional standards.	Same as previous	CFB shall not include foods sold or provided as part of the SBP, the SLP, and the CACFP of the USDA; provided further, that CFB shall not include non-sweetened carbonated water. All CFB sold or provided in public schools shall be limited to those complying with the nutritional standards.

Table 7.3 Continued

Bill # (Date) / Provision	HB2092[188] (1/12/09)	HB4438[189] (1/25/10)	HB4441[190] (1/28/10)	HB4459[191] (1/28/10)	SB2314[192] (3/9/10)	SB2322[193] (3/11/10)	HB4919[194] (7/21/10)
What the CFB nutrition standards should be based on	CFB sold or provided in public school shall be limited to foods or beverages that comply with the leading nutritional standards (defined as IOM April 2007 report) and other regulations promulgated by the department.		Same as previous	Same as previous	DPH <u>in consultation with DESE shall consider nutritional and dietary recommendations developed by state, federal and independent departments and health advisory associations including, but not limited to: DHHS, USDA, ADA, SNA, IOM, AHA, and SNA of MA; provided, however, that DPH, where appropriate, may develop regulations in conformity with federal nutritional standards.</u>	Same as previous	<u>DPH</u> shall consider nutritional and dietary recommendations developed by state, federal and independent departments and health advisory associations including, but not limited to: DHHS, USDA, ADA, SNA, IOM, AHA, and SNA of MA; provided, however, that DPH, where appropriate, may develop regulations in conformity with federal nutritional standards.

Table 7.3 Continued

Bill # (Date) / Provision	HB2092[188] (1/12/09)	HB4438[189] (1/25/10)	HB4441[190] (1/28/10)	HB4459[191] (1/28/10)	SB2314[192] (3/9/10)	SB2322[193] (3/11/10)	HB4919[194] (7/21/10)
Exceptions for where/when CFB nutrition standards must be met	DPH in consultation with DESE shall consider…the times of the school day during which the guidelines shall apply…provided that the departments shall create reasonable exceptions from said standards and guidelines for CFB sold before or after the end of the school day, during school-sponsored fundraisers and events, and at booster sales…		Previous language removed	DPH in consultation with DESE shall consider…the times of the school day during which the guidelines shall apply…provided that the departments shall create reasonable exceptions from said standards and guidelines for CFB sold before or after the end of the school day, during school-sponsored fundraisers and events, and at booster sales...	Nutritional standards shall not apply to CFB sold on school grounds up to 30 minutes before the start of the school day or 30 minutes after the end of the school day with the exception of CFB sold through vending machines, in which case the nutrition standards shall apply at all times. DPH may make reasonable exceptions for the application of the nutrition standards to CFB sold during the school day at booster sales…	Same as previous	Nutritional standards shall not apply, unless a public school district or board of trustees elects to apply the nutrition standards beyond this timeframe, to CFB sold on school grounds up to 30 minutes before the start of the school day or 30 minutes after the end of the school day with the exception of CFB sold through vending machines, in which case the nutrition standards shall apply at all times. DPH may make reasonable exceptions for the application of the nutrition standards to CFB sold during the school day at…

Table 7.3 Continued

Bill # (Date) / Provision	HB2092[188] (1/12/09)	HB4438[189] (1/25/10)	HB4441[190] (1/28/10)	HB4459[191] (1/28/10)	SB2314[192] (3/9/10)	SB2322[193] (3/11/10)	HB4919[194] (7/21/10)
Requiring nutritional information for CFB	Competitive food items not prepackaged with nutritional information by the distributor that are not fresh fruit or fresh vegetables shall be required to have nutritional information (nutrients specified in bill) available to students, either on a display case, in a binder or within information packets held by food service staff for requests by students.		Same as previous	Same as previous	Making nutritional information available to students for non-prepackaged CFB; provided, however, that this shall not include fresh fruits or fresh vegetables and foods or beverages sold during the school day at booster sales, concession stands, and other school-sponsored or school-related fundraisers and events.	Same as previous	Same as previous

Table 7.3 Continued

Bill # (Date) / Provision	HB2092[188] (1/12/09)	HB4438[189] (1/25/10)	HB4441[190] (1/28/10)	HB4459[191] (1/28/10)	SB2314[192] (3/9/10)	SB2322[193] (3/11/10)	HB4919[194] (7/21/10)
Food safety requirement for CFB	No provision		No provision	No provision	Ensuring that <u>all foods</u>, including CFB sold or provided to students during the school day, <u>meet state and federal food safety requirements</u>.	Ensuring that all foods, including CFB sold or provided to students during the school day, meet state and federal food safety requirements. <u>DPH, in collaboration with DESE, shall promulgate regulations requiring local health officials to conduct food safety inspections at public schools and to track and report the results of these inspections.</u>	Same as previous

Table 7.3 Continued

Bill # (Date) / Provision	HB2092[188] (1/12/09)	HB4438[189] (1/25/10)	HB4441[190] (1/28/10)	HB4459[191] (1/28/10)	SB2314[192] (3/9/10)	SB2322[193] (3/11/10)	HB4919[194] (7/21/10)
Fryolators	DPH in consultation with DESE shall establish guidelines for the phase-out of fryolators in all public schools within 5 years from the effective date of this act. These guidelines shall include, but need not be limited to (1) a timeline for the removal of all fryolators from public schools; (2) a list of alternative products to replace those prepared in fryolators; (3) mechanisms for monitoring and enforcing the removal of fryolators from all public schools in MA.		Public schools shall not use fryolators in the preparation of food; provided, however, that DPH, in consultation with DESE, may establish reasonable exceptions for the use of fryolators in the preparation of food sold after the end of the school day, during school-sponsored fundraisers and events, at booster sales, concession stands and other activities at school-related events.	Same as previous	Prohibiting fryolators in the preparation of competitive foods; provided, however, that DPH may establish exceptions for the use of fryolators in the preparation of competitive foods sold during the school day at booster sales, concession stands, and other school-sponsored or school-related fundraisers and events.	Same as previous	Same as previous

Table 7.3 Continued

Bill # (Date) / Provision	HB2092[188] (1/12/09)	HB4438[189] (1/25/10)	HB4441[190] (1/28/10)	HB4459[191] (1/28/10)	SB2314[192] (3/9/10)	SB2322[193] (3/11/10)	HB4919[194] (7/21/10)
Who will develop CFB nutritional standards	DPH shall develop nutritional guidelines and standards for the sale or provision of CFB...		Same as previous	Same as previous	DPH <u>in consultation with the DESE shall promulgate regulations establishing nutritional standards</u> for the sale or provision of CFB...	Same as previous	<u>DPH</u> shall promulgate regulations establishing nutritional standards for the sale or provision of CFB...
Implement-ation and enforcement of CFB nutrition standards	DPH in consultation with DESE shall establish guidelines for the phase-in and implementation of nutrition standards for CFB sold or provided in public schools...DESE shall require implementation of CFB standards in public schools and shall be responsible for enforcing said standards.		DPH in consultation with DESE shall establish <u>regulations</u> for the phase-in and implementation of nutrition standards for CFB sold or provided in public schools...DESE shall require implementation of CFB standards in public schools and shall be responsible for enforcing said standards.	Same as previous	DPH, in <u>collaboration</u> with DESE, <u>shall assist public schools in the implementation of the nutritional standards relative to the sale or provision of CFB in public schools.</u>	Same as previous	Same as previous

Table 7.3 Continued

Bill # (Date) / Provision	HB2092[188] (1/12/09)	HB4438[189] (1/25/10)	HB4441[190] (1/28/10)	HB4459[191] (1/28/10)	SB2314[192] (3/9/10)	SB2322[193] (3/11/10)	HB4919[194] (7/21/10)
Review of CFB nutrition standards	DPH in consultation with DESE shall conduct a review of implementation and appropriateness of maintaining the leading nutritional standards within 5 years of the effective date. Upon review, DPH shall use the most updated recommendations made by authoritative scientific and public health organizations concerning appropriate nutritional standards for CFB as well as the DHHS's and USDA's most current DGAs.		DPH in consultation with DESE shall conduct a review of implementation and appropriateness of maintaining the leading nutritional standards <u>at least once every 5 years</u> after the effective date. To assist in the review of said standards, DPH shall use the most updated <u>peer reviewed scientific studies and data</u> concerning appropriate nutritional standards for CFB as well as the DHHS's and USDA's most current DGAs.	Same as previous	<u>Every 5 years</u>, DPH, in consultation with DESE, shall conduct a review of the nutrition standards and <u>update the nutrition standards as needed</u>.	Same as previous	Same as previous

Table 7.3 Continued

Bill # (Date) / Provision	HB2092[188] (1/12/09)	HB4438[189] (1/25/10)	HB4441[190] (1/28/10)	HB4459[191] (1/28/10)	SB2314[192] (3/9/10)	SB2322[193] (3/11/10)	HB4919[194] (7/21/10)
Who review should be reported to	DPH shall report findings of the review to the Speaker of the House of Representatives, President of the Senate, House and Senate Chairs of Joint Committee on Health Care Financing and House and Senate Chairs of Joint Committee on Public Health.		DPH shall report findings of its review to the Speaker of the House of Representatives, President of the Senate, Joint Committee on Health Care Financing, Joint Committee on Public Health, and <u>Joint Committee on Education.</u>	Same as previous	Same as previous	Same as previous	Same as previous
School wellness advisory committees	No provision		No provision	DESE in collaboration with DPH shall promulgate regulations requiring all school districts to convene a School Wellness Advisory Committee. Lists required members and activities of committees.	Previous language removed	<u>DPH, in collaboration with DESE</u>, shall promulgate regulations <u>facilitating the establishment of</u> school wellness advisory committees within school districts. Lists possible members and activities.	Same as previous

Table 7.3 Continued

Bill # (Date) / Provision	HB2092[188] (1/12/09)	HB4438[189] (1/25/10)	HB4441[190] (1/28/10)	HB4459[191] (1/28/10)	SB2314[192] (3/9/10)	SB2322[193] (3/11/10)	HB4919[194] (7/21/10)
Farm-to-school	DAR in consultation with DESE shall make an investigation into the feasibility of developing and establishing a farm-to-school program to facilitate and promote purchase of MA farm products by schools, universities, and other educational institutions in MA. Other tasks described include collecting data, developing a mechanism and process for schools to connect with farms, and reporting the results of the investigation.		Previous language removed	DAR in collaboration with DESE shall collect data, develop a mechanism and process for schools to connect with farms, and report results. Also increases the financial cap to $50,000 on contracts that can be awarded for the procurement of state-grown agricultural products and directs state colleges and universities to prefer, to the extent feasible, products grown in the state when purchasing agricultural products	DAR shall collect data from farms interested in selling locally-grown farm products and public school districts wishing to purchase farm products, and DESE shall collect data from public school districts. DAR, in consultation with DESE, shall develop a process by which to connect farms and public schools, and shall report results. Directs the state purchasing agent responsible for procuring agricultural products on behalf of a state agency, authority, or trustees or officers of a state college or	DAR shall collect data from farms interested in selling locally-grown farm or locally-harvested fish products and public school districts wishing to purchase farm or fish products, and DESE shall collect data from public school districts. DAR, in consultation with DESE, shall develop a process by which to connect farms and public schools, and shall report results. Directs the state purchasing agent responsible for procuring agricultural products on behalf of a state agency, authority, or trustees or officers of a state college or	Same as previous

Table 7.3 Continued

Bill # (Date) / Provision	HB2092[188] (1/12/09)	HB4438[189] (1/25/10)	HB4441[190] (1/28/10)	HB4459[191] (1/28/10)	SB2314[192] (3/9/10)	SB2322[193] (3/11/10)	HB4919[194] (7/21/10)
Farm-to-school (continued)					university to make reasonable efforts to facilitate the purchase of such products grown in MA. Also provides a 10% price preference for state-grown foods. A procurement officer who follows generally- accepted business practices may award a contract, which includes individual purchases of less than $25,000 for the procurement of state-grown foods without seeking quotations as currently required.	university to make reasonable efforts to facilitate the purchase of such products grown in MA. Also provides a 10% price preference for state-grown foods. A procurement officer who follows sound business practices may award a contract, which includes individual purchases of less than $25,000 for the procurement of state-grown foods without seeking quotations as currently required.	

ADA: American Dietetic Association; **AHA:** American Heart Association; **CACFP:** Child and Adult Care Food Program; **CFB:** Competitive Foods and Beverages; **DAR:** Massachusetts Department of Agricultural Resources; **DESE:** Massachusetts Department of Elementary and Secondary Education; **DGAs:** Dietary Guidelines for Americans; **DHHS:** United States Department of Health and Human Services; **DPH:** Massachusetts Department of Public Health; **HB:** House Bill; **IOM:** Institute of Medicine; **MA:** Massachusetts; **SB:** Senate Bill; **SBP:** School Breakfast Program; **SLP:** School Lunch Program; **SNA:** School Nutrition Association; **US:** United States; **USDA:** United States Department of Agriculture

The first bill change made by the Senate Committee on Ways and Means required that the DPH consult with the DESE in promulgating the regulations establishing nutritional standards. In his testimony during the Senate session, Senator Richard Moore (sponsor of competing bill, SB861) explained that the DESE has a responsibility to keep students healthy, and should be part of a "cooperative venture" with the DPH in developing nutrition standards. However, a House amendment later removed the DESE from this and other mandates described below because they lacked both the health expertise and desire to participate in the development of the nutrition standards.

When it was introduced, HB2092 required that competitive foods and beverages comply with the IOM's Nutrition Standards for Foods in Schools. Many advocates supported the IOM standards for their stringency and scientific basis, especially compared to the weaker and seemingly self-serving voluntary guidelines developed by the Alliance for a Healthier Generation. Nevertheless, debate ensued around what kind of guidance the DPH should be given. Amendments made by the Senate Committee on Ways and Means directed the DPH to consider other dietary recommendations in addition to those of the IOM. Several governmental agencies and health-related associations were listed by name, including the United States Department of Health and Human Services; USDA; American Dietetic Association; AHA; and School Nutrition Association (SNA), a national non-profit organization of school food service professionals.

This language change seems to have occurred for a variety of reasons. One advocate stated that AHA had worked hard for this language so that the DPH could consider their guidelines, along with others. Another report indicated that the Senator who filed the amendment felt the IOM standards were too strict. Still another critique surrounded the time-

limited relevance of the IOM standards, as Senator Moore noted in his address to the Senate floor, “The bill establishes national standards for competitive foods to really look at, not just, as the House did, the Institute of Medicine guidelines, which were fine, but they don’t go far enough and also they are static. They haven’t been upgraded. They need to be.”

The Senate’s more inclusive language remained in the adopted bill mainly as a way to maintain buy-in from those who felt the IOM standards were too strict. Although this change had the potential to weaken the final bill, the bill sponsor and several advocates were comfortable with making this compromise, both because it was good practice to review a larger set of recommendations, and because of their confidence in the DPH to develop strong standards regardless of this increased flexibility.

Similarly, compromises were made over defining allowable exceptions to the nutrition standards. Upon introduction, HB2092 stated that the DPH, in consultation with the DESE, shall create “reasonable exceptions” from the standards for competitive foods sold before or after the school day and during school-related events. Although the House Committee on Ways and Means removed this provision, it was later added back through a House amendment and supported by Representatives concerned about fundraisers for sports programs and parent teacher organizations. While in the Senate Committee on Ways and Means, exceptions were made more prescriptive. The new provision stated that nutritional standards would not apply to competitive foods or beverages sold at school up to 30 minutes before or 30 minutes after the school day, with the exception of items sold in vending machines, in which case the nutritional standards would apply at all times. In addition, the DPH was given the option to make “reasonable exceptions” to the nutrition standards for items sold during the school day or at school-related

events. Ultimately, the Senate language was adopted, albeit with the condition that school districts could elect to apply the nutritional standards beyond the timeframe specified in statute.

Although not everyone agreed with weakening the bill by allowing exceptions to the nutrition standards, this compromise was viewed as a way to broaden the circle of legislative supporters. One advocate noted:

> The final version simply says that DPH may exempt [the application of the nutrition standards] and that was fine with us. That was about as strong as we were going to get, and that satisfied legislators who might otherwise had been critics to give DPH that latitude. DPH, in the end, made no exemptions, which we were very happy with. We didn't think exemptions were warranted.

Another change focused on deep fryers, known as fryolators. Initially, HB2092 required that the DPH, in consultation with the DESE, establish guidelines for the phase-out and removal of fryolators from public schools. However, the House Committee on Ways and Means loosened this provision in response to school district complaints over the high removal costs. From the sponsor's perspective, it was more important that fryolators not be used than they be removed from schools. Thus, to achieve buy-in and save schools money, the requirement to remove fryolators was eliminated from the bill. Instead, new language forbade public schools from using fryolators in the preparation of food, with the condition that the DPH, in consultation with the DESE, could establish "reasonable exceptions" for fryolator use in the preparation of food sold after school or during school-related events. Later, the Senate Committee on Ways and Means further relaxed the language, stating that fryolators were not to be used for the preparation of competitive foods, but that the DPH could establish exceptions for the use of fryolators in the preparation of competitive foods sold during the school day and at school-related events. These Senate changes remained and ultimately weakened the bill because they leave schools the ability to deep-fry foods for student consumption.

Still another change centered on food safety requirements. Although not included in the House bill versions, the Senate Committee on Ways and Means added a section requiring all foods, including competitive foods and beverages, to meet state and federal food safety guidelines. Additionally, Senator Susan Fargo, the Senate Chair of the Joint Committee on Public Health, introduced an amendment to further require the DPH, in consultation with the DESE, to promulgate regulations requiring local health officials to conduct food safety inspections at public schools and to track and report the results. This language remained and ultimately strengthened the adopted bill. One respondent explained that the amendment was a response to recent press over food safety concerns in a Massachusetts school district. He added that the amendment was "nothing anyone had concerns about. Addressing food safety in schools—that's sort of a winner issue."

Even the definition of competitive foods was modified over time. Initially, HB2092 banned all carbonated beverages from the list of allowable competitive foods and beverages. Yet a later House revision partially reversed this decision, allowing non-sweetened carbonated water to be sold or provided in schools. This amendment was introduced by two Representatives from Worcester, a district containing the Polar Beverages Company (makers of various seltzers and other carbonated beverages). Representative Koutoujian's office was approached several times to support this amendment and, having checked around for others' opinions, felt comfortable with the change, identifying non-sweetened carbonated water as equivalent to water. The change was also supported by Senator Moore (also representing Worcester), who identified "appropriately manufactured carbonated water" as a Massachusetts product that schools should utilize. The adopted bill excludes non-sweetened carbonated water from the definition of

competitive foods or beverages, thereby allowing its sale or provision in public schools. This change did not affect the strength of the final bill.

As HB2092 gained momentum in the legislature, additional sections were added or amended, including provisions around school wellness advisory boards, farm-to-school programs, and a commission on childhood obesity. Often, these new or revised sections originated from separate bills but were combined with HB2092 to increase the likelihood of becoming adopted. As a result of these additions, the bill's scope was broadened to not just address competitive foods and beverages, but other areas of school food and nutrition, as well. Although key stakeholder opposition to at least one of these new sections threatened the bill's passage, from the sponsor's point of view, allowing the addition of these sections increased the legislative buy-in and support for the overall bill. Similarly, advocates felt that these additions or amendments expanded the coalition of bill supporters, strengthened the bill, and aided bill adoption. Some of these language and content changes are detailed in Table 7.3.

Of note, while several respondents agreed that the final bill is stronger than the introduced bill, others felt that comparing a bill to a law was futile. One respondent explained, "A bill is worthless if it doesn't get enacted. So you can have the strongest standards in the world articulated in the bill, and it's meaningless. The only thing that really counts is what you can get passed by the legislature and what are the standards that actually get adopted." Another respondent reflected on the change requiring the DPH to consider other nutrition recommendations besides the IOM standards:

> The way that I also look at it is, if we hadn't kind of backed-off a little on that, well then maybe this wouldn't have happened at all. Maybe that was the sticking point and then we wouldn't have this at all and then we'd be weaker for it because we wouldn't have it. So it's hard for me to say, but I mean, it [the bill] accomplishes what it needs to accomplish.

Nevertheless, these respondents did not believe the final bill was weaker than the original bill.

Tactics Used by Primary Stakeholders to Influence Bill Language and Content

Supporters and opponents of a stronger HB2092 used similar tactics to influence the bill's content: testifying at hearings, drafting specific language changes, and introducing legislative amendments. To start, HB2092 supporters and opponents presented testimony at the June 2, 2009 public hearing of the Joint Committee on Public Health. During this hearing, advocates stressed the importance of the bill in addressing obesity and related diseases, rising healthcare costs, and disparities in health and food access. While supporters did not ask for changes in language or content to strengthen the bill, they did address some of their opposition's concerns, a strategy that may have helped prevent a weakening of the bill. For example, many school districts feared that implementing nutrition standards for competitive foods would lead to a loss in revenue as a result of decreased student purchasing. However, representatives from MPHA and SNA presented research or personal experience showing no loss, or even a gain, in net revenue in schools that already implemented nutritional standards for competitive food.

Opponents also expressed concern that the bill was unnecessary, given both the Alliance for a Healthier Generation's voluntary guidelines and the fact that many Massachusetts schools had already taken strides to serve healthier foods. One health advocate countered this argument by describing the powerful influence of industry as the reason to adopt a strong statewide policy:

> It appears to us that because of pressure exerted on them by cities and towns, especially those that have industries that provide certain products that I won't mention, DOE [Department of Education] has a real problem promulgating their own regulations, including controls, which is why we need legislative intervention to help DOE to do what they want to do. And that is to only allow healthy, fresh foods in the schools. So I think you'd be doing a great service to DOE by helping them out in this area.

Likewise, opponents utilized the public hearing in attempt to influence the bill's content. After agreeing that obesity is a national problem requiring new solutions, an American Beverage Association (ABA) representative opposed HB2092 outright, testifying that the bill's beverage standards were too restrictive and even unnecessary given the voluntary beverage guidelines ABA developed in partnership with the Alliance for a Healthier Generation. Rather, ABA's strategy was to support a competing bill—HB2063—that outlined beverage standards identical to the Alliance for a Healthier Generation's guidelines. ABA claimed their guidelines promoted choice, had support from national health organizations, and were already being implemented in the state. Notably, had the beverage standards in HB2063 been adopted instead of HB2092, the DPH would not have had the authority to require stricter standards (which they ultimately did) or update the standards over time.

Another tactic used by non-legislative supporters and opponents to influence bill content was drafting specific language changes. Supporters employed this tactic throughout the 10-year legislative attempt, from helping draft the initial bill to recommending major and minor language changes in later years. During the 2009-2010 legislative session, several organizations wrote language that was eventually incorporated into the bill. For example, AHA recommended and ultimately succeeded in changing language to require the DPH to consider a list of nutrition and dietary recommendations (including those co-developed by AHA) when developing the competitive food standards. Likewise, MPHA, together with the Massachusetts Farm to School Project, wrote the language for the farm-to-school sections, which were originally part of a separate bill. One advocate also described the process of drafting bill amendments:

> When we were working on the amendments, we would submit our recommendations on what language to be included. So I think, especially in Section 2 [local procurement provisions for agricultural products], there was some particular haggling about it, so we wrote new language for Section 2 and

> submitted that and that was the language that was ultimately included in the final bill.

Unfortunately, attempts to contact industry representatives were unsuccessful, so it has not been confirmed whether opponents wrote specific sections or amendments to HB2092. However, it is clear that the beverage industry drafted language, whether intentionally or not. A comparison of the competitive food standards between the two competing bills—HB2063 and SB861—and the voluntary guidelines agreed to by ABA show a near identical match. Thus, whether it was the MBA who submitted bill language to the legislative sponsors, or the sponsors who drafted the bills based on their own research, language for both bills was written in part by the beverage industry. Again, adoption of either of these bills would have led to weaker nutritional guidelines than what ultimately passed.

A third tactic used to influence bill content was the introduction of bill amendments. Amendments often originated from lobbyists or constituents requesting a change in the bill's language or content. Two types of amendments were observed: in the first type, one or more legislators recommended the addition or modification of a specific bill section during a House or Senate floor session. In the second type, committees—often the Committee on Ways and Means—offered amendments in the form of whole-bill substitutes. A review of HB2092's history showed amendments strengthening the bill were often of the first type and amendments weakening the bill were of the second type. For example, Senator Fargo's floor amendment added a single section requiring food safety inspections at public schools, and the adoption of this amendment helped strengthen the final bill. On the other hand, when the House Committee on Ways and Means offered their new version of the full bill, it included weaker language around the use of fryolators. Likewise, the Senate Committee on Ways and Means' bill substitute created exceptions for when nutrition standards must be met.

The use of the two types of amendments may have been a legislative strategy; it is more time consuming for legislators to review a full bill prior to a floor vote than it is one or two sections. With this logic, controversial changes may become adopted more easily if buried in the full bill than if introduced as a single modification. In fact, one Representative complained about the short notice she and others were given to review a substitute bill amendment, stating:

> Unfortunately, sometimes when we're releasing bills at 9:42 in the morning, or subsequently 10:56 for the next piece of legislation we're going to talk about, we invariably, not so much shortchange us, but we definitely shortchange the public in their ability to weigh in. I only say this because we have many people who serve on school boards across this Commonwealth, serve in public health capacities, serve as health educators, and we can all make perhaps a better bill, even if we were given at least 24 hours to look at the actual, final culmination.

Conversely, voting on specific "winner issues" (such as food safety) during a formal session may help persuade undecided legislators. In addition, amendment sponsors often took the opportunity to address their peers and speak on behalf of the amendment and the bill as a whole. For example, during the January 28, 2010 House session, Representative George Peterson offered an amendment to add the sections regarding farm-to-school programs and state agency local procurement provisions. Prior to the floor vote on whether to adopt the amendment, Representative Peterson described to the House members the amendment's purpose and importance:

> It [the Massachusetts farm-to-school project] is a program that's been in effect for a number of years and has been extremely beneficial for some of the local farmers that are adjacent to, and to be able to sell their fresh produce and goods to their local school districts. And we actually allow in this amendment to be able to expand upon that. So it's a good thing. You get fresher fruits, vegetables, produce, milk and dairy products into the local schools, as well as improving the viability of those local farmers, which is critical to keeping open space across the Commonwealth. So this is a pretty common sense amendment. It pretty much tracks the same language of S2107, I believe the bill was, and I would ask for your support.[195]

Following Representative Peterson's address, three other Representatives—including the bill's sponsor—also spoke out in support of the amendment. The amendment was then adopted by a unanimous vote of 153 to 0.

