

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Education Pre-K - 12 Committee

BILL: SB 552

INTRODUCER: Senator Wise

SUBJECT: Pancreatic Enzyme Prescription Supplements

DATE: February 16, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkey	Matthews	ED	Favorable
2.	_____	_____	HR	_____
3.	_____	_____	EA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill would permit a student to use pancreatic enzyme prescription supplements while in school, at a school-sponsored activity, or while in transit to or from school or a school-sponsored activity if the student’s parent and physician had provided the school with authorization for the student’s use of the supplement. The State Board of Education, in cooperation with the Department of Health, would be required to adopt rules for the use of the supplements. The bill requires the parents of a student who uses pancreatic enzyme prescription supplements to indemnify the school district, county health department, public-private partners, and their employees or volunteers for any and all liabilities arising from the student’s use of the supplements.

This bill amends s. 1002.20, Florida Statutes.

II. Present Situation:

Administration of Medication by District School Board Personnel

Section 1006.062, F.S., requires each district school board to adopt policies governing the administration of prescription medication by district school board personnel. Each school district must have in its policies a procedure for licensed medical personnel to train the school personnel who are designated by the school principal to assist students in the administration of prescribed medication. Each prescribed medication to be administered by district school board personnel must be received, counted, and stored in its original container. Under s. 1006.062(4), F.S., non-medical assistive personnel may perform health-related services after completing child-specific training taught by licensed medical personnel. Such procedures as intermittent clean catheterization, gastronomy tube feeding, monitoring blood glucose, and administering

emergency injectable medication must be monitored periodically by a licensed nurse or physician.

Student and Parental Rights

Section 1002.20, F.S., establishes a number of rights for student in kindergarten through 12th grade and their parents. This statute gives students the right to carry and use an inhaler in the treatment of asthma¹ and epinephrine auto-injectors in the treatment of a life-threatening allergic reaction². Authorization by a student's parent and physician is required before a student can carry and use either of those medications.

Cystic Fibrosis

Cystic fibrosis is a chronic and progressive disease causing mucus in the body to become thick and sticky. The mucus builds up in the body and clogs passages in the lungs, interfering with respiration. In the pancreas, the mucus blockage can interfere with normal digestive processes. Children who have cystic fibrosis often cannot absorb nutrients from food and may have below-normal growth and development. Children with cystic fibrosis need a high-calorie, high-protein diet and enzymes in order to gain weight and grow. There is no cure for cystic fibrosis. Management of the disease varies from person to person and generally focuses on treating respiratory and digestive problems to prevent infection and complications.³

Pancreatic Enzyme Supplements

The pancreas is an organ that produces enzymes that are involved in digestion as well as hormones, including insulin, that regulate metabolism. Individuals with pancreatic insufficiency or with cystic fibrosis take pancreatic enzyme to help digestion and food absorption.

According to the Cystic Fibrosis Foundation, children with cystic fibrosis need a high-calorie, high-protein diet and enzymes in order to gain weight and grow.⁴ They take oral pancreatic enzyme medicine with all meals and snacks that contain fat, protein, or complex carbohydrates.⁵ According to the Foundation, the pancreatic enzymes do not cause a problem if taken by another child. Most children with cystic fibrosis have been taking pancreatic enzymes since infancy and can take them on their own.⁶

Indemnity Clause

An indemnity clause is a contractual provision in which one party agrees to answer for any specified or unspecified liability or harm that the other party might incur.⁷

¹ s. 1002.20(3)(h), F.S.

² s. 1002.20(3)(i), F.S.

³ D. Golonka, "Cystic Fibrosis," Readable at <http://www.webmd.com/hw-popup/cystic-fibrosis>

⁴ Cystic Fibrosis Foundation, "Nutrition: School, Enzymes, and Sports for the Child with Cystic Fibrosis", Readable at <http://www.cff.org/LivingWithCF/AtSchool/>

⁵ *Id.*

⁶ *Id.*

⁷ *Black's Law Dictionary*, 8th ed., 2004.

III. Effect of Proposed Changes:

This bill allows K-12 students who have experienced