Factors Affecting the Success of Stakeholders in Influencing Bill Language and Content

Stakeholders advocating for changes to either strengthen or weaken HB2092 were most successful when they 1) either were key legislators or worked closely with key legislators to propose and/or draft specific changes; 2) introduced changes through substitute bill amendments; and 3) recommended changes that received support, or at least no opposition, from the bill sponsor and other key stakeholders. For example, with regards to the change directing the DPH to consider more than just the IOM standards, one advocate stated, "And in 2010, when it [the bill] was passed, it listed that the Department [of Public Health] had to look at a number of different standards. And [AHA] actually worked really hard to have that language included so that they could look at the Heart Association guidelines, as well as several other guidelines. So it wasn't just IOM."

On the policymaking side, stakeholders point to Senator Moore as the legislator who championed the change. Feeling that the IOM standards were too strict, especially around beverages in high schools, Senator Moore preferred the voluntary standards developed by the Alliance for a Healthier Generation (of which AHA is a member). Not only was Senator Moore in agreement with the AHA's co-authored nutrition standards and request for the language change in the bill, but he also sat on the Senate Committee on Ways and Means, the same committee that introduced the language change via substitute amendment.

In addition, HB2092's sponsor, Representative Koutoujian, did not oppose the change. Rather, he considered it an acceptable compromise that would help move the bill forward

through the legislature. According to one respondent, "That was the compromise. That was, okay, we really think that the IOM standards are the best. We're pretty sure DPH feels the exact same way. But if it's going to make everyone happy, then we can kind of widen that circle and say, let's take information from a wide range of sources as a way of compromising." Other advocates, such as MPHA and the Massachusetts Medical Society, agreed with the sponsor's position and did not seek to remove the new language. Ultimately included in the final bill, this change was most likely successful because AHA worked closely with an influential Senator to propose language that went uncontested.

Another example was the change allowing fryolators to remain in schools, recommended as part of a substitute amendment from the House Committee on Ways and Means. According to the legislative staff person, school representatives approached the bill sponsor and asked that the language be modified because removing fryolators was costly:

> A lot of schools weren't, or at least, a lot of schools were claiming that they don't use them [fryolators] anymore, that they literally just sit there. And the reason they hadn't been removed already is just the cost of removing them was high. So we were kind of like, you know, this isn't a life or death issue. It's more that the fryolators not be used, rather than the fryolators actually being there.

Again, Representative Koutoujian did not oppose the change, as it still addressed the underlying goal of reducing access to unhealthy competitive food in school. The final bill thus allowed schools to keep their fryolators, however prohibited their use in competitive food preparation.

Conversely, some language that was initially added did not remain in the final bill because it lacked at least one of the three factors identified above. For instance, although included as part of a Senate substitute amendment, the change requiring the DPH to consult with the DESE in developing the nutritional standards was subsequently removed via substitute amendment in the House. In addition, although it is not entirely clear who requested the initial

addition, the bill's sponsor did not support the DESE's inclusion. As the legislative staffer explained:

> I don't think they [DESE] felt very strongly either way about getting involved in terms of setting the standards. I'm not sure why they were put in, in the first place…This isn't in their wheelhouse. They don't have a background in health. Their focus is on education. Whereas this is really about nutrition and public health, so this probably should be a DPH thing. And that was something that they were fine with. I don't remember that being an issue when we changed it.

It appears that opposition from the bill sponsor, along with indifference from the DESE and others, was enough to permanently block this bill change.

Factors Influencing the Decision-Making Process

During the 2009-2010 legislative session, Massachusetts decision-makers were situated in a policy subsystem characterized by high levels of cohesion and lobbying, and a low level of constraints (Table 7.4).

Table 7.4 Ranking of conceptual framework constructs in terms of their levels during the policymaking process of Massachusetts HB2092

	Low	Medium/Moderate	High	Massachusetts HB2092 Ranking
Cohesion	More than 25% dissenting votes None in executive branch took a neutral or supportive position Presence of strong opposition to bill Stakeholders willing to compromise on few or no language and content changes	Between 15% and 25% dissenting votes Some in executive branch took a neutral or supportive position Presence of moderate opposition to bill Stakeholders willing to compromise on some language and content changes	Up to 15% dissenting votes All in executive branch took a neutral or supportive position Presence of little or no opposition to bill Stakeholders willing to compromise on most or all language and content changes	**High**
Lobbying	Presence of 10 or less registered and active lobbyists in favor or opposed to the bill	Presence of 11 to 20 registered and active lobbyists in favor or opposed to the bill	Presence of 21 or more registered and active lobbyists in favor or opposed to the bill	**High**
Constraints	Presence of 1 or no informational, temporal, or institutional constraints	Presence of 2 informational, temporal, or institutional constraints	Presence of 3 or more informational, temporal, or institutional constraints	**Low**

To start, high cohesion with regard to HB2092 is evident by at least three factors: 1) the executive branch took a neutral or supportive position; 2) stakeholders were willing to compromise on most language and content changes; and 3) the presence of little opposition to the bill. For example, from the executive branch, although the Governor did not publicly speak on behalf of the bill prior to signing it, news reports hinted at the Governor's support. In fact, combating obesity in Massachusetts was considered a top priority for the Governor's

administration, as illustrated by a statewide obesity prevention initiative—Mass in Motion[196]—launched in 2009. As part of Mass in Motion, Governor Patrick signed an executive order[197] requiring state agencies to follow specific nutrition standards when purchasing and serving foods to clients and patients. Advocates, legislators, and governmental agencies agreed that strengthening nutrition guidelines for competitive foods and beverages would help reduce the amount of unhealthy food available in schools, considered one of the contributors to childhood obesity.

Similarly, the DPH was publicly supportive of the bill, having testified at hearings and providing advocates and decision-makers behind-the-scenes assurance that, if the legislation passed, strong standards would be implemented. Much of this confidence in the DPH was due to the leadership of Commissioner John Auerbach, who was described by advocates as "strong," "fantastic," "a great public health advocate," "not a political person," and someone whose "priority is always public health." It was also likely beneficial that the DPH's Legislative Director at the time the bill passed was a former chief of staff to Representative Koutoujian, the bill sponsor.

To be sure, it was this confidence in the DPH's priorities that allowed bill supporters to comfortably accept several language changes that, on paper, could have weakened the bill's impact. For example, regarding the change directing the DPH to consider other nutrition and dietary guidelines in addition to the IOM standards, one advocate explained, "Our feeling was that the present administration at the Department of Public Health was very interested in the bill and that they would go for the toughest standards available. And so we really weren't afraid that if they were given other options they would go out and choose a weak option." Advocates did

not express any concern that future administrations may intentionally or inadvertently weaken the nutrition standards.

Likewise, the bill's broadened scope and loosened language allowed for support and buy-in from additional legislators. Adding sections, such as the farm-to-school and local procurement provisions, attracted new stakeholders—anti-hunger organizations, local farmers, and other farm-to-school advocates—to contact their representatives in support of the bill. Language changes that loosened provisions also helped garner political support from otherwise hesitant legislators. One news article gave the example:

> To build consensus for the bill, the nutritional standards would not apply to food-based fund-raisers, such as bake sales and concession stands, that are used to reduce or ward off fees for extracurricular activities. Koutoujian said some legislators were wary about limiting the ability of school districts to raise money in tough economic times.[198]

In addition, there appeared to be significantly less legislative opposition in 2009-2010 compared to previous years, due to at least two factors. First, following the resignation of House Speaker Salvatore DiMasi in January 2009, Representative Robert DeLeo was elected as the new Speaker and subsequently appointed a new House leadership team, which no longer included the powerful beverage industry-funded legislator described as instrumental in preventing the bill's movement during prior sessions. One advocate stated that the beverage industry's loss of legislative support during the 2009-2010 session was a key reason why they reduced their oppositional efforts. Second, a rise in public concern about diet and childhood obesity, coupled with 10 years of lobbying and advocacy by bill supporters, led to increased legislative awareness that childhood obesity in Massachusetts needed to be addressed. The large number of legislators sponsoring or co-sponsoring the bill upon introduction, and the affirmative vote for the amended

bill's passage in both chambers (while the House vote was uncounted, the Senate vote was unanimous), are further proof of high cohesion around HB2092.

With regards to lobbying pressure, about 40 individuals and entities registered lobbying activity around HB2092 and its subsequent versions. Table 7.5 provides a list of organizations that employed lobbyists, their position on the bill, and the amount of money each organization's lobbyists spent on campaign contributions while lobbying on the bill. Unfortunately, it is unknown how many contacts each lobbyist made with legislators, however interviews with advocates indicated lobbying as an important part of the overall strategy for successful bill adoption. This is further evidenced by the large number of advocacy organizations who lobbied in support of the bill.

In addition, at least one advocate believed that HB2092 was no longer a top priority for industry groups, stating:

> The soda industry really had dropped its opposition, I think partially because they sort of saw the writing on the wall that it [the bill] was going to happen. Just the trends nationally were not in their favor, and I think they just, they had less support in the [State] building. To oppose this, they'd really have to work behind the scenes…with key allies they can build in the legislature. And I think they just didn't have the leverage to do that. And it just wasn't their top priority. So there really wasn't that opposition.

It may also be that the Governor's proposal for a state sales tax on soda and candy distracted these groups, redirecting their lobbying efforts away from HB2092. Whatever the reason, the reduction in MBA's opposition was significant, given the financial resources and clientele of their lobbyist.[xx]

[xx] Shanley Fleming & Associates, the lobbying firm representing MBA, received a total of $1.28 million in 2009 and $1.38 million in 2010 from companies such as Abbot Laboratories, Fidelity Investments, General Motors Corp., GalaxoSmithKline, and Procter & Gamble.

Table 7.5 Organizations registered with lobbyist activity around Massachusetts HB2092 or later versions, and their respective lobbyists' state campaign contributions, 2009-2010

Supporters[199]	**2009**[200]	**2010**[200]	**Total**[200]
American Academy of Pediatrics, MA	$2,300	$2,750	$5,050
American Cancer Society, NE	$625		$625
American Diabetes Association*	$4,025	$4,325	$8,350
American Heart/Stroke Association	$150	$575	$725
American Lung Association, MA			
Boston Foundation	$200		$200
Children's Hospital Boston†	$5,600	$900	$6,500
Harvard Pilgrim Health Care		$16,400	$16,400
Health Foundation of Central MA		$500	$500
Jewish Alliance of Law & Social Action		$575	$575
MA Academy of Family Physicians*		($4,175)	($4,175)
MA College of Emergency Physicians*		($4,175)	($4,175)
MA Farm Bureau Federation, Inc.			
MA Health Council		$400	$400
MA Hospital Association		$33,035	$33,035
MA Medical Society*†	$1,300 ($8,475)	$8,500 ($4,175)	$9,800 ($12,650)
MA Orthopaedic Association*		($4,175)	($4,175)
MA Public Health Association	$900	$641	$1,541
Project Bread-The Walk for Hunger, Inc.	$450		$450
Worcester County Food Bank			
Total-Supporters	$15,550	$68,601	$84,151
Opponents[199]			
Coca-Cola Bottling Company, NE	$16,625		$16,625
MA Beverage Association**	$25,750	$27,725	$53,475
Pepsi Cola Company	$24,670	$30,100	$54,770
McDonald's Corporation		$15,500	$15,500
Total-Opponents	$67,045	$73,325	$140,370
Neutral[199]			
Anheuser-Busch Companies, Inc.		$200	$200
Beer Distributors of MA, Inc.		$11,800	$11,800
Grocery Manufacturers Association	$37,350	$41,525	$78,875
Kraft Foods Global, Inc	$13,950	$14,550	$28,500
Tufts Medical Center		$1,200	$1,000
Position Unknown[199]			
Abbott Laboratories**	$2,100 ($25,750)		$2,100 ($25,750)
March of Dimes Birth Defects Foundation	$13,600		$13,600
Total-Neutral or Unknown	$67,000	$69,275	$136,275

*The same lobbyist represented these organizations in 2009 and/or 2010.
† and ** The same lobbyist represented these organizations in 2009, respectively.
Note: The number in parenthesis is the amount spent by the organization's lobbyist on campaign contributions. Since several lobbyists represented more than one organization, the amount spent was counted only once so as not to inflate the total. **MA:** Massachusetts; **NE:** New England

Finally, the decision-making process surrounding HB2092 was minimally constrained. Although introduced during an economic recession, the bill did not cost the state money. In fact, legislative supporters often touted the bill as an economic win for the state, both in terms of healthcare savings and the promotion of locally-grown foods. From an institutional perspective, legislative barriers that existed in previous sessions were removed, allowing the bill to proceed through the decision-making process. For example, the beverage industry-funded legislator had lost her leadership position, and thus her influence, because of turnover in the House Speaker position that took effect in January 2009 (the same month that HB2092 was introduced). The new Speaker appointed a new leadership team, and respondents viewed the change in leadership priorities as an opportunity for the passage of HB2092.

Taken together, these factors influenced the decision-making process such that the final bill accomplished its underlying goals but became broader in scope and relaxed in certain areas in order to achieve buy-in and ensure adoption.

Discussion and Lessons Learned

Upon introduction, HB2092 was a bill that, among other things, sought to improve the healthfulness of competitive foods and beverages available in public schools. Over the course of the 2009-2010 legislative session, several additions and amendments were made as a result of three forces: 1) high cohesion among decision-makers to adopt HB2092; 2) lobbying from a large number of supporters and opponents to amend the bill; and 3) minimal legislative and executive-level constraints. While a few changes weakened specific provisions regarding competitive foods and beverages, the bill as a whole accomplished its overall goal and, in fact, was strengthened with the addition of other sections.

Although HB2092 was adopted with many of the original competitive food provisions intact, several lessons can be learned from the bill's long history. Perhaps most notably, establishing nutrition standards via regulation seems more politically acceptable and feasible than embedding standards in legislation, at least in Massachusetts. Advocates recommended that other states take the regulatory route from the beginning because nutrition science is not static, and it would take much more time, energy, and resources to change a law than to update regulations. One advocate reflected, "Well, I think if we were prescient, I think what we would have done was moved away from specific standards in the bill a lot earlier and focus on giving the authority to the regulatory agencies."

Of course, it is necessary that the regulatory authority be agreeable to the task, committed to children's health, and willing to develop strong, science-based standards even when faced with industry opposition. In Massachusetts, advocates and legislators were confident that the DPH would promulgate strong standards despite the increased flexibility they were ultimately given in the final bill. In fact, the regulations developed by the DPH were similar—and in some cases stricter—than the IOM Nutrition Standards for Foods in Schools. It should be noted, however, that less than a year after the competitive food regulations were released, the DPH announced an emergency amendment to eliminate the provisions pertaining to classroom and school-sponsored events and fundraising activities, such as bake sales. This announcement came as the legislature was working on amendments to remove the statewide ban on bake sales. DPH Commissioner Auerbach made the following statement, "At the direction of Governor Patrick, the Department will seek to remove these provisions. We hope to return the focus to how we can work together to make our schools healthy environments in which our children can thrive."[201] Despite years of hard work, successful bill adoption, and strong regulatory support and

development, a new legislature was able to exert its power and dismantle a provision of HB2092 before it was ever implemented.

Another lesson from the HB2092 case was the importance of a broad coalition of supporters who spoke with a unified voice. Advocates agreed that having the support of over a hundred organizations, including the major medical establishments, gave the coalition credibility with legislators. Rather than starting from scratch, one advocate recommended that other states look at the list of HB2092 supporters and engage the local chapters of those organizations early on. Still, it appeared that for several years, coalition members did not always agree. Of note was a clash between supporters of the IOM standards and those backing the Alliance for a Healthier Generation's School Beverage and Competitive Food Guidelines. One advocate recalled, "We came together and worked much better together in the final year or two of it [the bill]. And I think had we done that earlier on, in terms of all the partners getting on the same page early on, I think that would have been more helpful." This enhanced cooperation during 2009-2010 was both the result of agreement over giving the DPH regulatory authority, as well as mutual frustration over the 10-year attempt to pass the bill.

Likewise, advocates cautioned against attacking schools and school food service directors when trying to pass competitive food policies. Rather, it is important to support schools and partner with school food service directors to ensure they are a central part of the effort. One stakeholder explained:

> I think School Nutrition Association really helped to bring the people—the food service directors that were going to have to implement this—in to talk to legislators about why it is important, what they were already doing, what kind of resources they needed, so that people were really hearing about this from the ground, like who was really going to be working on this.

Similarly, one advocate credited their relationship with SNA as making a big difference with the legislature, stating:

> For us it was very important that the school food, School Nutrition Association, was one of our partners. Their president—at least in our last session—came on pretty much all of our lobbying visits with us and that was really important for people to see that this was something school food service directors wanted. We weren't fighting against them.

Still another lesson for advocates of strong competitive food policies is the importance of lobbying, especially when opposition comes from well-funded industry groups whose lobbyists can "work the [State] building." In order to be successful, advocates also had to employ lobbyists to counter the oppositional messaging. However, one advocate recommended that lobbying be part of a broader strategy: "I think it's really bringing those partners, the right people to the table to all work together to have one kind of message. And to do a really comprehensive, strategic campaign. To not just do lobbying alone, but lobbying with grassroots, with volunteers, with media advocacy. It's really important to do that strategic campaign."

Finally, HB2092 may not have passed had it not been for supporters' willingness to compromise on bill language and content. A legislative staffer expanded on this last point:

> You never want to put out the perfect bill because you want to give people the opportunity to buy-in. So, people can oppose it and then say, 'Well, I managed to talk them into widening the circle or making the standards more strict, so then I was okay voting for it.' So you always want to kind of leave wiggle room so that people can take things out or leave things in so that they feel like they can buy in.

Of the five voting opportunities that were tallied during the 2009-2010 session, all but one was unanimous. Clearly, leaving room for buy-in was a strategy that worked for HB2092.

Advocates of stronger competitive food policies can also learn from the success of supporters and opponents of HB2092. Those having the most impact on bill content 1) either were key legislators or worked closely with key legislators to propose and/or draft specific

changes; 2) introduced changes through substitute bill amendments; and 3) recommended changes that received support, or at least no opposition, from the bill sponsor and other key stakeholders. By working with legislators and offering specific language, advocates can clearly communicate the details and extent of a particular bill change. In addition, bill changes introduced via substitute amendment may be harder for legislators and the public to review prior to a floor vote, and thus may allow for easier passage. Finally, support from key legislators may cue other decision-makers to support a particular change, thus increasing the likelihood that the change will be incorporated into the bill.

CHAPTER 8

CALIFORNIA SENATE BILL 1413

Abbreviations

AB2704	Assembly Bill 2704 (Leno, 2008)
CDPH	California Department of Public Health
CFPA	California Food Policy Advocates
LAUSD	Los Angeles Unified School District
NSLP	National School Lunch Program
SB1413	Senate Bill 1413 (Leno, 2010)
UCLA	University of California, Los Angeles
USDA	United States Department of Agriculture

Introduction

On September 30, 2010, California Governor Arnold Schwarzenegger signed Senate Bill 1413 (SB1413) into law. This legislation—Chapter 558 of the California Statutes of 2010[202]—requires school districts to provide access to "free, fresh drinking water" during meal times in the school food service areas. The manner in which water is provided to students is left to the school districts to decide, however examples are provided in the legislation (such as providing cups and containers of water or soliciting or receiving donated bottled water). School districts unable to comply with this requirement due to "fiscal constraints or health and safety concerns" may adopt a resolution stating such. The resolution must be publicly noticed on at least two consecutive meeting agendas and approved by at least a majority of the governing board. This law is the latest in a series of California legislation (Box 8.1) to establish competitive food standards stricter than those required by the United States Department of Agriculture (USDA).

Box 8.1 California's competitive food policies prior to 2010

Title 5, Section 15500 of the California Code of Regulations[203] prohibits the sale of food by student organizations in grades K-8 if the school is participating in the National School Lunch, School Breakfast, or Food Distribution Programs. The governing authority may permit a student organization to sell not more than one food item per sale when all of the following conditions are met:

(1) The specific nutritious food item is approved by the governing board.
(2) The food sales do not begin until after the close of the regularly scheduled midday food service period.
(3) The sales during the regular school day are not of food items prepared on the premises.
(4) There are no more than four such sales per year per school.
(5) The food item sold is a dessert type food, such as pastry, ice cream, or fruit.
(6) The food item sold is not one sold in the food service program at that school that day.

Title 5, Section 15501 of the California Code of Regulations[204] allows a student organization in middle and high schools to sell food items during or after the school day if the following conditions are met:

(1) The specific nutritious food items are approved by the governing board.
(2) A student organization or organizations may be approved to sell food at any time during the school day, including the regularly scheduled food service period(s), if:
    (a) Only one such organization each school day is selling no more than three types of food or beverage items such as confections, popcorn, nuts, fruit, or soft drinks; and/or
    (b) Any one or more student organizations may conduct no more than four food sales of any food items during a school year in each school, but such sales shall be held on the same four days for any or all organizations.
(3) The sales during the regular school day are not of food prepared on the premises.
(4) The food items sold during the regular school day are not those sold by the district in the food service program at that school that day.

Box 8.1 Continued

As a result of adopted Senate Bill 12 (2005),[205] California Education Code Section 49431[206] was amended and Section 49431.2[207] was added, prohibiting the sale of certain food items in public schools:

Commencing July 1, 2007, at each elementary school, the only food that may be sold to a pupil during the school day are full meals and individually sold portions of nuts, nut butters, seeds, eggs, cheese packaged for individual sale, fruit, non-deep fried vegetables, and legumes. An individually sold dairy or whole grain food item may be sold to pupils at an elementary school, except food sold as part of a USDA meal program, if it meets all of the following:

- Not more than 35% of its total calories shall be from fat.
- Not more than 10% of its total calories shall be from saturated fat.
- Not more than 35% of its total weight shall be composed of sugar, including naturally occurring and added sugar.
- Not more than 175 calories per individual food item.

An elementary school may permit the sale of food items that do not comply with these standards as part of a school fundraising event if either:

(1) The items are sold by pupils of the school and the sale of those items takes place off of and away from school premises.
(2) The items are sold by pupils of the school and the sale of those items takes place at least ½ hour after the end of the school day.

Commencing July 1, 2007, snacks sold to a pupil in middle, junior, or high school, except food served as part of a USDA meal program, shall meet all of the following standards:

- Not more than 35% of its total calories shall be from fat. (Exceptions: nuts, nut butters, seeds, eggs, cheese packaged for individual sale, fruits, non-deep fried vegetables, legumes)
- Not more than 10% of its total calories shall be from saturated fat. (Exceptions: eggs, cheese packaged for individual sale)
- Not more than 35% of its total weight shall be composed of sugar, including naturally occurring and added sugars. (Exceptions: fruits, non-deep fried vegetables)
- No more than 250 calories per individual food item.
- Entrée items, except food served as part of a USDA meal program, shall contain no more than 400 calories, no more than 4 grams of fat per 100 calories, and shall be categorized as entrée items in the School Breakfast or National School Lunch Programs.

A middle, junior, or high school may permit the sale of food items that do not comply with these standards if either:

(1) The sale of those items takes place off of and away from school premises.
(2) The sale of those items takes place on school premises at least ½ hour after the end of the school day.
(3) The sale of those items occurs during a school-sponsored pupil activity after the end of the school day.

Box 8.1 Continued

As a result of adopted Senate Bill 965 (2005),[208] California Education Code Section 49431.5[209] was amended, prohibiting the sale of certain beverage items at public schools.

Regardless of the time of day, only the following beverages may be sold to a pupil at an elementary school, including in vending machines at any time:

- Fruit- or vegetable-based drinks that are composed of no less than 50% fruit juice or vegetable juice and have no added sweetener.
- Drinking water with no added sweetener.
- Milk with 2% milk fat or less, soy milk, rice milk, and other similar nondairy milk.

An elementary school may permit the sale of beverages that do not comply with these standards as part of a school fundraising event if either:

(1) The items are sold by pupils of the school and the sale of those items takes place off and away from the premises of the school.
(2) The items are sold by pupils of the school and the sale of those items takes place ½ hour or more after the end of the school day.

From ½ hour before the start of the school day to ½ hour after the end of the school day, only the following beverages may be sold to a pupil at a middle or junior high school, including in vending machines at any time:

- Fruit- or vegetable-based drinks that are composed of no less than 50% fruit juice or vegetable juice and have no added sweetener.
- Drinking water with no added sweetener.
- Milk with 2% milk fat or less, soy milk, rice milk, and other similar nondairy milk.
- An electrolyte replacement beverage that contains no more than 42 grams of added sweetener per 20-ounce serving.

A middle or junior high school may permit the sale of beverages that do not comply with these standards as part of a school event if both:

(1) The sale occurs during a school-sponsored event and takes place at the location of that event at least ½ hour after the end of the school day.
(2) Vending machines, pupil stores, and cafeterias are used later than ½ hour after the end of the school day.

Commencing July 1, 2007, no less than 50% of all beverages sold to a pupil in high school from ½ hour before to ½ hour after the school day shall meet the middle/junior high school standards. Commencing July 1, 2009, all beverages sold to a pupil in high school from ½ hour before to ½ hour after the school day shall meet the middle/junior high school standards.

Box 8.1 Continued

As a result of adopted Senate Bill 490 (2007),[210] California Education Code Section 49431.7[211] was added, prohibiting schools or school districts, through a vending machine or school food service establishment during school hours and up to ½ hour before and after school hours, from making available to elementary or middle school pupils a food containing artificial trans fat or use artificial trans fat in the preparation of a food item served to those pupils. This does not apply to food provided as part of a USDA meal program.

A food contains artificial trans fat if a food contains vegetable shortening, margarine, or any kind of partially hydrogenated vegetable oil, unless the manufacturer's documentation or the label required on the food lists the trans fat content as less than 0.5 grams of trans fat per serving.

Methods

Evidence for this case study is drawn from three stakeholder interviews and a variety of documentary sources. Interviews were conducted between March 15, 2012 and April 16, 2012 with Ken Hecht, former Executive Director of California Food Policy Advocates (CFPA, advocacy group); an anonymous advocate representing a lead organization in support of SB1413; and an anonymous researcher whose work helped motivate legislative action around ensuring student access to free water in schools. Interviews were also sought with five other potential respondents representing the California legislature, executive branch, and other advocacy groups, however three (60%) refused to be interviewed and 2 (40%) did not respond despite up to five telephone and e-mail invitation attempts. In addition, bill-related information was obtained via the Internet from the California legislature, state regulatory agencies, advocacy organizations, lobbyist registration records, media reports, and scholarly journals.

Bill History and Timeline

Introduced in February 2010, SB1413 was the result of several years of research and planning. Starting in 2006, community-based participatory research around school-based obesity prevention was conducted by the University of California, Los Angeles (UCLA)/RAND Prevention Research Center, (a Prevention Research Center funded by the Centers for Disease

Control and Prevention) in partnership with a community advisory board (made up of school teachers, parents, community leaders, and other key stakeholders from Carson and Wilmington, two adjacent communities in southwestern Los Angeles County), a youth community advisory board (made up of high school students from the Los Angeles Unified School District, LAUSD), and a Healthy Living Advisory Board (made up of LAUSD administrators, school board representatives, and community leaders knowledgeable about child obesity issues).[212] Based on key stakeholder interviews and focus groups with parents and students, the community-academic team chose to focus their middle school obesity intervention on the implementation of the Cafeteria Improvement Motion.[212] This motion was passed by the LAUSD's Board of Education in December 2005, directing district leaders to implement changes to improve school nutrition.[213]

Unexpectedly, researchers found water availability to be an issue.[212] Notably, students requested that cold water be offered in addition to juice and milk as part of the standard lunch, or be available for free in the cafeteria.[212,214] Researchers observed that drinking fountains often contained debris, and no fountains offered chilled water.[212] Likewise, student focus groups described the fountains as "dirty" and the bottled water as "expensive."[214] In response to community stakeholders' requests that the intervention address these concerns, researchers attempted a pilot study to offer free bottled water in one school cafeteria. However, this pilot was cancelled due to two main barriers perceived by school officials: 1) that their beverage vending contract restricted the school from offering drinking water other than through fountains or specified vendors, and 2) that federal regulations prohibited water from being offered next to milk at mealtime. These perceptions were later deemed false, though some beverage vending contracts do prohibit serving free bottled water of a different brand than is specified in the contract.[215] Further interviews conducted with LAUSD school and district administrators, school

staff, public health and nutrition agency representatives, students, and parents identified additional concerns, such as water safety, water quality (taste, appearance), fountain issues (location, pressure, cleanliness, cost of maintenance), decreased sales of competitive beverages if drinking water was free, and concerns over the environmental effects of bottled water.[215]

Researchers reported these findings back to the Healthy Living Advisory Board, of which CFPA was a member. CFPA, founded in 1992, is a statewide public policy and advocacy organization dedicated to improving the health and well-being of low-income Californians by increasing their access to nutritious and affordable food. After learning of the student water access issue in the LAUSD, CFPA spoke with school food service directors in other districts and found that the issue was more widespread. Armed with this information, CFPA decided to pursue water in schools as a legislative initiative in 2008, though realized the bill would have to be cost-neutral given the state's fiscal issues. The result was Assembly Bill 2704 (AB2704), which required school districts to allow free tap water in school food service areas and restricted school boards from entering into, or renewing, a contract restricting the availability of free tap water on school campus, among other things. AB2704 was sponsored by CFPA and authored by then- Assemblymember Mark Leno (Democrat), chair of the Assembly Appropriations Committee.[xxi] According to Ken Hecht, CFPA sought out Assemblymember Leno because:

> He was and is very smart and effective. He, you know, I can't remember what committee he was on. He may have been on the right committee, or chairing the right committee. I can't remember that now. But often that's one of the things we look for in finding an author. And we had worked with him on a number of other nutrition issues, so we knew he was good for this.

At least 11 food, health, and education advocacy organizations registered their support for AB2704, and only one group—the California Association of School Business Officials—took

[xxi] In California, a bill sponsor can be a member of the legislature, private individual, or group who develops a measure and advocates its passage. The bill author is the member of the legislature who introduces a legislative measure.[251]

an “opposed unless amended” position because of concerns over unnecessary provisions and vague language. AB2704 moved through the Assembly and Senate, however it was weakened over time to state that each district is authorized—rather than required—to provide free tap water in school food service areas. Although AB2704 passed the legislature, the bill was vetoed by Republican Governor Schwarzenegger, who provided the following explanation for his decision:

> I am returning Assembly Bill 2704 without my signature. This bill authorizes schools to provide free tap water for students in the food service area during the school day. Nothing under current law prohibits a school from providing free tap water to its students. This bill also prohibits a district from entering into contracts that prohibit the availability of free tap water. This bill essentially seeks to regulate a perceived lack of common sense amongst California's school administrators, implying that they are not acting in the best interest of our students, by denying kids access to free tap water. I do not believe this particular bill is necessary. Instead of signing this bill, I would much rather work with the Legislature on finding more positive and constructive ways to promote the accessibility and consumption of clean water in our schools. For these reasons, I am unable to sign this bill.[216]

The following year, California Project LEAN (Leaders Encouraging Activity and Nutrition)—a joint program of the California Department of Public Health (CDPH) and the Public Health Institute that works to advance nutrition and physical activity policy in schools and communities—conducted a health and nutrition survey of California school districts. California Project LEAN approached CFPA about inserting a water-related question into the survey, which asked districts whether school cafeterias provided students with access to free drinking water in food service areas during mealtime. Approximately 40% of responding districts reported that none of the school cafeterias in their district provided such access.[217] However, because the survey did not provide a standard definition of “access,” CFPA sensed that some portion of those districts reporting sufficient access to free drinking water actually had inadequate access, making the 40% figure a conservative estimate.[217]

Toward the end of 2009, Hecht and other advocates were invited to a meeting with Governor Schwarzenegger, who was beginning to think about his legislative legacy[xxii] and wanted to identify policy issues and priorities. During the meeting, Hecht shared the California Project LEAN survey finding that about 40% of responding districts did not provide access to free drinking water in food service areas. That one piece of data made all the difference. According to Hecht, "As soon as he [the Governor] heard it, he got the picture. He said he was on board. He said, 'I like water.' And he sponsored SB1413, which came roughly two years after he had vetoed a very similar bill." In fact, all interview respondents noted that this survey finding was integral in changing the Governor's mind that access to free water in schools was truly an issue.

Several months later at his 2010 Summit on Health, Nutrition, and Obesity, Governor Schwarzenegger announced his sponsorship of SB1413 among a package of bills, citing the importance of promoting water consumption and decreasing sugar-sweetened beverage consumption as strategies to support obesity prevention. The bill was again authored by Leno, who in 2008 was elected to the California Senate. SB1413 was written slightly differently than the previous bill that the Governor vetoed in that it required (rather than authorized) school districts to provide access to "free, fresh drinking water" in the food service areas. Additional language from AB2704 that made declarations and restricted school boards from entering or renewing contracts restricting the availability of free tap water was not included in SB1413. Table 8.1 provides a comparison of AB2704 and SB1413 at introduction and enrollment.[xxiii]

[xxii] In California, Governors serve terms of four years, with a two-term limit. Governor Schwarzenegger was first elected during the California recall election of 2003 and was re-elected in 2006, so 2010 was the final year of his second term.

[xxiii] An enrolled bill is one that has passed both chambers of the legislature, proofread for accuracy, and delivered to the Governor.[251]

Table 8.1 Comparison of California AB2704 and SB1413 at introduction and enrollment

	AB2704 (Leno, 2008)	SB1413 (Leno, 2010)
Introduced	Section 1. Makes 11 declarations around obesity prevalence, cost, contributors, and related diseases; the importance of water for health; and the barriers students face in accessing tap water in school. Section 2. Restricts school boards from entering into, or renewing, a contract that restricts the availability of free tap water on school campus. Section 3. States that each district *shall allow for the provision of* free tap water in school food service areas, including, but not limited to, areas where reimbursable meals are served or consumed. *Section 4. States that, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Government Code.*[218]	Section 1. By *January 1, 2012*, requires school districts to provide access to free, fresh drinking water in the food service areas. Section 2. *States that, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Government Code.*[219]
Enrolled	Section 1. Makes 11 declarations around obesity prevalence, cost, contributors, and related diseases; the importance of water for health; and the barriers students face in accessing tap water in school. Section 2. Restricts school boards from entering into, or renewing, a contract that restricts the availability of free tap water on school campus. Section 3. States that each district *may provide* free tap water in school food service areas, including, but not limited to, areas where reimbursable meals are served or consumed. (Former Section 4 removed)[220]	Section 1. By *July 1, 2011*, requires school districts to provide access to free, fresh drinking water in the food service areas, *including, but not limited to, areas where reimbursable meals are served or consumed. Examples are provided of how districts may comply with this provision.* Section 2. *States that the governing board of a school district may adopt a resolution stating that it is unable to comply with the requirements and demonstrating the reasons it is unable to comply due to fiscal constraints or health and safety concerns. Further procedural details are provided.* (Former Section 2 removed)[221]
Italicized text indicates changes made within a bill from introduction to enrollment.		

Introduced in the Senate on February 19, 2010, SB1413 required all schools to provide access to free water. Since costs associated with this mandate would be reimbursable by the state, the bill's fiscal impact was estimated at $4 million, depending on the manner in which schools chose to provide water to students. Because of this, the bill was referred to the Senate Appropriations Committee (of which Senator Leno was a member), who determined that the bill met the criteria for placement on the Suspense File.[xxiv] Following a series of bill amendments, this fiscal note was drastically reduced, and the bill proceeded fairly smoothly through the legislative process. Advocates cited several reasons for supporting the bill, including the importance of water consumption in obesity prevention efforts, the role of adequate hydration in cognitive function and academic achievement, and the need for ready access to "free, fresh drinking water" in order to promote equity and social justice.

However, the bill was not without some opposing votes coming exclusively from Senate and Assembly Republicans. Respondents gave two possible reasons for Republican opposition: concerns over both cost and government's imposition of requirements. Yet this opposition did not threaten the bill, as Democrats held an overwhelming majority in both chambers. By the end of the session, one additional legislator (Assemblymember Julia Brownley, Chair of the Assembly Education Committee) signed on to SB1413 as co-author, for a total of two authors and co-authors (1.7% of the 120-seat legislature). The bill passed both chambers and was signed by the Governor in September 2010, albeit with some language and content changes, described

[xxiv] The Suspense File is a holding place for bills with a fiscal impact in any single fiscal year of $50,000 or more from the General Fund or private funds, or $150,000 or more from any account(s) or fund(s). "Fiscal impact" includes cost increases, cost pressures, revenue decreases, and increases in appropriations. Bills placed on the Suspense File will be heard at a hearing that normally follows passage of the budget bill, and suspense bills may only be moved to the chamber floor by an action of the Appropriations Committee.[252,253]

in the following section. Table 8.2 provides a timeline of these and other major legislative events occurring in 2010, along with a summary of changes made to bill language and content.

Table 8.2 Timeline of major legislative actions and changes to California SB1413

Date	Bill Action	Bill Changes
Senate		
2/19/10	SB1413 introduced	Upon introduction, the bill required a school district to provide access to "free, fresh drinking water" in the food service areas of all schools under its jurisdiction. Costs associated with this mandate would be reimbursable by the state.
3/11/10	Referred to Committee on Education	
4/14/10	Passed Committee on Education, but re-referred to Committee on Appropriations (6-Y, 2-N)	
5/10/10	Placed on Appropriations Suspense File (9-Y, 0-N)	Fiscal note estimated that bill would cost $4 million, and all costs would be reimbursable by the state.
5/27/10	Passed Committee on Appropriations as amended (7-Y, 3-N)	Bill amended in its entirety. The requirement that schools must provide drinking water in food service areas was removed and replaced with language authorizing schools to provide free tap water in food service areas. The amended bill also prohibited school districts from entering into, or renewing, a contract that restricts access to free tap water on campus. Fiscal note updated to reflect no cost.
6/2/10	SB1413 passed Senate as amended (21-Y, 13-N) and sent to Assembly	
Assembly		
6/10/10	SB1413 referred to Committee on Education	
6/22/10	Passed Committee on Education with author's amendments. Read second time. Amended. Re-referred to Committee on Education.	Bill amended in its entirety to require school districts to provide access to free drinking water in food service areas during mealtime. School districts may meet this requirement by providing cups and containers of water or via donated bottled water. The amended bill authorized districts to opt out of this requirement by passing a board resolution specifying the reasons the school district cannot comply. Additional provision added about providing public notice of board resolution.

Table 8.2 Continued

Date	Bill Action	Bill Changes
6/30/10	Passed Committee on Education as amended (6-Y, 2-N)	Effective date changed from January 1, 2012 to July 1, 2011. Also, districts wishing to opt out of the mandate must demonstrate that they are unable to comply due to "fiscal constraints or health and safety concerns." Provision about providing public notice of board resolution clarified. Assemblymember Brownley added as co-author.
8/26/10	SB1413 passed Assembly as amended (52-Y, 22-N) and sent to Senate for concurrence	
Senate		
8/27/10	Senate concurred in Assembly amendments (22-Y, 9-N)	
9/8/10	Bill enrolled and sent to Governor	
Governor		
9/30/10	Signed by the Governor, Chapter 558, Statutes of 2010.	

Changes Made From Bill Introduction to Adoption

During the 2010 legislative session, several major changes were made to the language and content of SB1413 that both strengthened and weakened the final bill's potential to make the school food environment more healthful. Upon introduction, SB1413 required that school districts provide access to "free, fresh drinking water" in the food service areas of all schools under its jurisdiction. The bill was voted out of the Senate Education Committee unchanged, but because the costs associated with this mandate would be reimbursable by the state, SB1413 was referred to the Senate Appropriations Committee. Legislative analysis estimated the bill would cost $4 million, though this amount could be more or less depending on how schools chose to meet the requirement. For example, schools could decide to install a water fountain or hydration station in the food service area, estimated to cost $1,000. At a much lower cost, schools could provide containers of water and cups at mealtime, or solicit donations of bottled water.

Because of the high fiscal impact, SB1413 was placed on the Suspense File, where the bill, if not amended, would likely have died. As such, the bill was amended in its entirety during its review in the Senate Appropriations Committee. The requirement that schools must provide drinking water in food service area was removed and replaced with language authorizing schools to provide free tap water in food service areas. In addition, the amended bill also prohibited school districts from entering into, or renewing, a contract that restricts access to free tap water on campus. Essentially, SB1413 was weakened to mimic its 2008 predecessor, AB2704. Since the mandate was removed, the fiscal analysis was changed to reflect no cost and the amended bill was voted out of the Senate Appropriations Committee, and then passed the Senate floor.

It is unclear where the idea for this amendment came from. However, since Senator Leno sat on the Senate Appropriations Committee, it is possible that his prior experience with AB2704 helped inform the change. In fact, given that the amendment was later removed and replaced with stronger language in the Assembly, this seemingly temporary change by the Senate Appropriations Committee may have been used as a strategy to move the bill off the Suspense File and out of the Senate. Unfortunately, this remains speculation as respondent interviews and documentation do not confirm or refute this possibility.

Once in the Assembly, all remaining language and content changes were made while under consideration by the Assembly Education Committee. The most significant amendment was a complete revision recommended by the Committee and agreed to by Senator Leno, reverting SB1413 back to the original language requiring school districts to provide access to free drinking water in food service areas during mealtime. Examples were given of how districts may meet this requirement, such as by providing cups and containers of water or via donated bottled water. However, language was also added allowing districts to opt out of the requirement

by passing a board resolution with public notice, specifying the reasons the school district cannot comply. Respondents indicated that while they did not agree with allowing schools to opt out of the requirement, the bill would not have passed the legislature if it were written as an unfunded mandate given the state's deficit issues at the time. One respondent stated, "I think there were enough people persuaded that it was going to cost money that school districts didn't have. And in that sense, it would be an unfunded mandate, which is a big no-no in California."

Rather, the addition of the opt-out allowed the bill to retain the requirement without triggering referral to the California Commission on State Mandates, a quasi-judicial governmental body "whose primary responsibility is to hear and decide test claims that allege that the Legislature or a state agency imposed a reimbursable state mandate program upon local government."[222] Adding that districts must pass a board resolution with public notice was an attempt to make the opt-out more difficult to obtain. One respondent noted:

> And then if I remember right, the opt-out that we constructed for this bill was one where the school would have to demonstrate at a hearing—like a public hearing—and allow for public comment. And then for that, we also figured that there's some element of public scrutiny. And it might seem, you know, if a school district is going to go up there and make some financial case, that again requires them to go through some extra efforts to crunch the numbers and then have to go in front of the public and all this kind of other stuff. So if they actually went through all of that, then you could argue, well, then maybe it actually is true that the school can't do it. And since there wasn't funding attached to it [the bill], then it's not an unreasonable thing for a school to say, 'I can't actually do this.'

This change strengthened the bill from its previous iteration, however weakened the bill overall because it allows school districts the ability not to provide students with access to free tap water in food service areas.

SB1413 was then reported to the Assembly with the recommendation that the amendments become adopted and the bill be reprinted and re-referred back to the Education Committee, where additional changes were made. The first change specified that districts

wishing to opt out of the mandate must demonstrate that they are unable to comply due to "fiscal constraints or health and safety concerns." CFPA initiated this change in order to make the opt-out as narrow as possible. According to Hecht:

> That was the one thing we were able to push back with. Because our feeling was that, if school districts had to publicly explain what they were doing—they couldn't just say, 'We don't want to do it.' They had to have some factual basis for it—that, that would help. And if they had to do it publicly at a board meeting, that they'd be embarrassed to tell parents that they didn't want their kids to have free water.

This change strengthened the previous version of the bill by making it even more difficult for schools to opt out of the requirement.

Still another change was in reference to the bill's effective date, which was modified from January 1, 2012 to July 1, 2011. The change was recommended by the Assembly Education Committee, who suggested the provisions be operative on either July 1, 2011 or July 1, 2012 in order to accommodate the school calendar. One respondent commented, "I think it also kind of makes more sense to do it where you are starting off a new school year with whatever infrastructure is needed. Like, if you need to install something, you can do it over the summer when the kids aren't there, as opposed to January when we have the Christmas break." This change strengthened the bill, mainly because it required schools to meet the requirements sooner.

Additional clarifying changes were made to the bill, however these did not affect the strength or substance of the final bill. Overall, respondents felt that the final bill was weaker than the original, introduced bill as a result of the opt-out provision, yet they did emphasize that attempts were successfully made to minimize the effects of the opt-out. Interestingly, three months after SB1413 was signed by Governor Schwarzenegger, the federal Healthy, Hunger-Free Kids Act of 2010 (Public Law 111-296)[57,223] was enacted, requiring all schools participating

in the National School Lunch Program (NSLP) to make free drinking water available to students wherever meals are served during mealtime.[xxv] The federal law does not allow for opt-outs, and thus all California school districts participating in the NSLP must comply.

Tactics Used by Primary Stakeholders to Influence Bill Language and Content

During the 2010 session, advocates utilized several tactics to show their support for SB1413, such as testifying at committee hearings; sending action alerts to organizational members and networks; mailing and faxing letters of support to legislators; and writing press releases, reports, and fact sheets. Yet providing input into bill language was arguably the most important in influencing the bill's content. In fact, respondents did not recall making any language or content recommendations that were not included in the final bill.

Although it is unclear who wrote the original language, CFPA (the lead advocacy organization) did have the opportunity to comment on the bill, both before its introduction and during the legislative session. As Hecht explained:

> Well, to the extent that we were able to work with the Department of Public Health to frame the bill originally, we tried to make it as clean and simple as possible. And really, aside from the opt-out, I think we were able to hold on to that. And then, we negotiated as hard as we could to get as small an opt-out as possible. And I think we accomplished that.

With particular regard to the authorship of the opt-out, Hecht stated, "I don't know if it came from Leno's office or where it came from. I don't remember that now. But it certainly wasn't a suggestion of ours. We didn't like it. And that's why we put the public notice back in to try to cut that down as much as we could." Realizing that SB1413 would not pass as originally written due to the state's financial issues, CFPA worked closely with legislators and was successful in minimizing the potential impact of the opt-out.

[xxv] According to respondents and media reports, California SB1413 informed the federal law.

It should be noted that there was no overt opposition to SB1413; no organization went on the record to oppose the bill during committee or floor hearings, and respondents could not recall any particular groups that opposed the bill. In fact, except for an online article written by two Republican legislators and a Republican journalist asking for the Governor's veto of SB1413 because it exposes "schools to lawsuits for failing to comply with the undefined standard of 'fresh' tap water,"[224] the only other mention of bill opposition was in a document by the California Task Force on Youth and Workplace Wellness, a public-private endeavor started in 2002 by the California Legislature. The document states:

> Some school sites are concerned about how offering free water will conflict with beverage contracts and competitive foods, and this may prevent them from providing free water in their food service areas. Others are concerned about additional state costs; recent bill analysis estimated that this bill would cost $4 million if, for example, 40% of schools decided to install a hydration station or fountain, though less costly solutions exist. Some argue that this is a policy issue better addressed by local government, as opposed to state government. There is also concern over safety of water in certain parts of the state where water is more toxic than sweetened beverages. Apart from this apprehension, there are no known opponents to SB1413.[225]

Bill supporters worked to address these concerns by offering assistance in bill implementation, such as correcting misconceptions over vending contracts, brainstorming low-cost ways of providing free tap water in food service areas, and identifying financial resources for purchasing water containers and cups. In addition, bill language was added to give examples of low- or no-cost methods of providing free tap water to students (i.e., providing cups and containers of water or via donated bottled water). Either these interventions were adequate to quell any potential opposition, or the concerns expressed by schools or others were not strong enough to warrant actions against the bill.

Factors Affecting the Success of Stakeholders in Influencing Bill Language and Content

Stakeholders advocating for language or content changes to SB1413 were most successful when they: 1) either were key legislators or worked closely with key legislators to propose and/or draft specific changes; 2) recommended changes that did not weaken the previous bill version; and 3) received support, or at least no opposition, from the bill author, bill sponsor, and other key stakeholders. For example, the amendments reverting SB1413 back to a requirement with an opt-out provision, and thus strengthening the previous bill version, were proposed by the Assembly Education Committee and agreed to by the bill author. Although respondents described their dislike for the opt-out, they noted its necessity for successful passage and thus did not oppose the provision. Likewise, Governor Schwarzenegger (the bill sponsor) did not appear to oppose the opt-out provision. As Hecht noted, "I think their [the Governor's] office accepted that, and we did, too, just because we had to. We knew we needed to get around the unfunded mandate issue. And this was a way to do it."

Rather, advocates worked closely with legislators to change the opt-out so that it was more difficult to obtain, requiring districts wishing to opt out to demonstrate that they are unable to comply due to "fiscal constraints or health and safety concerns." This amendment also strengthened the previous bill version and was supported, or at least not opposed, by the bill author, bill sponsor, and the majority of the Assembly Education Committee members.

Conversely, some language that was initially added did not remain in the final bill because it lacked at least one of the three factors identified above. For instance, the Senate Appropriations Committee's amendment that rewrote the bill to mimic its weaker 2008 predecessor, AB2704, was subsequently removed and replaced by the Assembly Education Committee. While it is not understood how this initial change came to be, history showed that

the Governor was not supportive of AB2704's language. And although Senator Leno, CFPA, and others were supportive of AB2704 in 2008, it is clear that they preferred a bill requiring schools—rather than authorizing them—to provide free drinking water to students in food service areas. It appears that prior opposition from the bill sponsor, along with a lack of support from the bill author and advocates, was enough to permanently block this change that would have significantly weakened the final bill.

Factors Influencing the Decision-Making Process

During the 2009-2010 legislative session, California decision-makers were situated in a policy subsystem characterized by a high level of cohesion, medium/moderate level of lobbying, and a low level of constraints (Table 8.3).

Table 8.3 Ranking of conceptual framework constructs in terms of their levels during the policymaking process of California SB1413

	Low	Medium/Moderate	High	California SB1413 Ranking
Cohesion	More than 25% dissenting votes None in executive branch took a neutral or supportive position Presence of strong opposition to bill Stakeholders willing to compromise on few or no language and content changes	Between 15% and 25% dissenting votes Some in executive branch took a neutral or supportive position Presence of moderate opposition to bill Stakeholders willing to compromise on some language and content changes	Up to 15% dissenting votes All in executive branch took a neutral or supportive position Presence of little or no opposition to bill Stakeholders willing to compromise on most or all language and content changes	**High**
Lobbying	Presence of 10 or less registered and active lobbyists in favor or opposed to the bill	Presence of 11 to 20 registered and active lobbyists in favor or opposed to the bill	Presence of 21 or more registered and active lobbyists in favor or opposed to the bill	**Medium/ Moderate**
Constraints	Presence of 1 or no informational, temporal, or institutional constraints	Presence of 2 informational, temporal, or institutional constraints	Presence of 3 or more informational, temporal, or institutional constraints	**Low**

To start, high cohesion with regard to SB1413 is evident by at least three factors: 1) the executive branch took a supportive position; 2) stakeholders were willing to compromise on most language and content changes; and 3) a lack of overt opposition to the bill. For example, the executive branch—most notably the Governor—was publicly supportive of the bill from its introduction. In fact, a week after SB1413 was introduced in the Senate, Governor Schwarzenegger made the following statement in his weekly online video address to the residents of California:

> So this week, we held our second obesity summit and we brought together people who've had real success in fighting the obesity epidemic. And some of those ideas are part of my 2010 policy agenda that attacks obesity on every level. Now believe me, I want these healthy strategies to become action. That is why I'm proposing that we make some big changes. We will require school districts to make fresh, free drinking water available to our students. Now you say, 'Fresh drinking water, doesn't every school have that anyway?' No. Forty percent of the schools do not have fresh drinking water available where kids eat their lunches, for instance. That's crazy![226]

In addition, the CDPH submitted several letters of support to key legislators, such as Senator Leno and Assemblymember Brownley (Chair of the Assembly Education Committee), as well as a support letter to all members of the Assembly.

Next, the bill author and lead advocates were willing to compromise on bill language and content—specifically the addition of the opt-out—even though the change weakened the bill. In doing so, the $4 million fiscal note was removed and the bill was able to pass both chambers. Additionally, although most Republican legislators voted against the bill, no overt opposition to SB1413 was publicly expressed in committee hearings or during floor readings. Rather, respondents speculated that the dissenting votes were likely a result of ideological differences over the role of government. One respondent stated, "I don't remember, but they [Republicans] would characteristically be concerned about cost, big government, seeing this [SB1413] as a significant problem." Another explained, "I just think that generally, Republicans are opposed to much more requirements of this type." However, Democrats held an overwhelming majority in the Senate and Assembly in 2009-2010. As long as Democrats were cohesive amongst themselves (which they were), Republican opposition was not a threat to bill adoption.

With regards to lobbying pressure, at least 11 groups registered lobbying activity around SB1413 in 2010. All groups reported at least two 3-month periods of lobbying activity around the bill, though more than half lobbied the bill for three or four periods over the legislative session. Unfortunately, records do not allow a search by bill number of all organizations

employing registered lobbyists, so all information is based on the 19 organizations reported by legislative documents to have taken a position on SB1413. Thus, additional organizations may have lobbied the bill but are not included in this discussion. Table 8.4 on the next page provides a list of the 19 organizations in support of SB1413 (no organizations are known to have opposed the bill); the number of 3-month lobbying periods reported on their behalf with regard to the bill; and their political contributions in 2009-2010. Of the 19 supportive organizations, only 6 were determined to have made political contributions in 2009-2010, totaling over $18 million.

It is unknown how many contacts each lobbyist made with legislators, and it is not clear whether lobbying was an important tactic for advocates given a history of legislative support, the Governor's sponsorship, and a lack of opposition. Still, having influential school groups, such as the California Teachers Association and the California School Employees Association, was likely beneficial; had these groups opposed the bill or expressed major concerns, lobbying from advocates may have been much more important. Nevertheless, lobbying proved helpful for CFPA, who successfully minimized the effects of the opt-out provision, making the final bill stronger than its previous version.

Table 8.4 Organizations in support of California SB1413, number of three-month periods each organization reported lobbying for the bill, and state political contributions, 2009-2010

	# of 3-Month Reporting Periods[227]	2009 Political Contribution[228]	2010 Political Contribution[228]	Total Political Contribution[228]
American Academy of Pediatrics-CA District	0	--	--	--
American Cancer Society	2	--	--	--
American Heart Association	3	--	--	--
Board of Chiropractic Examiners	N/R	--	--	--
CA Center for Public Health Advocacy	N/R	--	--	--
CA Chiropractic Association	2	$28,533.61	$120,449.30	$148,982.91
CA Food Policy Advocates	2	--	--	--
CA Medical Association	0	$464,908.06	$573,876.60	$1,038,784.66
CA Park and Recreation Society	3	$1,051.00	$500.00	$1,551.00
CA Public Interest Research Group	2	$0.00	$112.00	$112.00
CA School Employees Association	3	$403,731.00	$2,256,500.50	$2,660,231.50
CA Teachers Association	4	$377,400.00	$14,538,924.61	$14,916,324.61
County Health Executives Association of CA	3	--	--	--
Environmental Working Group	0	--	--	--
Health Officers Association of CA	4	--	--	--
JERICHO	0	--	--	--
Prevention Institute	N/R	--	--	--
San Mateo County Board of Supervisors	2	--	--	--
Strategic Alliance for Healthy Food and Activity Environments	N/R	--	--	--

-- indicates that records do not show organization making political contributions in 2009-2010; **CA:** California; **N/R:** indicates that organization is not registered as employing lobbyists or contracting with lobbying firms

Finally, the decision-making process surrounding SB1413 was constrained for fiscal reasons, given that it was introduced during a national economic recession in a state with a history of multi-billion dollar budget deficits.[229] In fact, around the time SB1413 was introduced, Governor Schwarzenegger proposed a budget bill that included $8.5 billion in

spending reductions, including cuts to education and social programs.[230] As a result of these financial constraints, it was known that bills containing unfunded mandates would not pass. With an estimated cost of $4 million, SB1413 needed amending if it was to become adopted. Although advocates were not fond of the opt-out provision, they acknowledged that it was the only way to successfully maintain the requirement that schools provide free drinking water to students in food service areas. By wielding their influence, advocates were able to minimize the effects of the opt-out before the bill passed the legislature.

Discussion and Lessons Learned

Upon introduction, SB21413 was a bill that sought to improve the health of California's children by requiring schools to provide students with access to "free, fresh drinking water" during mealtimes in food service areas. Over the course of the 2010 legislative session, several language and content changes were made as a result of three forces: 1) high cohesion among decision-makers to adopt SB1413; 2) lobbying from a medium/moderate number of supporters; and 3) and fiscal constraints.

Despite the addition of the opt-out provision, respondents felt the adopted bill is representative of—albeit weaker than—the original bill's intent. Yet the opt-out provision proved to be a non-issue as the result of federal legislation. As one respondent explained, "And the one qualification would be whatever force the opt-out option had, which we'll never know because it never had to get used." Although advocates would have preferred a state-level bill that required all schools to provide access to free drinking water in food service areas, one respondent noted that SB1413 was much stronger than its 2008 predecessor, AB2704, though could have been made even stronger had provisions been included around implementation:

> I think the legislation [SB1413] is a lot stronger than it was [in 2008]. I mean, I think that would just be additional legislation or provided in guidance that's given

> to schools now as they roll out and try to implement the legislation. Because a lot of schools actually don't even know about this [legislation]. When we've interviewed school districts and schools, about a third knew of it—had even heard of it. So, I think there's some issues with getting the information out.

Nevertheless, respondents were pleased that the bill passed, given the Governor's veto in 2008. Hecht explained:

> Well, we were thrilled with the bill, to be honest about it. And we, particularly coming off of a vetoed bill years before, it didn't seem to us that this was going to go anywhere. And when we were trying to think what we wanted to say to the Governor in the meeting in December of '09, we really had to think about the water thing, whether that was going to be, should be our top priority or not. But I think, it just, it's such a spectacular issue for advocacy and for public health. It's sort of the quintessential public health issue: safe drinking water. It's where public health began. And the equity issue is just so compelling that it seemed to us that, armed with a statistic, we might have a shot at it. And so that was the decision. I certainly don't think going into that meeting we were very confident. And I think coming out we were very confident.

Despite the bill's changes over time, several lessons can be learned from SB1413's history. One is the importance of having compelling evidence that a problem exists. In the case of SB1413, documenting that about 40% of responding districts did not provide students with access to free drinking water was a factor that facilitated the bill's success. This statistic was publicized in legislative committee hearings, legislative analysis reports, bill fact sheets, research reports, and media articles. One respondent felt that the problem was actually underestimated, noting, "There are probably a whole lot more schools that really can't deliver what's a decent drink of water in the cafeteria. But at any rate, it was enough to work. And has really continued to resonate. I think it helped us get the federal legislation, as well."

Even more influential was presenting this data to the Governor. One respondent described:

> The first rendition of this legislation was, it actually failed. And then we, I think California Food Policy Advocates, in conjunction with folks at the Public Health Department, worked on some, did a quick survey of school administrators and found some data that said a certain percentage of schools didn't have water in the

> food service areas. And so the Governor kind of already knew about the legislation from the year before when he had vetoed it. But then when it came up again, but this time with the data, I think it helped change his mind.

The respondent continued, "Originally, the issue was that there's no money to provide for this [AB2704], and so it's a mandate. And I think there was also no data really to support it, which normally doesn't seem to matter for policy. But I don't know. This is one circumstance where I felt like it did actually make a difference to have numbers." Even though there was still no money in 2010 to support an unrestricted, statewide mandate that schools provide access to free drinking water in food service areas, SB1413 was able to pass through the legislative process in part because the data was compelling enough to move decision-makers to action.

Another lesson is to engage strategic sponsors and authors that can help move the bill through the legislative process. For SB1413, having the Governor sponsor the bill was critical given his prior veto. For example, one respondent noted, "I think it all hinged on the Governor. I think without the Governor, we didn't think we'd get anywhere. And with the Governor, we felt we were home." Because of the Governor's sponsorship of SB1413 from the time it was introduced in 2010, advocates spent relatively less time building support for the bill:

> We did less—we did some but not as much as usual—gathering of allies because it [SB1413] had the Governor's support. We knew it could get through the legislature, but we weren't at all sure that we wouldn't get vetoed again, except that it was the Governor's bill. So once that happened, then we knew we could handle what is usually the hardest part of the trip, which is the Governor's office.

There was less concern about the bill passing the legislature, mainly because of the Democratic majority. Still, having Senator Leno as the bill author may have proved beneficial, given that he sat on the Senate Appropriations Committee. Again, it is not known how initial changes to bill language and content were decided and whether the changes were a strategy to move SB1413 out of the Senate. Yet to the extent that he was involved in the changes, Senator Leno was in an ideal position to help shepherd the bill through the legislature.

A third lesson is the importance of timing. While in the possession of data showing the lack of free drinking water in food service areas at many California schools, advocates were given the opportunity to present this evidence directly to Governor Schwarzenegger. This meeting was held toward the end of the Governor's last term when he was seeking to leave a legacy that would help reduce obesity, a public health issue that continues to gain more and more attention over time. These three factors—data availability, meeting face-to-face with the Governor, and the Governor's eagerness to enact obesity-prevention legislation—were not present in 2008 when AB2704 was introduced and later vetoed, but came together in 2009. As Hecht explained:

> I think advocacy is a combination of being extremely well prepared and luck. And, because you can come armed with the same information or statistics year after year after year and get nowhere. And then suddenly it works. And some of that is the education that you provide in bringing the bills and getting people to talk or read or think about issues. And the world changes. And the obesity issues became much more prominent to people as time went on. And that continues to happen, but I think to some extent, it's fortune that things line up one year that didn't line up the year before. And it's being, it's having done all the hard work and being prepared and just being ready for when that opportunity arises. And that's what happened with the water. We couldn't get there two years before, but two years later, given a statistic, given meeting the Governor, given more time for the world to understand that there was an obesity crisis, the time was right. And you know, with any other Governor, it might not have worked. But with Schwarzenegger—who really did care about fitness and health, the water thing—he just got it immediately.

In addition, one respondent acknowledged the importance of the 2008 attempt in the timing and success of SB1413, stating, "What would have happened if they would have waited [to introduce a bill] until they had data? But maybe then it wouldn't have been on the Governor's radar. And maybe they wouldn't have gotten the right data, because they didn't know what the issue was, why the Governor did not like the bill in its previous rendition."

Still another lesson is to know when to compromise and when to push back. Recognizing that the bill would not pass with a $4 million fiscal impact statement, advocates compromised on

bill language by agreeing to the addition of the opt-out provision. In doing so, the fiscal impact was removed, allowing the bill to continue through the legislative process. Respondents noted their dislike of the opt-out provision, and were successful in pushing for bill language to make the opt-out more difficult for districts to obtain. Although not the ideal bill, respondents felt that this change minimized the opt-out's potential impact while still allowing the bill to become successfully adopted. According to Hecht, "It was our way to try the make the opt-out as little a problem as possible."

Respondents offered additional recommendations for competitive food policies in general, such as learning from what has been done in other states; building a broad partnership including schools, health groups, industry, and researchers; promoting healthy options in addition to restricting unhealthy items; and starting small and working incrementally. To this last point, Hecht elaborated:

> With a big change, it's better to start small and build up in two ways: number one, before the State of California eliminated sodas, Los Angeles had done it. And a number of other places had done it. And I think that gave the Legislature at the state level confidence in two ways: number one, that you could do it and the sky would not fall; and number two, that they had less to do because a lot of folks had already taken a bite. And I think that those are very helpful. And you really get the experience. You work through that—the ramifications of those bills—so you know when you're proposing policy the next time that you really have got the benefit of experience that you know something will work.

He went on to recommend that advocates be prepared for a long advocacy campaign and to settle for small, incremental wins. He stated:

> If you can pick up 5 or 10 or 15 percent of what you're trying to do, I would get it. And then come right back with the rest. I know there are advocates who say, 'Well, we don't want to accept a little because then the legislature will say, "We've dealt with this, we're done." And not get to the meat of it.' But my experience is the contrary; that you want to just get as much as you can get and come right back the next year.

Advocates of stronger competitive food policies can also learn from the success of supporters of SB1413. Those having the most impact on bill content: 1) either were key legislators or worked closely with key legislators to propose and/or draft specific changes; 2) recommended changes that did not weaken the previous bill version; and 3) received support, or at least no opposition, from the bill author, bill sponsor, and other key stakeholders. By working closely with key legislators to recommend specific language, advocates can clearly communicate the details, extent, and reasons behind a particular bill change. In addition, changes that weaken a bill—at least in circumstances when there is little or no bill opposition—are potentially more likely to be resisted by bill supporters than changes that strengthen or have no effect on the bill's capacity to improve the healthfulness of school food environments. Finally, support from key legislators may cue other decision-makers to support a particular change, thus increasing the likelihood that the change will be incorporated into the bill.

SECTION III

CROSS-CASE ANALYSIS AND CONCLUSIONS

This section begins with an analysis of themes and trends across the five cases in Chapter 9. Chapter 10 concludes the study with a discussion of the findings and implications for research, policy, and practice.

CHAPTER 9

CROSS-CASE ANALYSIS

This study seeks to describe and analyze the decision-making process of state-level competitive food legislation, including the role of public health advocates and others—policymakers, governmental employees, industry groups, etc.—in influencing the language and content of these policies. The three specific aims guiding this study (listed in Chapter 1) intend to provide a descriptive understanding of the process by which competitive food legislation is formed and adopted, and to discern conceptual applications of policy decision-making constructs. Each case study (Chapters 4-8) was guided by these aims, and this chapter uses cross-case analysis to explore similarities and differences between cases in reference to each aim.

General Overview of Case Studies

All cases studies were bounded by time between bill introduction and adoption, during the period of 2009-2010. Yet each case represents a different region of the United States, and cases varied on several correlates of bill introduction and adoption,[124-126] such as state obesity rate, political control of legislature, political party of Governor, and bill-related predictors. Appendix F provides a summary of these and other state-, legislature-, and bill-level factors across cases. Several of these factors are described in more detail below with regard to the specific aims.

Changes in the Language and Content of Competitive Food Bills (Aim 1)

Although the single case studies all focused on competitive food-related legislation, each bill differed in its content, comprehensiveness, and strength upon introduction. For example, California Senate Bill 1413 (SB1413) only directed school districts to provide access to "free, fresh drinking water" during meal times in the school food service areas. In contrast, the four

other bills required nutrition standards for competitive foods and/or beverages, either as the only bill provision or as part of a more comprehensive bill that includes additional sections on school food and nutrition, physical education, and/or student health and wellness. Differences in bill content and comprehensiveness at bill introduction are in large part related to what, if any, competitive food policies already existed in each state. For instance, by 2009, California already had several competitive food policies in place, including nutrition standards for foods and beverages sold in public schools, as well as the specific conditions under which non-compliant items may be sold. On the other hand, Massachusetts, Ohio, and Virginia did not have similar policies at the time, and thus their respective bills addressed larger gaps in state policy.

Similarly, the strength of bill language varied at bill introduction. As one example, Massachusetts House Bill 2092 (HB2092) required that nutrition standards apply to all foods and beverages sold or provided to students in public schools (excluding those sold as part of the federal meals programs), whereas Virginia Senate Bill 414 (SB414) excluded beverages and Ohio Senate Bill 210 (SB210) exempted non-sale items (those provided at no cost to students) from the purview of the nutrition standards. Differences in bill strength at introduction are likely a result of a number of factors, including political support, legislative learning from prior attempts at bill passage, and sources of input during bill drafting. For Massachusetts HB2092, the 2009-2010 legislative session brought an end to the bill's multi-year stalemate as House leadership changed and opposition of the bill decreased. For Virginia SB414, its 2008 predecessor was amended to specifically exclude beverages from the definition of competitive foods as a result of pressure from the beverage industry. Anticipating similar opposition in 2010, advocates deliberately chose not to restrict beverage sales in SB414. In Ohio, recommendations for SB210's language were the result of a long negotiation process involving a number of

interested parties, including children's health experts, pediatric researchers, health insurers, nutrition and physical activity professionals, food and beverage associations, businesses, education groups, and legislators. With so many stakeholders, reaching consensus becomes more difficult and bill strength may be compromised. As a result of the baseline differences in the strength of the five bills, the comparisons that follow focus on the language and content changes made over time.

In each case, two or more major changes were made to bill language or content between bill introduction and adoption. Table 9.1 summarizes 24 changes made to the five bills, the effect of each change on the adopted bill, and the reason(s) for each change. Overall, seven (29%) of these changes strengthened the adopted bill's potential to make the school environment more healthful, while another seven (29%) weakened this potential. Three (13%) of the changes had no substantial effect on the adopted bill, and the remaining seven (29%) had an unclear effect, either due to insufficient information or because the change had the potential to both strengthen and weaken the bill, depending on the actual outcomes of bill implementation.

Looking at changes by case, three bills—Virginia SB414, Ohio SB210, and California SB1413—were weakened over time as a result of the collective changes made to bill language and content. In these cases, the extent to which the bill was weakened by language and content changes was greater than the extent to which the bill was strengthened by such changes. This assessment was not based solely on the number of strengthening and weakening changes, but rather on an analysis of the content and impact of the changes overall. For example, California SB1413 had two strengthening changes and one weakening change, yet neither of the strengthening changes—or even the two combined—fully counteracted the fact that school districts could opt out of the mandate. Thus, the bill was considered weakened over time. Using

the same assessment method, the two remaining bills—Colorado House Bill 1335 (HB1335) and Massachusetts HB2092—were considered strengthened over time.

Table 9.1 Summary of major changes to bill language and content across cases

Case	Bill Change (Category)	Effect on Bill				Reason(s) for Change
		S	N	W	U	
Virginia SB414	Removed *served* foods from meeting nutrition guidelines **(1)**			X		Request from legislators or schools to not "kill cupcakes;" **T**
	Added stakeholder list to help develop nutrition guidelines/regulations **(2)**				X	Reduce bill's fiscal impact; request from industry to be involved in process; **F**
	Changed method of reporting compliance to nutrition guidelines **(5)**		X			Request from schools and legislators to alleviate extra paperwork; **F, T**
Colorado HB1335	Changed specific nutrient standards with referral to established standards **(3)**	X				Prior legislative criticism for being too prescriptive in statute
	Changed to allow grant program to go unimplemented if funds not available **(4)**				X	Request from Department of Education; common practice for grant-funded legislation; **F, T**
Ohio SB210	Added that schools consult with a nutrition professional when adopting nutrition standards **(4)**	X				Request from Ohio Dietetic Association to ensure school access to qualified personnel
	Removed chartered non-public schools from having to meet federal regulations **(1)**			X		Lack of legislative votes to keep provision; **T**
	Removed nutrition standard compliance oversight **(5)**			X		Request from Department of Education because of high cost; **F, T**
	Added a choice of nutrition standards to be adopted by school districts **(3)**				X	Give school districts flexibility; not enough data to exclude second choice
	Removed or made optional physical education and activity requirements **(6)**			X		Financial concerns from legislators; implementation concerns from education groups; **F, T**
	Changed to allow waiver from body mass index/weight status screenings **(6)**			X		Privacy concerns from legislators; implementation concerns from education groups; **F, T**
	Added members to children's health council **(6)**				X	Request from various groups to be added to council

Table 9.1 Continued

Case	Bill Change	Effect on Bill S	N	W	U	Reason(s) for Change
Massachusetts HB2092	Added, then removed, Department of Education from consultation on nutrition standards **(2)**		X			Added at request of legislator; removed due to agency's lack of health expertise and desire; **T**
	Added other nutrition guidelines to be considered in developing state standards **(3)**				X	Request of American Heart Association and legislators
	Changed exceptions to the nutrition standards **(1)**				X	Request of legislators concerned about fundraisers; **F, T**
	Changed to allow fryolators to remain in schools **(1)**			X		Request from schools concerned about high removal costs; **F, T**
	Added food safety requirements and inspections **(6)**	X				Response to recent press over food safety concerns
	Changed to allow sales of non-sweetened carbonated water **(1)**		X			Request from legislators representing seltzer company; **T**
	Added school district wellness advisory committee requirement **(6)**	X				Request from legislator
	Changed farm-to-school program/local procurement **(6)**	X				Request from advocates and agricultural groups
	Added members to childhood obesity commission **(6)**				X	Unclear
California SB1413	Removed, then added a changed mandate to provide free drinking water **(1)**			X		Reduce bill's fiscal impact; **F**
	Added requirements to obtain opt-out **(1)**	X				Request from advocates to make the opt-out as narrow as possible; **F**
	Changed bill effective date **(4)**	X				Accommodate school calendar
Total		**7**	**3**	**7**	**7**	

S: Strengthened; **N:** Neutral; **W:** Weakened; **U:** Unclear; **F:** Change made for fiscal reasons; **T:** Change made because one or more stakeholder groups were threatened by provision

(1): Defining who/what is required to comply with nutrition standards
(2): Identifying the groups involved in determining nutrition standards
(3): Defining the basis for nutrition standards
(4): Describing the implementation of nutrition standards
(5): Describing nutrition standard compliance reporting or oversight
(6): Describing other provisions related to school food, physical activity, and children's health

Based on a review of the 24 major changes to bill language and content across cases, changes were categorized into one of six categories: 1) defining who or what is required to comply with nutrition standards; 2) identifying the groups involved in determining nutrition standards; 3) defining the basis for nutrition standards; 4) describing the implementation of nutrition standards; 5) describing nutrition standard compliance reporting or oversight; and 6) describing other provisions related to school food, physical activity, and children's health. Table 9.2 provides a cross-tabulation of the effect of bill changes, by category, on the adopted bills. Although clear patterns are not discernible for all categories, it appears that changes to defining who or what is required to comply with nutrition standards (category #1) more often weakened bills, whereas changes to implementation details (such as effective dates and nutrition consultation, category #4) more often strengthened bills. Changes to either the groups involved in determining nutrition standards (category #2) or the basis for those standards (category #3) tended to have a neutral or unclear effect on the adopted bills.

Table 9.2 Effect of bill language and content changes, by category, on adopted bills

Change Category	Strengthened	Neutral	Weakened	Unclear	Total
(1)	1	1	4	1	**7**
(2)	--	1	--	1	**2**
(3)	1	--	--	2	**3**
(4)	2	--	--	1	**3**
(5)	--	1	1	--	**2**
(6)	3	--	2	2	**7**
Total	**7**	**3**	**7**	**7**	**24**

(1): Defining who/what is required to comply with nutrition standards
(2): Identifying the groups involved in determining nutrition standards
(3): Defining the basis for nutrition standards
(4): Describing the implementation of nutrition standards
(5): Describing nutrition standard compliance reporting or oversight
(6): Describing other provisions related to school food, physical activity, and children's health

Regarding the reasons for bill changes, as originally hypothesized, bill provisions that did not threaten a particular stakeholder group were more likely to remain in or be added to a bill than those provisions that did threaten a particular stakeholder group (indicated with a "T" in Table 9.1). Of the 10 provisions initially added to the bills, only 1 (10%) was judged as threatening a particular stakeholder group and subsequently removed from the bill. However, of the 14 provisions that were removed or changed, 10 (71%) were done so in response to perceived or actual threats felt by one or more stakeholder groups. In addition, of the 11 bill changes made in response to such threats, 6 (55%) led to weaker bills, accounting for all but 1 of the 7 weakening changes. The remaining five changes either had a neutral or unclear effect on the bills (three changes and two changes, respectively). No change made in response to a threat felt by one or more stakeholders was determined as strengthening a bill.

To illustrate, the four changes made to Ohio SB210 that either removed provisions or made them optional (those regarding chartered non-public schools complying with federal regulations, nutrition guideline compliance oversight, physical education and activity, and BMI [body mass index]/weight status screening) resulted primarily from stakeholder concerns over implementation costs and ultimately weakened the final bill. In contrast, the three additions made to the bill (those regarding consultation with a nutrition professional, choice of nutrition standards to be adopted by school districts, and members of the children's health council) did not threaten a particular stakeholder group, but rather were made at the request of groups seeking to advance their own interests. Bill advocates in Ohio did not resist these additions, either because advocates were not concerned with the changes, or because they viewed the changes as acceptable or necessary for achieving buy-in from stakeholders.

In fact, it should be noted that advocates in all five cases made bill compromises in efforts to thwart perceived or actual threats to bill adoption. With few exceptions, advocates reported they conceded—though sometimes reluctantly—to bill changes in order to neutralize opposition, achieve stakeholder buy-in, and/or reduce bill costs. Respondents made comments such as:

- "It wasn't worth potentially losing the whole bill over." [Advocate, Virginia]
- "If you go into a hearing and people...or other major organizations come forward and say this is not a good bill, usually you're pretty well dead in the water." [Advocate, Colorado]
- "It was a matter of interest groups panicking that they didn't have a seat at the table and at the end of the day, if a legislator could give them that and make them feel like they were included in the process, they did." [Advocate, Ohio]
- "If we hadn't kind of backed-off a little on that, well then maybe this wouldn't have happened at all." [Legislative staff member, Massachusetts]
- "I think their [the Governor's] office accepted that, and we did, too, just because we had to. We knew we needed to get around the unfunded mandate issue." [Advocate, California]

Rarely did advocates decide not to compromise, but in the four cases where they resisted change, advocates were able to push back and win. For example, Virginia advocates were successful in reducing SB414's fiscal impact statement without weakening bill language or content by challenging the bill's projected costs. Likewise, the Colorado Boards of Cooperative Educational Services (BOCES) Association was concerned the requirement that grantees meet nutrition standards was an unfunded mandate. Pressure from the Colorado BOCES Association

to remove the requirement was met with pushback from advocates, who assured the BOCES Association that nutrition standards would only need to be met if grant funding was provided to do so. In Massachusetts, the legislative sponsor reversed the addition of a provision requiring the Department of Public Health to consult with the Department of Elementary and Secondary Education. And in California, advocates disagreed with allowing schools to opt out of the requirement to provide free, fresh drinking water to students during mealtime. Although the opt-out provision was deemed necessary for bill passage, advocates successfully worked to change the opt-out so that it was more difficult for schools to obtain. Respondents did not reveal how or why they chose not to concede on these four changes over others, though it is likely that the lack of powerful or justifiable opposition, coupled with advocates' strong convictions, gave advocates the confidence necessary to resist compromise.

It is also important to highlight the significance of financial costs and benefits in influencing bill language and content, given that changes were frequently made for financial reasons (indicated with an "F" in Table 9.1). In fact, of the 24 changes made over the five bills, 10 (42%) were in some way responding to a direct financial concern, be it labor or equipment costs related to bill implementation (8 changes), lack of appropriations made for bill provisions (1 change), or excluding food-based fundraisers from being subjected to nutrition standards (1 change).[xxvi] The fiscal impacts of these bills were a significant factor given that states were slowly emerging from a national economic recession and money was not allotted at the state and local levels for new programs, especially those considered unessential. Changes that could reduce or eliminate a bill's fiscal impact—even if the changes weakened a bill—were perceived

[xxvi] It should be noted that changes made for financial reasons and those made in response to threats felt by stakeholder groups were not mutually exclusive. In fact, of the 14 changes made for at least one of these reasons, 7 (50%) were made for both. In these cases, the threats felt by stakeholder groups were financial in nature.

as necessary for the bill's survival. Overall, five (50%) of the changes related to fiscal concerns weakened the final bills, whereas three (30%) had an unclear effect and one (10%) had a neutral effect. Only one change (10%) strengthened a bill, mainly because it minimized the weakening effects of a prior change.

In addition, it could be argued that stakeholders supported bill additions for their own financial gains. For example, mandating that nutrition professionals be consulted in the implementation of Ohio SB210 could lead to either extra income or status for those consultants. Similarly, adding that the Alliance for a Healthier Generation's School Beverage and Competitive Food Guidelines be considered in the development of statewide standards allows food and beverage companies a better chance of having those guidelines codified. To the extent that vendors already comply with the Alliance for a Healthier Generation's guidelines, vendors will not have to spend money to change their product mix. It is therefore important that advocates anticipate and understand the financial concerns and potential financial benefits a competitive food policy can have on various stakeholder groups, and to make creative recommendations and strategic decisions about bill language and content that will minimize costs and increase stakeholder support without significantly compromising bill strength.

Stakeholders Supporting and Opposing State-Level Competitive Food Legislation (Aim 2)

Each of the five competitive food bills under study garnered participation from multiple stakeholders in support and opposition of the bill or specific sections within the bill. The majority of stakeholders fell into one of ten categories: 1) business/industry groups; 2) child advocacy groups; 3) education groups; 4) environmental groups; 5) executive branch of government; 6) food/school food groups; 7) health/medical groups; 8) legislators; 9) physical

activity groups; and 10) social justice groups. Table 9.3 provides examples of the bill stakeholders in support and opposition by category across cases.

At least one stakeholder from each category was noted to support competitive food legislation in two or more cases. While some bills—like Virginia SB414, Colorado HB1335, and Massachusetts HB2092—had supporters from only five categories, California SB1413 had supporters from eight categories and Ohio SB210 received support from stakeholders in every category. Bill opponents or those expressing concerns came from one of four categories: business/industry groups, education groups, executive branch, and legislators. Each case had opponents from two or three of these categories. In total, the number of unique stakeholder categories involved in each case ranged from 5 to 10, illustrating the complexity of the decision-making process surrounding these five bills.

Table 9.3 Examples of bill stakeholders across cases, by category

Supporters	Virginia SB414	Colorado HB1335	Ohio SB210	Massachusetts HB2092	California SB1413
Business/ Industry Groups			BRT, OGA, OSDA, others		
Child Advocacy Groups		CCC	Voices for Ohio's Children		
Education Groups		BOCES Association	Universities, others		CSEA, CTA
Environmental Groups			OEHA		EWG
Executive Branch	Gov	Gov	Dept of Health, Gov	Dept of Public Health, Gov	Dept of Public Health, Gov
Food/School Food Groups	SNA		CHA	Food Bank, others	CFPA, others
Health/Medical Groups	AAP, ACS, AHA	AHA, TCHF	AAP, ACS, AHA, ODA, Hospitals, others	AAP, ACS, AHA, MMS, MPHA, others	AAP, ACS, AHA, others
Legislators	Democrats, Republicans	Democrats	Democrats	Democrats, Republicans	Democrats
Physical Activity Groups			OPRA, others		CPRS
Social Justice Groups	VICPP		United Way	JALSA	JERICHO
Opponents/Those With Concerns					
Business/ Industry Groups	VAMA, VBA, VWDA, others			ABA, MBA, Pepsi, others	
Education Groups	Schools, Districts		OEA, OFT, others	Schools, Districts	Schools, Districts
Executive Branch	Dept of Education	Dept of Education	Dept of Education		
Legislators		Republicans	Republicans		Republicans
Total Unique Categories	**7**	**5**	**10**	**7**	**8**

AAP: American Academy of Pediatrics; **ABA:** American Beverage Association; **ACS:** American Cancer Society; **AHA:** American Heart Association; **BOCES:** Boards of Cooperative Educational Services; **BRT:** Ohio Business Roundtable; **CCC:** Colorado Children's Campaign; **CFPA:** California Food Policy Advocates; **CHA:** Children's Hunger Alliance; **CPRS:** California Park and Recreation Society; **CSEA:** California School Employees Association; **CTA:** California Teachers Association; **Dept:** Department; **EWG:** Environmental Working Group; **Gov:** Governor; **JALSA:** Jewish Alliance of Law and Social Action; **MBA:** Massachusetts Beverage Association; **MMS:** Massachusetts Medical Society; **MPHA:** Massachusetts Public Health Association; **ODA:** Ohio Dietetic Association; **OEA:** Ohio Education Association; **OEHA:** Ohio Environmental Health Association; **OFT:** Ohio Federation of Teachers; **OGA:** Ohio Grocers Association; **OPRA:** Ohio Parks and Recreation Association, Inc; **OSDA:** Ohio Soft Drink Association; **SNA:** School Nutrition Association; **TCHF:** The Colorado Health Foundation; **VAMA:** Virginia Automatic Merchandising Association; **VBA:** Virginia Beverage Association; **VICPP:** Virginia Interfaith Center for Public Policy; **VWDA:** Virginia Wholesalers and Distributors Association

Stakeholder categories also made common arguments for and against stronger competitive food legislation across cases. Table 9.4 summarizes five prominent arguments in support and opposition of the five bills and the stakeholder categories that most frequently made the arguments. While every argument was not made in every case, supporters of all five bills highlighted the need to reduce childhood obesity through improving school food environments, whereas opponents of all five bills shared concerns over how the implementation of provisions would be funded.

An analysis of these arguments reveals that in some areas, supporters and opponents used similar language, while at other times their arguments emerged from different belief systems. For example, both supporters and opponents addressed the fiscal implications of stronger competitive food legislation. Supporters made the case that restricting unhealthy competitive foods would save money by reducing healthcare costs, whereas opponents argued that bill provisions would cost governments money, either via implementation costs or reductions in revenues from vending machines. Despite these fiscal arguments, it does not appear that supporters or opponents in any of the five cases attempted a formal cost benefit analysis (i.e., calculating whether the short- and long-term benefits of the bill outweighed estimated costs).

In terms of ideologies, however, supporters and opponents made different arguments. Supporters framed their messaging around moral imperatives (i.e., every child has the right to healthy food, and governments have the responsibility to provide it) and human capital improvements (i.e., investing in healthier school food promotes academic achievement and children's health). Opponents, on the other hand, espoused a common political argument that government should not intrude in local or personal matters, such as school food and food choice.

In these moral and political disputes, evidence of the policy problem and demonstrated success of solutions was less important than policy beliefs.

Table 9.4 Five prominent arguments made in support and opposition of competitive food bills across cases and the stakeholder categories that made the arguments

Arguments Made In Support Of Competitive Food Bills	**Stakeholder Categories**
Every child has the right to a healthy environment, and ensuring access to that environment is a matter of equity and social justice.	• Child Advocacy Groups • Food/School Food Groups • Health/Medical Groups
Increasing the healthfulness of competitive foods will help support the development of healthy habits, reduce childhood obesity, and improve children's health.	• Executive Branch (Departments of Health, Governors) • Food/School Food Groups • Health/Medical Groups • Legislators (bill sponsors, Democrats)
Reducing childhood obesity will help mitigate healthcare spending growth for employers in the state.	• Business Groups
Schools need support to ensure that healthy, fresh foods are available in schools, and state legislatures have both the authority and responsibility to provide this support.	• Child Advocacy Groups • Health/Medical Groups • Legislators (bill sponsors)
Students require healthy foods and beverages in order to promote cognitive function and academic performance.	• Child Advocacy Groups • Executive Branch (Departments of Health) • Food/School Food Groups
Arguments Made In Opposition Of Competitive Food Bills	**Stakeholder Categories**
Bill provisions cannot be implemented with current resources, and thus bills place unfunded mandates upon schools.	• Education Groups • Executive Branch (Departments of Education)
Bill provisions will adversely impact class scheduling, classroom celebrations, school safety, and/or teachers' responsibilities.	• Education Groups
Nutrition standards are too restrictive and will limit the types of items that can be offered to schools, since many foods are manufactured for national distribution.	• Industry Groups
State governments should not be interfering in local issues or matters of personal/parental responsibility.	• Legislators (Republicans)
Vending machine revenues will decrease if competitive foods are required to meet nutrition standards.	• Education Groups

As originally hypothesized, the types of stakeholder groups in support and opposition of stronger competitive food legislation were similar across cases, though some exceptions were noted. In general, the primary non-governmental stakeholders in support of stronger competitive food legislation represented child advocacy, food/school food, or health/medical groups. This is not surprising given that the goal of competitive food legislation is to improve school food environments in order to positively impact children's health. These groups were therefore likely supporters for such legislation.

Of particular note is the backing of the American Academy of Pediatrics and American Cancer Society in four of the cases, and support from the American Heart Association (AHA) in all five. Although not the lead advocates in every case, these three groups are concerned with chronic disease prevention and support policy efforts aimed at preventing childhood obesity and/or improving children's health and nutrition, and thus were natural supporters of improving school food environments. In addition, AHA had a particular interest in competitive food legislation, given their involvement in the Alliance for a Healthier Generation and the voluntary School Beverage and Competitive Food Guidelines. Since the voluntary guidelines were released in 2006, AHA has been working at the state level to improve school nutrition policies, and as illustrated in three of the case studies, adopt the Alliance for a Healthier Generation's guidelines as state policy.

One exception to this general finding was the business community's support of Ohio SB210. In fact, it was the Ohio Business Roundtable (BRT) that initiated the bill due to concerns over rising healthcare costs for employers. An organization of the chief executives of over 80 of the state's major businesses, BRT is an influential group in Ohio and works closely with the Governor and legislative leaders on select public policy issues.[169] Respondents from

Ohio noted that BRT's leadership on SB210 was a large part of the reason why the bill was adopted, compared to the unsuccessful prior attempts led by advocacy groups.

Additional non-governmental supporters of competitive food policies included education, social justice, environmental, and physical activity groups. Advocates from education and/or social justice groups were publicly supportive in all five cases, likely because of each bill's intent to promote health and positive learning environments for all public school children. On the other hand, environmental and physical activity groups tended to provide public support only for those bills that addressed their respective concerns. For example, in addition to improving health and hydration, advocates of California SB1413 highlighted the bill's potential to reduce the harmful environmental impacts of bottled water. It is therefore not surprising that the bill received support from the Environmental Working Group, a non-profit organization whose mission is to "protect public health and the environment."[231] Similarly, physical activity groups, such as the Ohio Athletic Trainers Association and the Ohio Parks and Recreation Association, were likely most interested and supportive of the physical education and physical activity provisions included in Ohio SB210.

Although having strong support from a diverse group of stakeholders can broaden the constituent base and thus increase influence,[93] this was not supported by the five cases. Rather, those bills that were strengthened over time—Colorado HB1335 and Massachusetts HB2092—had the support of only three categories of non-governmental stakeholders. In contrast, California SB1413 and Ohio SB210 were weakened over time despite the support of six and eight categories of non-governmental stakeholders, respectively. It is hard to know whether the involvement of these additional groups aided or hindered bill strength, mainly because of the difficulty in predicting what would have happened to bills like California SB1413 and Ohio

SB210 without broad stakeholder support. In the face of strong opposition, Ohio SB210 may have been further weakened had there not been such a large and diverse coalition of influential business and industry groups in favor of the bill. Similarly, without the support of the powerful statewide education groups in California, concerns of individual schools and districts may have had more influence in the language and content of SB1413. On the other hand, broader support will inevitably lead to diverse opinions and interests, and conflicts may arise within coalitions over what bills should contain or how they should be written. In fact, one Ohio respondent questioned the benefit of having such a large coalition in support of the bill, explaining that the voice of the business community, which initiated the bill, was "watered down" and compromises were made to achieve consensus.

Non-governmental opposition to stronger competitive food legislation across the five cases generally stemmed from education and industry groups. Again, this is to be expected. Since competitive food legislation often affects what, where, and when foods and beverages may be sold or served, schools and industry groups feared that changes to product availability and accessibility would decrease revenues. In addition, because several of these bills included other provisions affecting schools—such as requirements around physical education, BMI/weight status screenings, and compliance reporting—education groups in these states grew concerned that such mandates would adversely impact class scheduling, school budgets, and teachers' responsibilities.

It should be noted, however, that some education groups in Ohio and California supported the competitive food legislation, even when other education groups opposed or had concerns about the same bill. For instance, several provisions in Ohio SB210 were opposed by education groups—such as the Ohio Association of School Business Officials, Ohio Education

Association (OEA), Ohio Federation of Teachers, and Ohio School Boards Association—primarily because of cost and implementation challenges. Still, other education groups like the Ohio State University and University of Cincinnati were members of the coalition in support of the bill, likely because they were not directly affected by the same provisions that the primary and secondary schools were. Given the strong legislative influence that school teachers' organizations, universities and colleges, and K-12 education interest groups have across the states,[86] it is important for advocates to address or minimize the concerns of education groups, and when possible, garner their support for a bill.

With regards to legislative stakeholders, Table 9.5 summarizes bill support and opposition by political party. Four bills—Colorado HB1335, Ohio SB210, Massachusetts HB2092, and California SB1413—were generally supported by Democrats and received opposition from some Republicans, while Virginia SB414 was passed with unanimous support from both political parties. In those states where voting followed party lines, interview respondents explained that Republicans tended to oppose any bill that imposed unfunded mandates on schools and state interference in local issues or on individual choice. Still, advocates in three cases were able to find bipartisan bill sponsors, which may have helped garner support from some or all Republicans. Only in Ohio did Republican opposition potentially threaten the adoption of the legislation; in Colorado, Massachusetts, and California, Democrats held a large majority in both legislative chambers and were thus less concerned with Republican votes. Thus, in states with split legislatures (i.e., Democrats hold the majority in one chamber, while Republicans hold the majority in the other), these findings suggest that advocates may benefit from eliciting bipartisan sponsorship, and specifically a Republican sponsor in the

Republican-led chamber. While this will not ensure bill adoption, a Republican sponsor may help cue[95] other Republicans to vote in favor of a bill.

Table 9.5 Summary of legislative support and opposition, by political party, across cases

Political party of:	Virginia SB414	Colorado HB1335	Ohio SB210	Massachusetts HB2092	California SB1413
Sponsor	Bipartisan	Bipartisan	Bipartisan	Democrat	Democrat
Support	Bipartisan	Bipartisan	Bipartisan	Bipartisan	Bipartisan
Opposition	N/A	Republican	Republican	Republican	Republican
House majority	Republican	Democrat	Democrat	Democrat	Democrat
Senate majority	Democrat	Democrat	Republican	Democrat	Democrat

In terms of the executive branch, competitive food bills tended to have the support of State Departments of Health (DOHs), whose missions are to promote the health and wellbeing of their residents. This held true even in states like Ohio and Massachusetts where the DOHs were directly affected by the bill. Some DOHs, such as those in Massachusetts and California, publicly supported the bill, whereas others worked closely with advocates during the legislative process but did not take public positions. Likewise, advocates from all five cases were in contact with their respective Governor's office and felt confident in their support, even though, with the exception of California, Governors did not take public positions on the bills prior to signing them. On the other hand, State Departments of Education (DOEs) commonly expressed concerns over costs of bill implementation. Since funds were not appropriated for the bills, several DOEs made the case that provisions affecting their employees—such as the development of nutrition standards and the reporting and monitoring of compliance—could not be implemented using current resources. It is unclear whether these concerns were valid, but nevertheless, legislatures often took these financial concerns seriously and made bill language and content adjustments accordingly because of the economic climate at the time. Only in Virginia were the concerns of the DOE addressed without bill changes.

Like education groups, state agencies also yield high levels of influence in state decision-making,[86] especially given their input into bill analysis and fiscal impact statements. In fact, one Virginia advocate explained that the DOE exaggerated the costs and labor needed to implement bill provisions as a strategy to potentially "kill the bill," or at least to gain staff and financial resources. This observation was not corroborated with the Virginia DOE, nor did advocates in other states discuss it during interviews. However, in the five cases reviewed in this study, state agencies affected by a bill often had input into fiscal estimates, and in two cases, an upper limit of potential fiscal impact was provided based on maximum possible costs. For example, California SB1413 did not require that schools purchase and install water fountains in cafeterias (the most expensive method of providing free drinking water to students), yet the bill's fiscal analysis was calculated as 40% of schools (the percentage found not to be providing access to free water) taking this route.

While basing legislative decision-making on maximum potential costs may protect states from underestimating needed funds, this practice may also intentionally or unintentionally mislead legislators into thinking that less expensive alternatives are not available, appropriate, or feasible. It is critical, then, for advocates to work with state agencies during bill drafting stages, and to determine whether fiscal impact analyses are accurate. If analyses are inaccurate or inflated, advocates can take one of several routes. The first option is inaction, which—especially in fiscally constrained policy subsystems—could lead to significant bill changes or even bill defeat. A second option is for advocates to recommend or support cost-reducing amendments to bill language and content as a means to minimize fiscal estimates. In the case of California SB1413, a blend of these two options was used. Because the bill would not pass out of the Appropriations Committee without a reduced fiscal note (since all costs would be reimbursable

by the state), a provision was ultimately added allowing schools to opt out of the mandate, which removed the state's financial responsibility to pay for bill implementation and allowed the bill to proceed to adoption. Although they did not agree with or support the opt-out, advocates felt that they had little choice but to accept the change or risk bill defeat. Still, advocates promoted less costly options than installing water fountains—such as providing water pitchers and cups during mealtime or obtaining donations of bottled water—and were successful in getting these examples added into the language of the bill (though because these additions were made after the fiscal summary was updated, they did not affect the bill's estimated cost).

Yet another option advocates have is to obtain accurate, independent cost analyses and use this evidence to challenge the inaccurate estimates made by government agencies or other interest groups. Although advocates in these five cases did not seek independent cost analyses, advocates in Virginia did challenge the fiscal impact statement, and win. Specifically, SB414 was projected to cost $105,000 per year for two years to cover one additional full-time DOE employee, and this estimate was based on DOE's reported concerns over using federally-funded employees to fulfill state-level mandates. Advocates worked with the DOE to obtain clarification from the United States Department of Agriculture (USDA) that the USDA-funded employees at the DOE could implement the bill's provisions. Once this guidance was received, advocates worked with the DOE and legislators to revise the fiscal impact statement to reflect no cost, preventing the bill's defeat by the Appropriations Committee. In addition, advocates offered to assist the DOE in developing and disseminating the nutrition guidelines—and language stating such was added to the bill—making it even more difficult for the DOE to claim insufficient resources for bill implementation.

Table 9.6 summarizes the main tactics used by key non-legislative stakeholders to influence bill language and content across the five cases. In general, the eight main tactics used by primary supporters of stronger competitive food policies were similar across cases. Such tactics included recommending bill language, testifying at committee hearings, activating volunteers or networks to contact legislators, and media advocacy. Likewise, the four main tactics used by primary opponents[xxvii] were similar across cases, and included sharing concerns with legislators and recommending bill language. One notable exception was in Ohio, where OEA linked their bill change requests to candidate endorsements for the upcoming state elections. This tactic was particularly successful in the House, where Democrats faced losing their slim majority. While it is unknown whether they were more fearful of voter rejection or fewer campaign contributions, House Democrats nonetheless loosened SB210's requirements around physical activity and BMI/weight status screening. Unfortunately, advocates were either unable or unwilling to counteract this pressure, leading to a weakening of the bill.

[xxvii] It is important to note that tactics used by opponents, as stated here, were obtained from documentation review and interviews with bill supporters and legislative sponsors or their staff. Thus, the full range of tactics used by opponents cannot be determined.

Table 9.6 Summary of key non-legislative stakeholders and the main tactics used to influence bill language and content across cases

Case	Main Supporters	Main Tactics Used	Main Opponents	Main Tactics Used
Virginia SB414	AAP, ACS, AHA, SNA	Recommend bill language, testify, action alerts, activate volunteers to contact legislators	DOE, Schools/ districts, VAMA, VWDA	Share concerns with legislators
Colorado HB1335	CCC, TCHF	Recommend bill language, testify, write newsletters and fact sheets, activate networks to contact legislators	DOE	Share concerns with legislators
Ohio SB210	BRT, HCHC (each made up of many member groups), DOH	Recommend bill language, testify, write press releases and fact sheets, activate networks to contact legislators, work with editorial boards, host media event, develop website	DOE, OEA, OFT, other education groups	Share concerns with legislators, recommend bill language, link bill change requests to candidate endorsements for upcoming election
Massachusetts HB2092	AHA, DPH, MMS, MPHA	Recommend bill language, testify	ABA, MBA, Schools/ districts	Share concerns with legislators, recommend bill language, testify
California SB1413	CFPA, DPH, Governor	Recommend bill language, testify, write press releases and fact sheets, action alerts, activating networks to contact legislators	Schools/ districts	Share concerns with legislators

AAP: American Academy of Pediatrics; **ABA:** American Beverage Association; **ACS:** American Cancer Society; **AHA:** American Heart Association; **BRT:** Ohio Business Roundtable; **CCC:** Colorado Children's Campaign; **CFPA:** California Food Policy Advocates; **DOE:** Department of Education; **DOH:** Department of Health; **DPH:** Department of Public Health; **HCHC:** Healthy Choices for Healthy Children Coalition; **MBA:** Massachusetts Beverage Association; **MMS:** Massachusetts Medical Society; **MPHA:** Massachusetts Public Health Association; **OEA:** Ohio Education Association; **OFT:** Ohio Federation of Teachers; **SNA:** School Nutrition Association; **TCHF:** The Colorado Health Foundation; **VAMA:** Virginia Automatic Merchandising Association; **VWDA:** Virginia Wholesalers and Distributors Association

This last example illustrates the role of interest group power in state legislative decision-making. While supporters and opponents may utilize a variety of tactics to influence bill language and content, not all stakeholders wield equal power or have equal access to state legislatures. In fact, across the 50 states, the most influential interest groups (as perceived by

public officials and political scientists) are general business organizations, schoolteachers' organizations, utility companies and associations, and manufacturers, whereas public interest groups and other social issue groups tend to enjoy less political clout (see Table 2.4).[86] Assessing actual interest group influence is difficult, however, because of the many factors that determine power: financial and organizational (e.g., personnel, legitimacy, internal unity, etc.) resources, access to and relationships with government officials, and state political climate, among others.[73,86] In addition, groups may be successful in getting what they want but may not be viewed by politicians or political observers as particularly powerful in the overall political system, as in the case of the Ohio Dietetic Association. Conversely, as with BRT, high profile groups considered important players in state politics might not always fully achieve their own goals.[86]

Still, results from this study suggest that those who oppose or have concerns about stronger competitive food policies—mainly food/beverage/vending industry groups, schools/districts/teachers unions, and DOEs—tend to have greater influence in weakening bills than supporters—child advocacy groups, food/school food groups, health/medical groups, and others—have in strengthening them. This finding held true even when seemingly powerful groups, such as BRT and the California Teachers Association, supported stronger competitive food legislation. Additionally, in the two cases where bills were strengthened over time, opposition was either minimal (as in the case of Colorado HB1335) or powerful opponents lost access to influential state legislators (such as the beverage industry in the case of Massachusetts HB2092). Advocates in these two cases were effective in strengthening bill language and content in part because the power dynamic was shifted in their favor.

The ability of opponents to have more power and influence than supporters may be related to the differential response to a threatened or actual loss compared to a potential gain. According to Stone,[232] "If a group can portray an issue in a way that emphasizes bads, losses, and costs, it can more effectively harness individual energies for collective purposes."[232(pg 221)] This is because losses and costs arouse strong emotions, such as anger, resentment, and injustice, whereas the promise of something new—especially after adaptation to the status quo—is likely to stimulate weaker emotions of hopes and desires.[232] Thus, advocates of stronger competitive food legislation may increase their power and influence by promoting the potential losses and opportunity costs of not taking action, rather than solely focusing on the possible gains of a legislative proposal.

Roles of Cohesion, Lobbying, and Constraints on Advocates' Relative Effectiveness (Aim 3)

Cases were ranked for the presence of the three conceptual framework constructs—cohesion, lobbying, and constraints—during the policymaking process of their respective competitive food bill. The categories of low, medium/moderate, and high were defined for this study in order to provide variability among cases and thus allow for cross-case comparisons (see Table 3.3 for category definitions). Each case followed a different ranking pattern, and no case earned the same ranking for all three conceptual framework constructs. Table 9.7 summarizes the rankings across the five cases, as well as whether bills were strengthened or weakened as a result of language and content changes made during the legislative process.

Table 9.7 Rankings of conceptual framework constructs and cumulative effect of language and content changes on adopted bill across cases

Case	Conceptual Framework Construct Rankings			Cumulative Effect of Bill Changes
	Cohesion	Lobbying	Constraints	
Virginia SB1413	High	Low	High	Weakened Bill
Colorado HB1335	High	Low	Low	Strengthened Bill
Ohio SB210	Medium/ Moderate	High	Medium/ Moderate	Weakened Bill
Massachusetts HB2092	High	High	Low	Strengthened Bill
California HB1413	High	Medium/ Moderate	Low	Weakened Bill

Cohesion. Overall, all five cases were situated in policy subsystems characterized by medium to high levels of cohesion, which is to be expected given that all bills were adopted. Low cohesion—defined here as over 25% dissenting votes in the legislature, strong opposition from subsystem actors (including the executive branch), and a lack of willingness to compromise on most or all bill language and content—would have made it very difficult for a bill to progress through the legislative process. Interestingly, only one case (Ohio SB210) was ranked as exhibiting medium/moderate cohesion, whereas all other cases had highly cohesive policy subsystems. Still, comparisons can be made and it appears that, as originally hypothesized, advocates situated in highly cohesive policy subsystems were more effective at influencing bill language and content than advocates in less cohesive policy subsystems.

This finding is illustrated by the three bills weakened over time, two of which were positioned in highly cohesive policy subsystems while the other was situated in a moderately cohesive subsystem. Of the five cases, Virginia SB414, Ohio SB210, and California SB1413 were weakened over time as a result of the changes made to bill language and content, yet Ohio SB210 had the largest number of changes weakening the bill and was arguably weakened the

most relative to its introduced form. While advocates were successful in making at least one change to Ohio SB210 that strengthened the bill (requiring schools to consult with a nutrition professional when adopting nutrition standards), opponents were more effective in weakening the bill by removing chartered non-public schools from having to meet federal nutrition standards for à la carte food and beverages[xxviii], compliance oversight to the à la carte nutrition standards, and physical education requirements; and by making physical activity requirements and BMI/weight status screenings optional. In contrast, a change exempting *served* foods from meeting the nutrition guidelines weakened Virginia SB414, yet advocates were successful in adding language requiring their own input in the development and dissemination of the nutrition guidelines. Likewise, California advocates were successful in partially counteracting a change allowing schools to opt out of SB1413's provisions by making the opt-out requirements more restrictive. With regards to Colorado HB1335 and Massachusetts HB2092, advocates successfully strengthened their respective bills with few, if any, changes weakening the bill.

There are at least two reasons why Ohio SB210's policy subsystem was less cohesive than the others. First, Ohio SB210 was the most comprehensive bill of the five, including provisions for competitive foods, as well as physical education and activity, BMI/weight status, and a children's health council. All other bills focused solely on school food and child nutrition issues. It is perhaps easier for subsystem actors to agree on bills seeking a single objective—

[xxviii] Upon introduction, Ohio SB210 required that all public and chartered non-public schools (regardless of their participation in the federal school meals programs) meet certain nutrition standards for à la carte food and beverages. In addition, the bill stated that "If, after July 1, 2009, the USDA adopts regulations for the sale of à la carte food/beverage items in schools that are more restrictive than the requirements of this section, those regulations shall supersede the requirements of this section. Each chartered non-public school shall comply with the regulations, regardless of whether the USDA applies the regulations to nonpublic schools."[254] This latter provision was retracted in a later bill version, thereby removing chartered non-public schools from having to meet federal nutrition standards for à la carte food and beverages.

such as improving the healthfulness of competitive foods—than on bills covering a wider range of separate objectives, even if those objectives aim to solve a single problem like childhood obesity. Second, as a result of the bill's broad scope, Ohio SB210 also had the largest and most diverse group of stakeholders, both in support and opposition of the bill. With so many different subsystem actors, the potential for disagreement increases and the need to compromise becomes more important for bill adoption. Thus, bill advocates may find themselves agreeing to more concessions than they expected—both to neutralize opposition and to appease supporters with varying interests—making advocates relatively less effective in influencing bill language and content. Advocates must therefore consider and weigh the benefits of a comprehensive bill—such as efficiency in getting more accomplished through a single bill and the ability to engage a larger and broader group of supporters—over those of a narrower bill—such as increased cohesion and potential to pass a stronger bill.

Lobbying. The number of groups lobbying in support or opposition for a particular competitive food bill varied greatly among cases, from 9 groups in Virginia to 87 groups in Ohio. Two cases—Virginia SB414 and Colorado HB1335—ranked low with 10 or less groups registering lobbying activity, whereas two cases—Ohio SB210 and Massachusetts HB2092—ranked high with over 20 groups registering lobbying activity. In between, California HB1413's policy subsystem was characterized with a medium/moderate level of lobbying. Contrary to the original hypothesis, advocates situated in advocacy coalitions characterized by high lobbying activity were not always more effective than advocates in coalitions characterized by low lobbying activity. In fact, one bill was strengthened and one was weakened in each of the high and low lobbying categories.

For example, despite having the largest total number of groups lobbying on the bill (the majority of whom lobbied in support), advocates of Ohio SB210 were less effective at influencing bill language and content than advocates in Colorado, ranked as having low lobbying activity. Additionally, advocates were effective at influencing bill language and content in cases spanning all three ranking categories, such as Virginia SB414 (ranked low), California SB1413 (ranked medium/moderate), and Massachusetts HB2092 (ranked high). Although it is difficult to quantify advocates' effectiveness across these three cases, advocates in Massachusetts were perhaps the most effective because they successfully added or amended provisions that strengthened the bill from its introduced state. In contrast, advocates in Virginia and California were effective in minimizing the extent to which bills were weakened by opponents, but did not attempt to strengthen the bills beyond what was introduced.

Several factors may explain why high levels of lobbying did not necessarily lead to increased advocate effectiveness in these five cases. First, while the number of groups lobbying for or against the bill was obtained for each case, it is unknown how many contacts each lobbyist made with a given legislator, and how many legislators each lobbyist contacted. Likewise, it was not determined whether groups engaged in specialized lobbying techniques—such as hiring a consultant or utilizing outside lobbying to affect public opinion[93]—or whether organizations contracted with external lobbying firms, which may have several clients and increased political influence as a result. Thus, it is not possible to compare the extent, intensity, and effectiveness of lobbying across cases. It could be that having a smaller number of advocates engaged in frequent and extensive lobbying is just as—or perhaps even more—effective than a larger number of advocates who lobby sporadically.

Second, advocate effectiveness may be affected by what Smith[95] describes as the level of resource advantage (i.e., the quality and quantity of resources committed to the advocacy effort compared to what opposing parties have committed). For example, no groups lobbied against Colorado HB1335 or California SB1413, so advocates in these states held a resource advantage that likely facilitated their effectiveness in influencing bill language and content. In contrast, several groups lobbied against Ohio SB210, and those that did made much larger political contributions in 2009-2010 than advocates, many of whom made no political contributions those years. Thus, even though more bill supporters than opponents reported lobbying on Ohio SB210, opponents held a resource advantage that provided them increased influence over the bill's language and content.

Cohesion of the policy subsystem is yet another possible reason why high levels of lobbying did not necessarily increase advocate effectiveness. When there is high level of agreement within a policy subsystem and among decision-makers, the need for lobbying by a large number of groups is reduced. Such was the case in Virginia, Colorado, and California; the policy subsystems in these states were highly cohesive but the number of groups lobbying on the bill was low to medium/moderate. Nevertheless, advocates in each state were effective in influencing bill language and content. In contrast, Ohio's policy subsystem was characterized by medium/moderate cohesion and a high level of lobbying. In this case, although a large number of supporters lobbied for the bill, the lower level of cohesion was a barrier to advocate effectiveness. Advocates must therefore identify the advocacy coalition(s) within a policy subsystem and estimate the amount of resource advantage they need to overcome any bill opposition. This estimate can help determine the amount of lobbying and other advocacy tactics, as well as how many supporters, are needed to influence bill outcomes.

Constraints. All cases were constrained by at least one factor, while Ohio SB210's policy subsystem was constrained by two factors, and Virginia SB414's subsystem was constrained by three. Given the national economic climate in 2009-2010, every case was constrained for fiscal reasons, meaning that bills could not cost the state money. Yet four bills were introduced with fiscal notes, ranging from $105,000 per year in Virginia to pay for a full-time staff person, to over $6 million in Ohio to pay for nine additional staff people, develop a physical fitness assessment, and other requirements. Table 9.8 summarizes the fiscal impacts and expenditures across cases.

Table 9.8 Summary of estimated fiscal impact and expenditures across cases

Case	Fiscal Impact as Introduced	Expenditures
Virginia SB414	$105,000/year	One staff person to conduct the research, development, dissemination, and monitoring of nutrition guidelines
Colorado HB1335	$246,430/year	Grant distribution; senior consultant to establish grant program
Ohio SB210	>$6 million	Physical fitness assessment development; nine staff people for site visits to determine compliance; other administrative costs
Massachusetts HB2092	N/A	N/A
California SB1413	$4 million	Installation of hydration station or water fountain at 40% of California schools

Interestingly, while concerns over the potential loss of revenue from changing competitive food offerings were often shared by school officials, no mention of potential revenue loss was factored into any case's fiscal impact statement, nor were these concerns convincing enough to change bill language or content. This may be because advocates were armed with research debunking these claims and shared the evidence with both opponents and legislators. Rather, fiscal analysis focused on the potential state and local costs of bill implementation and enforcement. Due to fiscal constraints at the time, these costs were taken very seriously and

changes to bill language and content were made in all but one case to reduce or eliminate them (in Virginia, the fiscal impact was eliminated following clarification of a misunderstanding).

As originally hypothesized, advocates situated in minimally constrained policy subsystems were more effective than advocates in highly constrained subsystems, though only to the extent that advocates could not work through the constraints. For example, Virginia SB414 was ranked as having a high level of constraints, yet advocates were able to remain effective by working around them. Politically, advocates chose new bill sponsors to prevent political tensions that arose during the previous legislative session from affecting the bill's passage. From a fiscal perspective, advocates worked closely with the DOE to revise the bill's fiscal impact statement. Temporally, by introducing two versions of the bill—one in the House and one in the Senate—advocates were able to maximize the likelihood that the bill would meet the deadline to cross over to the second chamber. None of these constraints led to changes in bill language or content, and advocates were still able to counteract changes that weakened the bill.

In contrast, advocates of Ohio SB210 were not able to work around the political constraint they faced—and thus were less effective in influencing bill language and content—mainly because powerful opponents threatened to withhold campaign endorsements and contributions unless bill changes were made. These endorsements were critical for House Democrats, who risked losing the majority. Although advocates also made political contributions, the amounts were well exceeded by those of bill opponents. Without providing some other form of electoral security, advocates were unable to counteract changes to bill language and content.

These findings suggest that, while constraints are often out of the control of stakeholders and are unamenable to change, advocates can be proactive and strategic in their approach to the

legislative process. As Howlett et al. explain, "The essence of the search for solutions to a policy problem entails discovering not only which actions are considered to be technically capable of addressing or correcting a problem but also which among these is considered to be politically acceptable and administratively feasible."[73(pg 113)] It is therefore necessary, for example, to assess any fiscal constraints facing a policy subsystem and to choose policy language accordingly. In subsystems that are fiscally constrained, ensuring that bills are not costly to states will likely increase the likelihood of bill success, or at least reduce the chance that bills will not stall as a result of their estimated fiscal impacts. Similarly, understanding the political constraints of the subsystem—including political party dynamics and established patterns of ideologies and beliefs—can help guide advocates in choosing bill sponsors, formulating interpretations and alternate interpretations,[95] and targeting lobbying efforts for successful outcomes.

Lessons Learned Across Cases

Across the five case studies, interview respondents reported several common lessons learned that, while applicable to state-level competitive food legislation, are appropriate for many types of bills at all levels of government. These include obtaining evidence of the policy problem; building a broad coalition or network of supporters; choosing bill sponsors strategically; neutralizing opposition and achieving stakeholder agreement early in the legislative process; and lobbying. Each of these themes was mentioned by at least one respondent in at least three of the five case studies. However, not all of these lessons reported by respondents are supported by the cross-case analysis or the broader policy decision-making literature.

To start, obtaining evidence of the policy problem was identified by respondents in three cases as important for both educating decision-makers and countering opposition. For example, obtaining evidence of the lack of drinking water access in public schools was key for advocates

of California SB1413, who were able to use this data to gain the needed support from the Governor. Advocates in other states, such as Ohio and Massachusetts, shared estimates of increasing state-level obesity prevalence and related healthcare costs with legislators during committee hearings or via written reports. Still, while it may be difficult for legislators and opponents to disagree with evidence of the policy problem, it should be noted that evidence of successful solutions does not always influence bill outcomes. Such was the case in Ohio, where advocates provided several examples of schools that had already successfully implemented the bill's physical activity provisions without consequence, yet oppositional concerns and influence were stronger, leading to required provisions being made voluntary.

Building a broad coalition of supporters was identified by interview respondents from all five cases as important for achieving credibility with legislators. Respondents noted the particular value of including those who will be affected by the bill, such as schools and food service directors. However, cross-case analysis revealed that large and diverse coalitions did not lead to increased advocate effectiveness in influencing bill language and content. Rather, those bills that were strengthened over time had the support of only a few stakeholder categories, whereas those bills garnering broader support were weakened over time. Again, it is difficult to predict what would have happened without diverse coalitions in cases like California and Ohio, as bills may have been strengthened or further weakened depending on the extent to which compromises were made among supporters, or the additional impact of powerful opposition without broad stakeholder support.

Choosing bill sponsors strategically—either for their leadership role in an influential committee, personal passion for the topic, or their political party affiliation—was also useful across cases to earn support from legislative peers and to push bills through the legislative

process. This lesson was reported by interview respondents in three of the five cases, as well as supported by the cross-case analysis and consistent with the broader literature. Of note, research reveals that the introduction and adoption of childhood obesity prevention legislation is enhanced when bills are introduced by senior legislators and those with a strong personal interest.[126] Likewise, childhood obesity prevention legislation enactment increases if there is more than one legislative sponsor, and further increased if there is bipartisan sponsorship.[124]

Neutralizing opposition and achieving stakeholder agreement early on can increase subsystem cohesion and thus the likelihood of a smooth legislative process. For example, knowing school districts and industry groups feared that replacing unhealthy competitive foods with healthier items would reduce revenues, one Colorado advocate conducted research refuting these claims before HB1335 was even introduced. Interview respondents in three other cases reported similar attempts to achieve stakeholder buy-in, both in the bill drafting stages and after bill introduction. As the cross-case analysis suggests, advocates situated in highly effective policy subsystems are more effective at influencing bill language and content than advocates in less cohesive policy subsystems. Thus, neutralizing opposition is an important strategy for achieving policy goals and outcomes.

Finally, respondents in three cases stressed the importance of lobbying as an advocacy tactic, especially since opposition often came from well-funded industry or education groups that have strong relationships and frequent contact with legislators. Respondents noted that in addition to working with legislators, lobbyists help ensure that advocate relationships and the coalition's unified voice remain intact. Yet cross-case analysis revealed that high lobbying activity did not necessarily result in increased advocate effectiveness. Rather, it is likely that lobbying quality, as well as quantity, is important for influencing bill language and content. In

addition, as Smith[95] suggests, lobbying outcomes may be enhanced when advocates have a resource advantage over their opponents. It is therefore critical that advocates first identify their level of resource advantage, and then make strategic decisions about the extent and intensity of lobbying and other advocacy tactics needed to influence bill outcomes.

Interview respondents in three of the five cases also revealed lessons specific to competitive food legislation, such as mirroring national, science-based nutrition guidelines for competitive foods or taking a regulatory route. Bills that were initially introduced with specific nutrition standards listed in statute were later adopted as either a requirement to adopt an established set of national nutrition guidelines or as a regulatory mandate (i.e., requiring a state agency to promulgate regulations setting nutrition standards for competitive foods). As the case studies suggest, requiring the application of national nutrition guidelines (especially those developed by the Alliance for a Healthier Generation)—rather than new standards generated at the state or local levels—will likely receive less opposition from the food and beverage industry, who would prefer a national standard than to have separate product formulations and packaging sizes for each state.

Respondents also noted that allowing a regulatory agency to develop nutrition standards is preferable to specifying standards in statute because nutritional science is constantly changing, and it would take much more time, energy, and resources to change a law than to update regulations. Yet as the Massachusetts case reveals, even when the regulatory agency is agreeable to the task, committed to children's health, and willing to develop strong science-based standards, the regulatory process is not immune to political pressures and interest group influence. Additionally, researchers note that the regulatory process does not provide the same level of transparency and public accountability as the legislative process, and that the seemingly

simpler process of setting regulations can "often turn into a long, drawn-out affair."[34(pg 1519)] Indeed, nearly two years since the enactment of the federal Healthy, Hunger-Free Kids Act of 2010 (Public Law 111-296),[57] the USDA has yet to release its nutrition standards for competitive foods.

CHAPTER 10

CONCLUSIONS AND IMPLICATIONS

This final chapter briefly reviews the study; reports the key findings determined from the cross-case analysis; presents a revised conceptual framework of decision-making constructs; describes the strengths and limitations of the study; and concludes with implications for research, practice, and policy.

Review of the Study

This study seeks to deepen understanding of the decision-making processes by which states determine competitive food legislation. Grounded in the Advocacy Coalition Framework,[77,78,85] this comparative case study of five states' legislation formation processes draws on three decision-making constructs identified by policy researchers.[73,86,87,93,95] Ultimately, a revised conceptual framework linking these three constructs describes the process by which competitive food legislation decisions were influenced.

Three main factors contributed to the idea for this study. First, childhood obesity is a leading public health concern in the United States, and there is growing evidence that food environments—including those within schools—play an important role in dietary consumption. Yet schools across the country provide students with access to a number of unhealthy competitive foods and beverages, due in part to the minimal federal restrictions over what may be sold outside of the highly regulated National School Lunch Program and School Breakfast Program. Second, states have begun to adopt stronger competitive food policies placing further limits on the types of competitive foods and beverages that can be sold and served to students, as well as where and when these items can be made available. Evaluations of these policies indicate that they are effective in reducing the availability and consumption of unhealthy

competitive foods, without negatively affecting school revenues. Finally, little research has focused on how state-level competitive food policies are formed and adopted, a knowledge gap this study seeks to fill.

Based on documents and archival materials, as well as interview data collected from 17 legislators, legislative staff members, non-governmental advocates, and researchers, Chapters 4-8 present comprehensive case studies of the decision-making processes determining competitive food legislation in five states. These cases describe policy formation and adoption through a narrative chronology of events and changes to bill language and content, and analyze phenomena across three decision-making constructs. Chapter 9 continues this analysis of the decision-making process through cross-case comparisons. The key findings emerging from this analysis are presented below, along with a revised conceptual framework to describe the decision-making processes in these five cases.

Key Findings

Analysis of the decision-making process through which states determine competitive food legislation yielded 10 key findings related to the dynamics of the legislative process and the roles played by various stakeholders.

1. Competitive food bill provisions that do not threaten a particular stakeholder group are more likely to remain in or be added than those provisions that do threaten a particular stakeholder group. Stakeholders most often feel threatened by provisions that increase demands on resources such as budgets, staff, and time. In addition, stakeholders support bill additions that directly or indirectly promote their own interests.

2. Fiscal concerns regarding increased expenditures—but not lost revenues—are influential factors in the weakening of bill language and content, especially in the context of a fiscally constrained policy subsystem.
3. The types of stakeholders in support and opposition of stronger competitive food bills are similar across states, with some exceptions. In general, the primary non-governmental stakeholders in support of stronger competitive food legislation represent child advocacy, food/school food, and health/medical groups. Non-governmental opponents or those expressing concerns most often represent education and industry groups. From the executive branch, State Departments of Health are often supportive of stronger competitive food legislation, while State Departments of Education often have concerns. In terms of the legislature, opposition comes almost exclusively from Republican legislators, though some Republicans do join Democrats in supporting strong competitive food legislation.
4. Strong support from a large and diverse coalition of stakeholders may increase political influence, yet at the same time lead to weakened bill language in efforts to appease multiple interests. In the face of strong opposition, the benefits of a broad coalition of supporters may outweigh the risks of bill compromise. On the other hand, in highly cohesive subsystems where bills are likely to pass without much opposition, broader support may do more harm than good.
5. A key tactic used by supporters to influence bill language and content is recommending language prior to bill introduction and throughout the legislative process. Opponents most frequently share their concerns about bill provisions directly with legislators in order to successfully influence bill language and content.

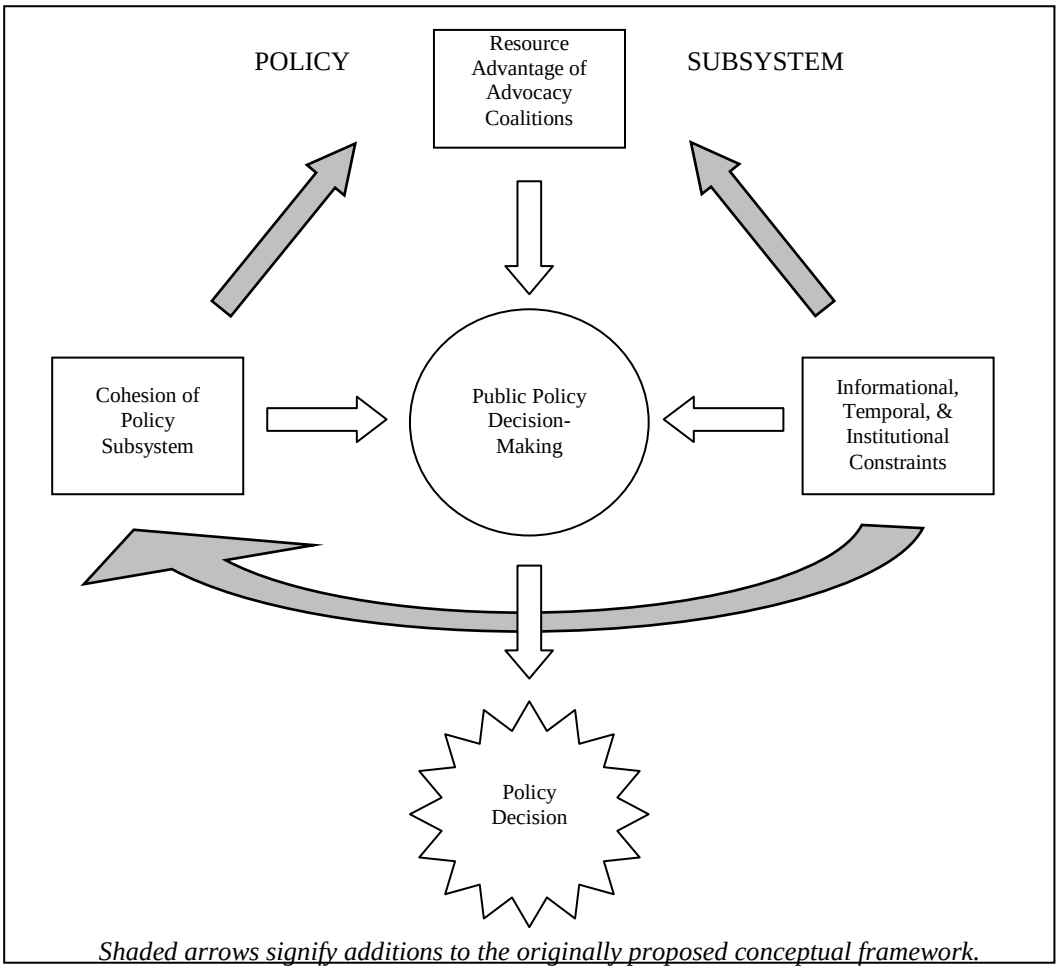
6. Advocates situated in highly cohesive policy subsystems are more effective at influencing bill language and content than advocates in less cohesive policy subsystems. This is most likely because highly cohesive policy subsystems share similar policy beliefs and interests and are faced with lower levels of opposition.
7. Advocates situated in advocacy coalitions characterized by high lobbying activity are not necessarily more effective in influencing bill language and content than advocates in coalitions characterized by low lobbying activity. Factors that may explain this lack of relationship include the extent, intensity, and effectiveness of advocates' lobbying; the level of resource advantage advocates hold; and the level of cohesion within the policy subsystem. Nevertheless, lobbying is an important tactic for both influencing legislative decisions and for maintaining coalition relationships and messaging.
8. Advocates situated in minimally constrained policy subsystems are more effective than advocates in highly constrained subsystems, though only to the extent that advocates are unable to work through the constraints. While constraints are often out of stakeholders' control and unamenable to change, advocates can be proactive and strategic in their approach to the legislative process.
9. Obtaining evidence of the policy problem and effectiveness of solutions can help persuade decision-makers about the importance of the issue, as well as address stakeholder concerns and reveal misconceptions. This is especially the case when little is known about the problem or when successful implementation of solutions has already occurred within the state.
10. Competitive food legislation that requires nutrition standards through a regulatory mandate or the adoption of an established set of guidelines is often politically

preferable to specifying standards in statute. Regulatory mandates are supported over specific standards in statute because nutritional science is constantly changing and regulations are viewed as easier to amend than legislation. (It should be noted, however, that the regulatory process is not immune to political pressures and interest group influence.[34]) The advantage of adopting established nutrition guidelines over specifying standards in statute is a probable reduction in opposition from industry groups, who are most likely already meeting the established guidelines in another state or school district.

Revised Conceptual Framework

In order to investigate the role of public health advocates in influencing bill changes during the legislative process, this study proposes a conceptual framework (Figure 2.2) consisting of three decision-making constructs: cohesion of the policy subsystem; resource advantage of advocacy coalitions; and informational, temporal, and institutional constraints. While the five case studies support the influence that these three constructs have on the decision-making process, findings suggest that constructs also influence one another. As a result, Figure 10.1 provides a revised conceptual framework to illustrate the competitive food legislation decision-making process. This section focuses on the changes made to the framework, noted in the figure by the shaded arrows.

Figure 10.1 Revised conceptual framework



Shaded arrows signify additions to the originally proposed conceptual framework.

Starting at the top left, cohesion of the policy subsystem can affect the need for, and influence of, resource advantage. When there is a high level of agreement within a policy subsystem and among decision-makers, the need for lobbying and advocacy efforts by a large number of groups is reduced. On the other hand, lower levels of cohesion likely signify two or more advocacy coalitions, and in this context, having a resource advantage over other coalitions can be critical to influencing legislative outcomes. The results of this study do not, however, support a bi-directional relationship between cohesion and resource advantage. In other words,

resource advantage does not appear to influence the effect of cohesion on the decision-making process.

Similarly on the top right, constraints on the policy subsystem can affect the amount and type of resources advocacy coalitions have or need to make available to influence decision-making. For example, political constraints, such as leadership changes or the threat of power shifts, can enhance the resource advantage of one coalition over another. As demonstrated in this study, advocacy coalitions with a large constituent base may be even more influential during elections years, especially given the potential for political party shifts in chamber majorities. Likewise, fiscal constraints on the subsystem may reflect broader financial issues faced by some or all organizations in support or opposition of a bill. With restricted budgets, non-profit organizations may especially have to prioritize which legislative proposals receive the most resources. Again, the findings from this study do not point to a bi-directional relationship between constraints and resource advantage.

Finally, the constraints facing a policy subsystem can influence the subsystem's cohesiveness. As seen in this study, times of financial uncertainty may lead advocacy coalitions to make compromises in bill language or content that sacrifice bill strength for fiscal neutrality, rather than risk bill defeat. In these cases, subsystems may appear quite cohesive. Yet in times of prosperity, such concessions may not be as easily and readily made, and cohesion levels will appear to fall. Results do not, however, indicate that cohesion influences constraints on a policy subsystem.

Strengths and Limitations

Strengths. The study has several strengths. To start, this is the first study of its kind to examine the policy formation process of competitive food legislation. As such, the results of this

study contribute to the childhood obesity literature by going beyond a description of the problem to better understanding how action is currently being taken. By learning from prior efforts, public health advocates can better strategize their future attempts to improve the food environment within schools.

Another strength of this study is the use of multiple data sources. Utilizing multiple sources of evidence allows for data triangulation and in effect provides different measures of the same phenomenon, increasing the likelihood that the underlying construct was measured. In this study, multiple documents and interviews were used in each case because of their complementary strengths. A benefit of documentation is that documents are stable; they can be reviewed repeatedly over time without changing. Documentation has also been termed "unobtrusive" and "nonreactive" because the material is not created as a result of the study and the investigator's presence does not alter the evidence.[98,113] On the other hand, a major strength of interviews is the insight that can be gained from the perceptions and explanations of the respondents. And unlike documentation, interviews are targeted at a specific line of inquiry, thus keeping focus on case study topics and reducing the amount of superfluous information collected.[98,113]

A third strength is the use of the comparative case approach, which provides a basis for comparison and allows for more robust findings.[98,113] Walt et al.[233] identify the case study design as the most utilized, and comparative case studies an even stronger, methodology in health policy studies. Comparative case studies are particularly strong designs for investigating policy processes, allowing for the analysis of why certain policies are implemented, under what circumstances, and by whom. Investigators can also identify the key stakeholders involved in the policy process, their arguments for or against a policy, and the success or failure of their

advocacy strategies within a particular context. A comparison of these findings across policies, health issues, or in this case, states, provides rich insight into characteristics for successful policy development, advocacy, and implementation, thereby creating valuable recommendations for future research and action.

Limitations. Several limitations to this study should be noted. The first lies in the generalizability of the study. Each case is based on a specific type of bill in a specific state at a specific time, and thus findings might not be applicable to other state-level policies, or to competitive food policies at different policymaking levels (e.g., federal, district, school). Indeed, the purpose of this study is not to generalize results to all policies or policymaking levels, but rather to gain a deeper understanding of the process by which competitive food policies are being constructed at the state level. Still, this study analyzed and compared five cases representing different geographic, political, and socio-demographic contexts, as well as a varying level of prior attempts (successful or not) at passing similar or related legislation. This variability across cases increases confidence that the emerging themes can inform similar endeavors in other states in the future.

Second, in order to expedite case selection, competitive food bills were identified using secondary databases, and it is possible that these databases are incomplete. Consequently, three different databases were searched in attempt to identify the vast majority of bills introduced. As an additional check, the legislative databases from five randomly chosen states (10%) were searched for competitive food bills introduced in 2009-2010.[xxix] One additional bill was

[xxix] With states numbered in alphabetical order, five states were chosen for this cross check using a random number generator: Connecticut, Michigan, New Jersey, South Dakota, and Vermont. Each state's legislative database was searched for bills introduced in 2009-2010 containing the words "school*" and "food*" (where * signifies a wild card search).

identified in this process, though the bill was not adopted and therefore would not have been included as a case in this study.

Another potential threat to the validity of this study is missing data. In an effort to balance breadth and depth, case studies are based—in part—on an average of three respondent interviews. However, in all case studies, additional representatives from legislative, advocacy, and opponent groups were either not identified, did not respond to invitation requests, or refused to be interviewed. This has likely led to missing primary data, such as a more complete understanding of the tactics used by opponents and state agencies to influence bill language and content, as well as the extent, intensity, and effectiveness of lobbying and other advocacy techniques across cases. However, attempts were made to better understand multiple perspectives by asking respondents questions about other primary stakeholders, as well as triangulating data or filling gaps using secondary data from organizational websites and news reports.

It should also be mentioned that the five cases in this study were not evaluated against a comparison group of bills not adopted in 2009-2010. This is because the goal of the study was to characterize and extract lessons from successful cases, not to state the factors necessary for bill adoption. The latter line of research has already been studied in the context of childhood obesity prevention legislation—both qualitatively and quantitatively—by several researchers.[124-126]

Despite these limitations, this study makes an important contribution to the literature by deepening the understanding of how states form food policies that help to reduce and prevent childhood obesity, a major threat to the nation's health. The lessons learned from this study are also expected to provide a useful guide for researchers, advocates, and policymakers seeking to promote stronger statewide policies that create a more healthful food environment.

Implications for Research

The findings from this study suggest several directions for future research. From a theoretical perspective, this study draws on the work of several policy researchers[73,77,78,85-87,93,95] and follows a conceptual framework based on three main constructs identified as influential in the public policy decision-making process. The revised conceptual framework presented in this chapter could be tested on other decision-making processes to see if it holds in other geographic and temporal contexts or with other types of legislation. Additional constructs may also be revealed with further application of this framework.

With regards to the policy process, as more states begin to adopt competitive food legislation, it is important to acknowledge that policy adoption does not necessarily equate with consistent implementation or enforcement. Policy impact is contingent upon both the strength of bill language and to what extent that language is followed. Researchers have begun to study the implementation of state school competitive food and beverage standards and have found that, while the availability of many of the least healthy food and beverage items has been reduced, students remain exposed to noncompliant foods and beverages in schools.[58,59,62] In fact, a survey of 24 California schools conducted after enactment of SB1413 but before the implementation date found that only 14 (58%) offered free drinking water in food service areas.[234] In addition, only 12 (50%) of the school administrators had heard about SB1413.[234] Clearly, there is room for improvement and further longitudinal studies are needed in those states with competitive food policies in order to determine compliance and the barriers and facilitators to implementation.

In addition, several of the bills studied here require that a state agency promulgate regulations setting nutrition standards for competitive foods. However, little is known about the

regulatory process at the state level and to what extent various stakeholders influence outcomes. State agencies may face both internal and external conflicts as they develop regulations, and even upon announcement, regulations are subject to change. This was recently the case in Massachusetts, where less than a year after the nutrition standards for competitive foods were released, the Department of Public Health announced an emergency amendment to exclude foods and beverages available at classroom and school-sponsored events and fundraising activities from meeting the nutrition standards. This change was made at the request of the Governor in response to threats from the House and Senate, who were in the process of passing legislation to overturn the regulations.[201] Despite years of hard work, successful bill adoption, and strong regulatory support and development, a new legislature was able to exert its power and dismantle a provision of HB2092 before it was ever implemented. Further insight into the regulatory process can help advocates in other states avoid or navigate similar outcomes.

Still another avenue for further research is to focus study on state agencies and opponents, whose policy influence and legislative power is apparent but not transparent. Unfortunately, resource and access limitations in this study restricted the amount of primary information obtained from these stakeholders. Multiple, targeted attempts at reaching these groups, though difficult, may reveal "insiders" who are willing to providing details on the strategies and tactics used to influence bill language and content. These details can confirm or refute, for example, whether fiscal impact estimates are purposefully exaggerated by state agencies, as well as elucidate what advocates described as "behind-the-scenes" measures taken by industry groups to influence decision-makers.

Additional research is also needed to determine how to identify the most powerful interest groups in a given policy subsystem, as well as the potential of advocates—especially

those perceived by policymakers and political observers as having less political clout—for soliciting the support and/or overcoming the opposition of more powerful interest groups. Furthermore, future research can reveal the actions that advocates can take to shift the power dynamic in their favor. Such information would prove invaluable to public health advocates, who can use this knowledge to better prepare for the legislative process.

From an issue perspective, the federal Healthy, Hunger-Free Kids Act of 2010[57] requires the United States Department of Agriculture (USDA) to develop national nutrition standards for competitive foods. Upon their release, research will be needed to determine how the federal regulations compare to recommended standards (such as those by the Institute of Medicine) and state policies so as to identify any gaps that states may be able to fill. Potential areas of weakness may come from provisions concerning fundraisers and school-related events, the types of beverages allowed, and tiered standards based on school level, and these gaps can be addressed through further legislation or regulation at the state level.

Implications for Practice and Policy

The purpose of this study is to understand the competitive food policy decision-making process with the hopes of assisting public health advocates in identifying potential strategies, barriers, collaborators, and opponents when seeking to create a more healthful school food environment within their state. To that end, there is much to be learned from advocates' experiences in these five case studies. For one, advocates can follow the approach used in this study to assess the levels of subsystem cohesion, resource advantage, and constraints that can affect the decision-making process surrounding competitive food policies. It is important that advocates have a clear understanding of the policy subsystem within which they are working in order to make strategic decisions around language and content recommendations, bill

sponsorship, and advocacy tactics. For instance, results from this study suggest that fiscally constrained subsystems are perceived by advocates as not allowing for high-priced bills, so bill provisions must be capable of implementation given current resources or already have a source of funding in place.

It should be mentioned, however, that both the perception of fiscal prudence and the demand for—and implementation of—austerity measures are socially constructed, politically decided, and context dependent. Governments determine who and when to tax, what fees to impose, where funds will be spent, and how budgets will be balanced. Advocates can either accept these decisions or challenge them. While it does not appear that any of the five state governments in this study prioritized competitive food legislation enough to appropriate money for implementation, advocates did not pressure legislatures to allocate funds for these bills. Rather, advocates accepted that it was politically unfeasible to pass costly legislation, and thus conceded to bill changes that either reduced bill requirements or allowed provisions to become voluntary. Alternatively, advocates can challenge the austerity mentality, as seen by the recent occupy movements and anti-austerity protests around the world.[235-237] Although improving competitive food alone is arguably not enough of a reason to initiate similar events, childhood obesity—and obesity in general—is a serious issue that deserves comprehensive actions by local, state, and national governments.

Advocates in other states who are attempting strong competitive food policies can also refer to the lists of stakeholder groups who supported these five bills, as well as the reasons for their support, in order to elicit the involvement of their counterparts. Groups representing businesses, education, and medicine are quite influential across the states,[86] and having their active support can be especially helpful in bill adoption. In Ohio, for example, the business

community supported stronger competitive food legislation as one of several strategies to prevent obesity and thus quell the rising costs of healthcare for employers. Advocates in other states could use a similar argument to recruit business support, or at least neutralize any potential opposition.

However, as the study results indicate, advocates must weigh the benefits of broad coalitions—more resources, increased expertise, larger constituent base, etc.—with the time and energy needed to achieve consensus and the risks of compromising bill strength to satisfy multiple interests. In those situations where additional resources are necessary to counteract opposition, advocates should have a clear sense of which bill provisions they are willing to compromise on and to which they want to hold firm. In fact, one legislative staff person suggested leaving "wiggle room" when drafting a bill so that opportunities exist for achieving stakeholder buy-in. As one example, three of the bills in this study included provisions for a council or taskforce with clearly identified members. Adding additional stakeholders to these councils during the legislative process was particularly helpful in neutralizing opposition, and may be a successful strategy in other states.

Likewise, knowing where opposition may come from—education and industry groups, Republican legislators, and State Departments of Education in this study—and the arguments that might be raised can help advocates prepare messaging and gather research to counter oppositional concerns. For example, a common fear expressed by education groups is the loss of revenue when stronger competitive food standards replace unhealthy foods and beverages with healthier items. Yet research shows this is not the case,[68,238] and advocates can work closely with researchers to gain similar evidence from schools and districts within the state. Another frequent concern in this study regarded implementation of bill provisions, and advocates can help

alleviate some opposition by sharing suggestions for creative solutions. Such was the case in California, where advocates developed a website (www.waterinschools.org) to assist schools and districts in implementing the water access requirements of SB1413.

It is also important for those advocates and policymakers working to implement stronger competitive food policies in their state to realize that they need not start from scratch. There are a number of model policies,[239] recommended guidelines,[38] and successful examples from states, such as those in this study. Advocates and policymakers can consult these examples and adapt a policy that will best accommodate their state's needs.

While nutrition standards for competitive foods help improve the healthfulness of school food environments and students, it is critical to ensure that policies address monitoring or consequences for non-compliance, since "victory in lawmaking is meaningless if the law is ignored or subject to feeble administration."[75(pg 17)] Advocates and policymakers should pay careful attention to how bill provisions will be implemented and enforced during the policy formation process, as well as hold schools, districts, and/or state agencies accountable once policies are adopted and implemented.

Finally, advocates across the five cases took an incremental approach to changing school food environments by supporting legislation that reduces the availability of unhealthy competitive foods and beverages and/or increases the availability of healthier items. This approach seeks to obtain "the best we can get" in a given context. However, one California respondent acknowledged a more transformative paradigm, where "the ideal school has no foods or beverages that can be purchased other than the USDA meal." Eliminating competitive foods from all schools is a vision shared by some school food and food policy researchers,[23,34] and a reality in several school districts.[240] Of course, if the five cases from this study are any

indication, a complete ban on competitive food will likely be challenged by the food and beverage industry, and possibly even schools and local districts. Despite criticisms that such a proposal may be unrealistic or politically unfeasible, some researchers counter that there should be no compromise when it comes to children's health.[34] In fact, the removal of competitive foods from schools can eliminate the need for compliance oversight, increase participation in school meals programs, and decrease commercialism in schools,[34,68] favorable outcomes for a nation working to address fiscal spending, hunger, and childhood obesity simultaneously. While it is unlikely that such transformative change will occur in the near future (especially given the pending federal nutrition standards for competitive foods), this idyllic vision remains a possibility that should not dismissed.

In conclusion, this comparative case study of state-level competitive food legislation formation addresses a research gap by yielding a deeper understanding of how and why policies change during the legislative process, including the role of public health advocates and others in affecting the language and content of these policies. It is evident from this study that advocates, policymakers, and researchers play a crucial role in influencing the decision-making process surrounding competitive food legislation, and this study provides insights and tools that can assist these groups in future efforts to create a more healthful food environment for all school children.

APPENDICES

APPENDIX A

NATIONAL NUTRITION GUIDELINES FOR COMPETITIVE FOODS

Appendix A.1 Institute of Medicine: Nutrition Standards for Foods in Schools

Standards for Nutritive Food Components

Standard 1: Snacks, foods, and beverages meet the following criteria for dietary fat per portion as packaged:

- No more than 35 percent of total calories from fat;
- Less than 10 percent of total calories from saturated fats; and
- Zero trans fat.

Standard 2: Snacks, foods, and beverages provide no more than 35 percent of calories from total sugars per portion as packaged.

Exceptions include:

- 100-percent fruits and fruit juices in all forms without added sugars;
- 100-percent vegetables and vegetable juices without added sugars; and
- Unflavored nonfat and low-fat milk and yogurt; flavored nonfat and low-fat milk with no more than 22 grams of total sugars per 8-ounce serving; and flavored nonfat and low-fat yogurt with no more than 30 grams of total sugars per 8-ounce serving.

Standard 3: Snack items are 200 calories or less per portion as packaged and à la carte entrée items do not exceed calorie limits on comparable National School Lunch Program items.

Standard 4: Snack items meet a sodium content limit of 200 mg or less per portion as packaged or 480 mg or less per entrée portion as served for à la carte.

Standards for Nonnutritive Food Components

Standard 5: Beverages containing nonnutritive sweeteners are only allowed in high schools after the end of the school day.

Standard 6: Foods and beverages are caffeine-free, with the exception of trace amounts of naturally occurring caffeine-related substances.

Standards for the School Day

Standard 7: Foods and beverages offered during the school day are limited to those in Tier 1.

Standard 8: Plain, potable water is available throughout the school day at no cost to students.

Standard 9: Sports drinks are not available in the school setting except when provided by the school for student athletes participating in sport programs involving vigorous activity of more than 1 hour's duration.

Standard 10: Foods and beverages are not used as rewards or discipline for academic performance or behavior.

Standard 11: Minimize marketing of Tier 2 foods and beverages in the high school setting by:

- Locating Tier 2 food and beverage distribution in low student traffic areas; and
- Ensuring that the exterior of vending machines does not depict commercial products or logos or suggest that consumption of vended items conveys a health or social benefit.

Standards for the After-School Setting

Standard 12: Tier 1 snack items are allowed after school for student activities for elementary and middle schools. Tier 1 and 2 snacks are allowed after school for high school.

Standard 13: For on-campus fundraising activities during the school day, Tier 1 foods and beverages are allowed for elementary, middle, and high schools. Tier 2 foods and beverages are allowed for high schools after school. For evening and community activities that include adults, Tier 1 and 2 foods and beverages are encouraged.

Actions for the Implementation of Nutrition Standards in Schools

Action 1: Appropriate policy-making bodies ensure that recommendations are fully adopted by providing:

- Regulatory guidance to federal, state, and local authorities;
- Designated responsibility for overall coordination and oversight to federal, state, and local authorities; and
- Performance-based guidelines and technical and financial support to schools or school districts, as needed.

Action 2: Appropriate federal agencies engage with the food industry to:

- Establish a user-friendly identification system for Tier 1 and 2 snacks, foods, and beverages that meet the standards per portion as packaged; and
- Provide specific guidance for whole-grain products and combination products that contain fruits, vegetables, and whole grains.

Foods and Beverages That Meet Tier 1 and Tier 2 Standards

Foods	Beverages
Tier 1 for All Students	
Tier 1 foods are fruits, vegetables, whole grains, and related combination products* and nonfat and low-fat dairy that are limited to 200 calories or less per portion as packaged and: • No more than 35% of total calories from fat • Less than 10% of total calories from saturated fats • Zero trans fat (≤ 0.5 g per serving) • 35% or less of calories from total sugars, except for yogurt with no more than 30 g of total sugars, per 8-oz portion as packaged • Sodium content of 200 mg or less per portion as packaged À la carte entrée items meet fat and sugar limits as listed above** and: • Are National School Lunch Program menu items • Have a sodium content of 480 mg or less	Tier 1 beverages are: • Water without flavoring, additives, or carbonation • Low-fat† and nonfat milk (in 8-oz portions): o Lactose-free and soy beverages are included o Flavored milk with no more than 22 g of total sugars per 8-oz portion • 100% fruit juice in 4-oz portion as packaged for elementary/ middle school and 8 oz (two portions) for high school • Caffeine-free, with the exception of trace amounts of naturally occurring caffeine substances
* Combination products must contain a total of one or more servings as packaged of fruit, vegetables, or whole grain products per portion. ** 200-calorie limit does not apply; items cannot exceed calorie content of comparable National School Lunch Program entrée items.	† 1% milk fat
Tier 2 for High School Students After School	
Tier 2 snack foods are those that do not exceed 200 calories per portion as packaged and: • No more than 35% of total calories from fat • Less than 10% of total calories from saturated fats • Zero trans fat (≤ 0.5 g per portion) • 35% or less of calories from total sugars • Sodium content of 200 mg or less per portion as packaged	Tier 2 beverages are: • Non-caffeinated, non-fortified beverages with less than 5 calories per portion as packaged (with or without nonnutritive sweeteners, carbonation, or flavoring)

SOURCE: Institute of Medicine. *Nutrition Standards for Foods in Schools: Leading the Way Toward Healthier Youth.* Washington, D.C.: The National Academies Press; 2007: 125-138. Reprinted with permission from The National Academies Press.

Appendix A.2 Alliance for a Healthier Generation: School Beverage and Competitive Food Guidelines

School Beverage Guidelines

Category	Qualify for the Alliance for a Healthier Generation School Beverage Guidelines		
	Elementary	**Middle**	**High***
Water	• Any size • No added sugars, artificial sweeteners or sodium		Any size
Plain or flavored fat-free or low-fat milk Up to 150 calories per 8 oz *Includes nutritionally equivalent milk alternatives per United States Department of Agriculture*	8 oz, 150 calories	10 oz, 188 calories	12 oz, 225 calories
100% juice (or 100% juice plus water) Up to 120 calories per 8oz and 10% Daily Value for at least 3 vitamins and nutrients**	8 oz, 120 calories	10 oz, 150 calories	12 oz, 180 calories
No or low-calorie beverages Up to 10 calories per 8 oz	No	No	Any size
Other drinks Up to 66 calories per 8 oz	No	No	12 oz, 99 calories
* At least 50% of beverages must be water and no or low-calorie beverages. ** 100% juice (or 100% juice plus water) with no added sweeteners must contain at least 10% Daily Value of 3 vitamins and nutrients, such as Vitamin A, C, D, and calcium.			

Time of Day: The guidelines apply to beverages sold on school grounds during the regular and extended school day when events are primarily under the control of the school or third parties on behalf of the school. The extended school day can be defined as the time before or after the official school day that includes activities such as clubs, yearbook, band and choir practice, student government, drama, and childcare/latchkey programs.

The guidelines do not apply to school-related events where parents and other adults are a significant part of an audience and are selling beverages as boosters during intermission, as well as immediately before or after such school-related events. Examples of these events include interscholastic sporting events, school plays, and band concerts.

SOURCE: Alliance for a Healthier Generation. School Beverage Guidelines. Available at: http://www.healthiergeneration.org/uploadedFiles/For_Companies/School_Beverage_Documents/BevGuidelines2.pdf. Accessed July 23, 2012. Reprinted with permission from the Alliance for a Healthier Generation, founded by the American Heart Association and the William J. Clinton Foundation. For more materials like this one, visit www.HealthierGeneration.org.

Competitive Food Guidelines

	Calories	Total Fat	Saturated Fat	Trans Fat	Sugar by Weight	Sodium
Baseline	100	35%	10%	0 g	35%	230 mg
Dried fruit with no added sugar	150 elementary 180 middle 200 high	0 g	0 g	0 g	Exempt	230 mg
Nuts, nut butters, and seeds	150 elementary 180 middle 200 high	Exempt	Exempt	0 g	35%	230 mg
Low-fat and fat-free dairy*	150 elementary 180 middle 200 high	35%	10%	0 g	35%	480 mg
Soup and vegetables with sauce	150 **If contains at least two of the following: 2 g fiber; or 5 g protein; or 10% Daily Value Vitamin A, C, E, folate, calcium, magnesium, potassium, or iron; or ½ serving (¼ cup) fruit or vegetables.**	35%	10%	0 g	35%	480 mg **If contains at least two of the following: 2 g fiber; or 5 g protein; or 10% Daily Value Vitamin A, C, E, folate, calcium, magnesium, potassium, or iron; or ½ serving (¼ cup) fruit or vegetables.**
Snacks	150 elementary 180 middle 200 high **If contains at least one of the following: 2 g fiber; or 5 g protein; or 10% Daily Value Vitamin A, C, E, folate, calcium, magnesium, potassium, or iron; or ½ serving (¼ cup) fruit or vegetables.**	35%	10%	0 g	35%	230 mg
Fruit with nuts (trail mix)	150 elementary 180 middle 200 high **Product must contain only fruit, nuts, and/or seeds and must have no added sweeteners.**	Exempt	10%	0 g	35%	230 mg
* Cheese may be reduced fat or part skim in 1.5-oz portions. One egg or egg equivalent with no added fat is permitted.						

SOURCE: Alliance for a Healthier Generation. Competitive Food Guidelines. Available at: http://www.healthiergeneration.org/companies.aspx?id=2540. Accessed July 23, 2012. Reprinted with permission from the Alliance for a Healthier Generation, founded by the American Heart Association and the William J. Clinton Foundation. For more materials like this one, visit www.HealthierGeneration.org.

APPENDIX B

CATALOG OF COMPETITIVE FOOD BILLS INTRODUCED IN 2009-2010

State	Date Filed	Bill Number	Bill Summary (As Introduced)	Outcome	Database Source
Alaska	1/20/09	HB 70	Among other things, establishes a grant program for schools to provide Alaska grown fruits and vegetables throughout the school day for all students free of charge.	7/9/10 Signed by Governor	NCSL
California	2/17/10	AB 1982	This bill would declare the intent of the Legislature to enact legislation to further encourage schools to offer healthy and nutritious foods to pupils.	Failed to pass out of committee	YRC
	2/19/10	SB 1255	This bill would remove electrolyte replacement beverages from those beverages that may be sold at schools at specified times.	Died in committee	YRC
	2/19/10	SB 1413	This bill would require a school district to provide access to free, fresh drinking water in school food service areas.	9/30/10 Signed by Governor	YRC
Colorado	2/10/10	HB1335	Establishes the Healthy Food Grant Program to promote better school nutrition. The bill would require each BOCES that receives a grant from the program to procure and distribute to schools of its constituent school districts only food and beverages that satisfy certain nutritional standards.	5/27/10 Signed by Governor	YRC
Hawaii	1/27/09 1/23/09	HB 1416 SB 507	Among other things, establishes a grant program for schools to provide free, locally-grown fresh fruits and vegetables throughout the school day.	Failed to pass out of committee	NCSL
	1/20/10	HB 1853 SB 2118	Makes it unlawful for the Department of Education to operate stores or permit the sale of ice cream, candy, and other merchandise on school campuses without the written permission of the Department, with certain exceptions.	Failed to pass final reading	YRC

State	Date Filed	Bill Number	Bill Summary (As Introduced)	Outcome	Database Source
Kansas	2/1/10	SB 499	The State Board of Education shall develop nutrition guidelines for all foods and beverages made available to students in public schools during the school day.	Died in committee	YRC
Louisiana	4/17/09	HB 767	Revises nutrition standards for beverages sold in public high schools.	7/1/09 Signed by Governor	NCSL
Massachusetts	1/20/09	HB 448 SB 260	Establishes the Pilot Rewards for Healthy School Meals Program to provide an additional 10 cents per lunch to grantee schools. A Healthy School Meals school must meet certain criteria, including using a minimum proportion of locally-grown fresh produce in season as part of school meals and à la carte offerings as demonstrated in school food purchasing records.	Will not be considered	NCSL, YRC
	1/20/09	HB 2092	The Department of Public Health shall develop nutritional guidelines and standards for the sale or provision of competitive foods or beverages in public schools; provided, however, that competitive foods or beverages sold or provided in public schools shall be limited to foods or beverages that comply with the leading nutritional standards and other regulations promulgated by the Department. Public schools shall offer for sale fresh fruit and non-fried vegetables at any location where food is sold. Public schools shall make available plain, potable water to all public school students during the school day at no cost.	7/30/10 Signed by Governor	NCSL, YRC

State	Date Filed	Bill Number	Bill Summary (As Introduced)	Outcome	Database Source
Mississippi	1/5/10	HB 131	Requires the State Board of Education to adopt a regulation requiring local school districts to provide low-fat snacks and meals to children diagnosed by a physician as overweight and to children whose parents request low-fat only snacks and meals for their children. Requires the State Board of Education to adopt a regulation addressing food sales outside of the child nutrition school meals programs that are made available at the discretion of the local school district.	Died in Committee	YRC
	1/18/10	HB 1078	Requires the Office of Healthy Schools/Department of Education to develop and implement the HealthierUS School Initiative (USDA) to facilitate healthier choices and practices by local school districts through the promotion of healthier school environments. Requirements for participating schools include adhering to guidelines established by the Food and Nutrition service for foods served outside of the National School Lunch Program.	3/24/10 Signed by Governor	NASBE, YRC
New Jersey	1/12/10	AB 1229	Prohibits sale on school property of certain foods during school breakfast and lunch periods. (Last session bill number AB 1306)	Failed to pass out of committee	YRC
	1/12/10 2/11/10	AB 986 SB 1373	Requires boards of education to provide certain nutritional information for food and beverage items offered for sale in school cafeterias. (Last session bill number AB 4059 and SB 2855)	Failed to pass out of committee	YRC

State	Date Filed	Bill Number	Bill Summary (As Introduced)	Outcome	Database Source
New York	4/24/09 4/13/09	AB 7804 SB 4118	Requires nutrition regulations that set limits on cholesterol, sodium, fat, sugar, and calories and ban trans fats; and requires that produce be offered, that at least half of grain products are whole grain, and that entrées sold separately are nutritionally equivalent to entrées sold as part of school meals. Prohibits sale of soda and candy in elementary and secondary schools at any time of day, with exceptions.	Failed to pass out of committee	NCSL
	5/10/10 6/4/09	AB 11027 SB 5785	Provides for the development and implementation of statewide school nutrition standards for food and beverages sold to students.	Failed to pass out of committee	NCSL, YRC
	3/17/10	AB 10310	Creates the "Healthy Kids" pilot program under which 10 school districts would receive grant money to offset the cost of selling only healthy food.	Failed to pass out of committee	YRC
	3/25/10 5/6/10	AB 10419 SB 7756	Prohibits the sale of certain foods in vending machines on school grounds or property, including but not limited to, candy, carbonated water with added sweeteners, or beverages that contain caffeine or sweeteners.	Failed to pass out of committee	YRC
	5/13/10	AB 11075	Provides for media health promotional campaigns; requires Department of Health to promote best practices to support healthy nutritional choices; establishes additional nutritional standards for food and beverages available at schools.	Failed to pass out of committee	YRC
	5/11/09 3/8/10	AB 8250 SB 7028	Enacts the "New York State Healthy Kids Act" to provide that only healthy foods and beverages are served during the school day; directs the Board of Regents and the Commissioner of Education to establish nutritional standards.	Failed to pass out of committee	YRC

State	Date Filed	Bill Number	Bill Summary (As Introduced)	Outcome	Database Source
North Carolina	5/17/10 5/19/10	HB 1756 SB 1289	Would establish statewide nutrition standards that meet recognized national standards adopted by the Alliance for a Healthier Generation or the IOM. The standards would apply to school meals, à la carte foods and beverages, items served in after-school snack programs, and all other candy, snack food, and beverages sold or offered to students on school property during the school day. Exceptions: items offered to students during a school or birthday celebration.	Failed to pass out of committee	YRC
Ohio	11/17/09	SB 210	To establish nutritional standards for certain foods and beverages sold in public and chartered nonpublic schools; to require public school students to have periodic body mass index measurements; require daily physical activity.	6/18/10 Signed by Governor	NASBE, YRC
Pennsylvania	6/1/09	HB 1572	Provides for school foods reform and imposing duties on schools relating to the sale of food and beverages and on the Department of Education and the Department of Health.	Failed to pass out of committee	YRC
South Carolina	1/15/09	HB 3297	To amend section 59-10-340, code of laws of South Carolina, 1976, relating to snacks sold for student consumption in schools, so as to provide for fat, calorie, and sugar content standards that snack food and beverages must meet in order to be sold in schools.	Failed to pass out of committee	YRC
Utah	1/27/10	SB 49	This bill establishes standards for the contents of vending machines in public schools. This bill provides a list of allowed beverages and non-beverage items that may be sold in vending machines at public schools and establishes compliance dates.	Failed to pass out of committee	YRC

State	Date Filed	Bill Number	Bill Summary (As Introduced)	Outcome	Database Source
Virginia	1/13/10 1/13/10 1/12/10	HB 1067 SB 414 SB 210	Requires Board of Education, in cooperation with the Department of Health, to develop nutritional guidelines for all competitive foods sold to students during school hours. This shall include guidelines for calorie, fat, sugar, and sodium content. Requires the Board to adopt either the Alliance for a Healthier Generation's Competitive Food Guidelines or the IOM Recommended Standards for Competitive Foods in Schools as the initial statewide standard. Each local school board must adopt the standards as a part of their local wellness policy.	4/13/10 Signed by Governor	NASBE, YRC
West Virginia	1/13/10	HB 3088	Allows parents or the school to serve sweets during the holidays if the school receives parental or guardian consent.	Failed to pass out of committee	YRC
Wisconsin	12/17/09	AB 620	The bill requires all public schools, charter schools, and private schools to use stated requirements for foods sold outside of federally reimbursed USDA meal programs.	Failed to pass out of committee	YRC

AB: Assembly Bill; **BOCES:** Board of Cooperative Educational Services; **HB:** House Bill; **IOM:** Institute of Medicine; **NASBE:** National Association of State Boards of Education; **NCSL:** National Conference of State Legislators; **SB:** Senate Bill; **USDA:** United States Department of Agriculture; **YRC:** Yale Rudd Center

APPENDIX C

INTERVIEW INVITATION LETTER

Doctor of Public Health Program (DPH)

The Graduate School and University Center
The City University of New York
365 Fifth Avenue
New York, NY 10016-4309
TEL 212.817.7986 FAX 212.817.1683
E-MAIL public_health@gc.cuny.edu

Dear _____,

My name is Lauren Dinour and I am a doctoral student in the Public Health Program at The Graduate Center of the City University of New York (CUNY). I am writing to inform you of a research study I am conducting for my doctoral dissertation, and to ask for your participation.

The purpose of this study is to understand the role of various stakeholders in influencing the language and content of statewide policies regulating competitive foods, those items sold in schools outside of the federal school meals programs. Often found in vending machines and cafeteria à la carte lines, competitive foods are frequently scrutinized for being unhealthy. In fact, the most commonly consumed competitive foods are juice drinks, cookies/cakes/brownies, candy, and soda, all considered low nutrient and energy-dense. More and more, competitive foods are being regulated by states as one way to address childhood obesity. This study will examine competitive food policymaking at the state level during 2009 and 2010 in order to describe and analyze how and why policies change during the legislative process.

I am requesting your participation in a telephone interview about your experiences in the policymaking process of (insert bill/policy number and state). I estimate that the interview will take about one hour. To protect your privacy, you will be given the opportunity to define the extent to which your name will be associated with any or all statements made during the interview, and will be given the right to retract any statement at any time prior to publication of research results. Any statements that you designate as "off the record" will not be attributed to you, nor used in a way that would link the statement to you. I will use any such comments only as background information. You do not have to answer any questions about which you do not feel comfortable, and you may stop the interview at any time.

Information from this research will be used to expand the knowledge base related to the policy formation process of school food policies, as well as provide a useful guide for researchers, advocates, and policymakers seeking to promote statewide policies that create a more healthful school food environment.

I have enclosed two copies of a consent form for the interview, and a self-addressed, stamped envelope. If you are interested in participating in this study, please sign both copies, retain one for your files, and mail the other back to me no later than (insert date). I will follow-up with you to schedule the interview.

If you have any questions or concerns regarding your participation in this research, please contact me by phone at 917-328-8841, or by email at LDinour@gc.cuny.edu. Thank you so much for your consideration.

Sincerely,

Lauren Dinour, MPH, RD, CDN
Doctoral Candidate
The Graduate Center, City University of New York

APPENDIX D

INTERVIEW GUIDES

Appendix D.1 Legislative Sponsor/Legislative Staff Interview Guide

I'd like to start out by asking if you could confirm some job-related information.

How long have you served as _____?

What legislative committees did you serve on in 2009-2010?

Did you chair any of these committees? If so, which one(s)?

Now I'm going to ask some questions regarding (bill #) from last session. This bill was introduced in (month, year) and adopted as policy in (month, year). The adopted policy (summarize bill provisions).

To start, how would you define the policy problem that this bill sought to address?

Could you tell me about the origins of the bill? (see below for prompts)

> Where did the idea for the bill come from? Had anyone spoken or written to you about this issue prior to the bill's drafting? If so, who and what did they say?
>
> Who wrote the original bill? Did the writers receive input from any governmental or non-governmental agencies? If so, which ones?
>
> Were there attempts at passing a similar bill in past sessions? If so, what happened? How long ago did these attempts begin?

What were your reasons for sponsoring (bill #)?

Of the (#) bills you sponsored in 2009-2010, where did this one fall in priority (1=most important, #=least important)?

Aim 1: To examine changes in the language and content of state-level legislative proposals addressing competitive foods.

I noticed that changes were made to the text of the bill before it became policy. I'm wondering if you can tell me about them and how they came about. (Refer to chart of tracked changes and ask about each.)

Is the adopted policy representative of the bill's original intent? Please explain your answer.

In your opinion, is the policy stronger, weaker, or the same as the original bill you sponsored? Please explain.

Aim 2: To identify and characterize the primary stakeholders in support and opposition of stronger state-level competitive food legislation.

I noticed that there were (#) co-sponsors to the original bill. Why do you think these legislators supported the bill?

I also noticed that the bill passed through the House/Assembly and Senate with (amount) opposition. Why do you think there was/wasn't legislative opposition to this bill?

Did the Governor take a position on the bill before it came to him for his signature? If so, what was his position? Was his position public?

Did anyone from a governmental agency ask you to support or oppose the bill or sections of it? If so, who and what did they ask of you? How many times did they contact you? How?

Did anyone from outside government contact you in support of this bill? Who and why do you think they were supportive?

Was anyone opposed to this bill or sections of it? Who and why do you think they were opposed?

Did any oppose the changes that were made to the bill?

At what points in the policymaking process were these stakeholders most active?

Aim 3: To assess the roles of policy decision-making constructs of cohesion, lobbying, and constraints on advocates' relative effectiveness in influencing the language and content of competitive food legislation.

Who would you identify as the strongest supporters of this bill?

Of this list, which three were most effective in influencing the language and content of the final policy?

In what ways were they influential?

How do you think they accomplished this? What factors facilitated their success?

For the other supporters, what factors made them less influential than the three you just named?

Who would you identify as the strongest opponents of this bill?

Of this list, which three were most effective in influencing the language and content of the final policy?

In what ways were they influential?

How do you think they accomplished this? What factors facilitated their success?

For the other opponents, what factors made them less influential than the three you just named?

Lessons learned

In hindsight, is there anything you would or could have done differently, or in addition, to change how the final policy was written?

What could advocates of stronger competitive food policies have done differently, or in addition, to change how the final policy was written?

What would you recommend to those in other states who are advocating for strong competitive food policies?

Is there anything else you would like to tell me about this bill or the decision-making process that I haven't asked?

Who else would you recommend I speak to?

Thank you so much. I really appreciate the time you have taken to answer my questions.

Appendix D.2 Non-Governmental Advocate Interview Guide

I'd like to start out by asking if you could confirm some job-related information.

How long have you been in your current position? (If not longer than 3 years, ask what his/her position was during 2009-2010)

Can you tell me a little about your position? What kinds of things are you responsible for?

Now I'm going to ask some questions regarding (bill #) from last session. This bill was introduced in (month, year) and adopted as policy in (month, year). The adopted policy (summarize bill provisions).

In what ways were you personally involved in the policymaking process of (bill #) during 2009-2010?

How did you first learn about the bill?

How would you define the policy problem this bill sought to address?

Could you tell me about the origins of the bill? (see below for prompts)

> Where did the idea for the bill come from?
>
> Who provided the language for the original bill?
>
> Were there attempts at passing a similar bill in past sessions? If so, what happened? How long ago did these attempts begin?

Why did (sponsor's name) sponsor the bill?

Aim 2: To identify and characterize the primary stakeholders in support and opposition of stronger state-level competitive food legislation.

How did your organization perceive this bill?

> Was it something to be supported, opposed, or changed?
>
> Did your organization support the bill in its entirety, or were there only certain sections that were supported? Please explain.

What did your organization consider the ideal policy in relation to this bill?

Did your organization have input into the drafting of the original bill?

If so, what did your organization recommend?

What were the reasons for these recommendations?

Were all of your recommendations included in the original bill?

If not, what was left out?

Why do you think these items were excluded?

Were there any aspects of the bill that your organization disagreed with?

If so, what were they?

Why did your organization disagree with them?

Did your organization seek changes to the bill after it was introduced?

If so, what changes was your organization seeking?

What were the reasons for those changes?

Aim 1: To examine changes in the language and content of state-level legislative proposals addressing competitive foods.

I noticed that changes were made to the text of the bill before it became policy. I'm wondering if you can tell me about them and to what extent your organization (or others) had involvement in these changes. (Refer to chart of tracked changes and ask about each.)

Is the adopted policy representative of the bill's original intent? Please explain your answer.

In your opinion, is the policy stronger, weaker, or the same as the original bill? Please explain.

Aim 3: To assess the roles of policy decision-making constructs of cohesion, lobbying, and constraints on advocates' relative effectiveness in influencing the language and content of competitive food legislation.

In thinking about your organization's priorities for 2009 and 2010, where did (bill #) fall? Would you say it was towards the top, middle, or bottom of the priority list?

What resources (time, people, money) did your organization commit to this bill before it became policy?

What steps, strategies, or tactics did your organization take in attempt to influence the language and content of the final policy?

In what ways, if any, was your organization effective in influencing the language or content of the policy?

In what ways, if any, was your organization ineffective?

Who would you identify as the strongest supporters of this bill?

Of this list, which three were the most effective in influencing the language and content of the final policy?

In what ways were they influential?

How do you think they accomplished this? What factors facilitated their success?

With regards to the other supporters of this bill, what made them less influential than the three you just named?

Who would you identify as the strongest opponents of this bill?

Of this list, which three were the most effective in influencing the language and content of the final policy?

In what ways were they influential?

How do you think they accomplished this? What factors facilitated their success?

With regards to the other opponents of this bill, what made them less influential than the three you just named?

Did the Governor or any state agencies take a position on this bill before signing it? If so, what were their positions? Were their positions public?

This bill passed with (amount) opposition. Why do you think there was/wasn't legislative opposition to this bill?

Lessons learned

In hindsight, is there anything you or your organization would or could have done differently, or in addition, to change how the final policy was written?

What could other advocates of stronger competitive food policies have done differently, or in addition, to change how the final policy was written?

What would you recommend to those in other states who are advocating for strong competitive food policies?

Is there anything else you would like to tell me about this bill or the decision-making process that I haven't asked?

Who else would you recommend I speak to?

Thank you so much. I really appreciate the time you have taken to answer my questions.

APPENDIX E

INFORMED CONSENT FORM

Doctor of Public Health Program (DPH)

The Graduate School and University Center
The City University of New York
365 Fifth Avenue
New York, NY 10016-4309
TEL 212.817.7986 FAX 212.817.1683
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CONSENT FORM

My name is Lauren Dinour, and I am a doctoral student in the Public Health Program at The Graduate Center of the City University of New York (CUNY), and Principal Investigator of this project, entitled "The Role of Advocacy in State-Level Competitive Food Policy Formation." More and more, competitive foods—those items sold in schools outside of the federal school meals programs—are being regulated by states. This study will examine competitive food policymaking at the state level during 2009 and 2010 in order to describe and analyze how and why the policy changed during the legislative process. The study seeks to understand the role of various stakeholders in affecting the language and content of adopted policies. I am requesting your permission to interview you about your experiences in this policymaking process.

It is estimated that the interview will take about one hour. With your permission, I would like to audio record this interview to ensure accuracy in documenting responses. The recordings will only be heard by me and my faculty advisor. To protect your privacy, you will be given the opportunity to define the extent to which your name will be associated with any or all statements made during the interview, and will be given the right to retract any statement at any time prior to publication of research results. Any statements that you designate as "off the record" will not be attributed to you, nor used in a way that would link the statement to you. I will use any such comments only as background information. You do not have to answer any questions about which you do not feel comfortable, and you may stop the interview at any time.

The risk of participating in this study is a breach of confidentiality. To minimize this risk, all audio recordings will remain strictly confidential and will be kept on my password-protected computer. Audio recordings will be destroyed once the transcription has been completed. All paper documents will be kept in a locked file cabinet in my office. Any "off the record" information will be permanently removed from the interview transcript and kept in a separate, anonymous file that will be coded. A list of linked names and codes will be kept in a locked file cabinet in my faculty advisor's office.

There will be approximately 28 participants taking part in this study. There will be no direct benefits to participants, but results of the analysis are expected to aid child nutrition advocates in effectively influencing policymaking processes.

I may publish the results of the study. You have the right to remain anonymous, and can do so by initialing here: _____. If you do not choose to remain anonymous, in quoting from the interview transcript in my future work, I may attribute remarks directly to you, but will not necessarily do so. If you would like a copy of your interview transcript or the final study, please provide me with your address and I will send you a copy in the future.

If you have any questions about this research, you can contact me at (917) 328-8841 or LDinour@gc.cuny.edu, or my advisor, Nicholas Freudenberg, at (212) 481-4363 or NFreuden@hunter.cuny.edu. If you have questions about your rights as a participant in this study, you can contact Kay Powell, IRB Administrator, The Graduate Center, City University of New York, (212) 817-7525, KPowell@gc.cuny.edu.

Thank you for your participation in the study. I will provide you a copy of this form for your records.

I agree to have this interview audio-recorded (please circle one): Yes No

_____	_____	_____	_____
Participant's Signature	Date	Investigator's Signature	Date

APPENDIX F

STATE-, LEGISLATURE-, AND BILL-LEVEL FACTORS ACROSS CASE STUDIES

Appendix F.1 State- and Legislature-Level Factors Across Case Studies

(information compiled from case studies unless otherwise noted)

State-Level Factors	Virginia SB414	Colorado HB1335	Ohio SB210	Massachusetts HB2092	California SB1413
Region in US[241]	South	West	Midwest	Northeast	West
Division in US[241]	South Atlantic	Mountain	East North Central	New England	Pacific
Total population (2009)[242]	7,882,590	5,024,748	11,542,645	6,593,587	36,961,664
Population <18 years (2009)[242]	1,844,848	1,228,089	2,714,179	1,432,880	9,435,102
Median household income (2009)[242]	$59,330	$55,430	$45,395	$64,081	$58,931
Poverty rate (2009)[242]	10.5%	12.9%	15.2%	10.3%	14.2%
Adult obesity rate (2009)[243]	25.5%	19.0%	29.8%	21.8%	25.5%
Child obesity rate (Age 10-17, 2007)[244]	15.2%	14.2%	18.5%	13.3%	15.0%
% population <18 years participating in NSLP (2009)[242]	40.7%	32.1%	41.4%	37.7%	33.9%
% NSLP participants who are free/reduced priced (2009)[242]	51.9%	59.7%	57.8%	50.3%	78.9%
# schools enrolled in NSLP (2009)[242]	2,027	1,730	4,028	2,273	10,502
Date of prior state-level competitive food policies	1980, 1994, 2005	1998, 2004 (r), 2005, 2006 (r), 2008	1979	N/A	1977, 2005, 2007
Party of Governor (2009-2010)	Republican	Democrat	Democrat	Democrat	Republican
Legislature-Level Factors					
Majority party-House (2009-2010)	Republican	Democrat	Democrat	Democrat	Democrat
# House members	100	65	99	160	80
Majority party-Senate (2009-2010)	Democrat	Democrat	Republican	Democrat	Democrat
# Senate members	40	35	33	40	40
Length limit of regular/formal legislative session	Even years 60 days; Odd years 30 days	120 days	No limit; legislature meets all year	Even years July 31; Odd years 3rd Wed in Nov	Even years by Nov 30
Interest group impact[86(pg 121)]	Dominant/ Complementary	Complementary	Dominant/ Complementary	Complementary	Dominant/ Complementary

HB: House Bill; **N/A:** Not applicable; **NSLP:** National School Lunch Program; **(r):** Repealed; **SB:** Senate Bill; **US:** United States

Appendix F.2 Bill-Level Factors Across Case Studies
(information compiled from case studies)

Bill-Level Factors	Virginia SB414	Colorado HB1335	Ohio SB210	Massachusetts HB2092	California SB1413
Date bill filed	1/13/10	2/10/10	11/17/09	1/20/09	2/19/10
Date bill adopted	4/13/10	5/27/10	6/18/10	7/30/10	9/30/10
# days between bill filing and adoption	90	106	213	556	223
# bill sponsors and co-sponsors by the time bill adopted	2 sponsors (called patrons)	3 sponsors, 28 co-sponsors	2 sponsors, 39 co-sponsors	1 sponsor, 56 co-sponsors	1 sponsor, 1 co-sponsor (called author and co-author)
Party of sponsor(s)	Bipartisan	Bipartisan	Bipartisan	Democrat	Democrat
Legislative committees assigned to bill	House Education; House Appropriations; Senate Education and Health	House Education; House Appropriations; Senate Education; Senate Appropriations	House Health; Senate Health, Human Services, and Aging	Joint Public Health; House Ways and Means; Senate Ways and Means	Assembly Education; Senate Education; Senate Appropriations
# unique bill versions	3	3	4	7	4
Same bill filed in second chamber?	Yes (HB1067)	No	Yes (HB373)	No	No
Estimated fiscal impact	Originally $105,000/year, however revised to $0 in light of new information	$250,000/year not appropriated (contingent upon gifts, grants, donations)	Originally up to $6 million or more, however reduced following bill amendments	No fiscal note	Originally $4 million, however revised to $0 following bill amendments
State agencies affected by bill	BOE; DOH	BOE; DOE	BOE; DOE; DOH	DAR; DESE; DMH; DPH	None
Bill content upon introduction	Nutrition standards for competitive foods (excluding beverages)	Authorizes a BOCES to serve as school food authority; Creates the BOCES Healthy Food Grant Program, which requires participating BOCES to meet nutrition standards for all foods and beverages	Nutrition standards for competitive foods and beverages; Children's health council; BMI/wt status screenings; Breakfast in the classroom; Physical education requirements; etc.	Nutrition standards for competitive foods and beverages; Free drinking water availability; Fryolator removal; Child obesity commission; Nutrition education, Farm-to-school program; etc.	Free drinking water availability

Bill-Level Factors	Virginia SB414	Colorado HB1335	Ohio SB210	Massachusetts HB2092	California SB1413
Meaning of "competitive food" as defined by adopted bill	Any food, excluding beverages, sold to students on school grounds during regular school hours and not part of the school breakfast or lunch programs	N/A, standards apply to procurement and distribution of any foods or beverages	Individually priced food and beverage items available for sale to students via food service programs, vending machines, or school stores; excludes items sold at fundraisers or events outside the school day, or any item of a reimbursable meal	All foods or beverages (except non-sweetened carbonated water) sold or provided in public schools, excluding those part of school breakfast or lunch programs or CACFP	N/A, bill only pertains to drinking water
Basis for nutrition standards	Alliance for a Healthier Generation or IOM	IOM	Alliance for a Healthier Generation or Snackwise®	DHHS, USDA, ADA, SNA, IOM, AHA, and others	N/A
Method of nutrition standards development	Regulation	Regulation	Legislation	Regulation	N/A
# prior attempts at bill passage	One attempt in 2008 (SB721)	None noted	None noted	Multiple attempts over prior decade	One attempt in 2008 (AB2704)

AB: Assembly Bill; **ADA:** American Dietetic Association; **AHA:** American Heart Association; **BMI:** Body mass index; **BOCES:** Board of Cooperative Educational Services; **BOE:** Board of Education; **CACFP:** Child and Adult Care Food Program; **DAR:** Department of Agricultural Resources; **DESE:** Department of Elementary and Secondary Education; **DHHS:** United States Department of Health and Human Services; **DMH:** Department of Mental Health; **DOE:** Department of Education; **DOH:** Department of Health; **DPH:** Department of Public Health; **HB:** House Bill; **IOM:** Institute of Medicine; **N/A:** Not applicable; **SB:** Senate Bill; **SNA:** School Nutrition Association; **USDA:** United States Department of Agriculture

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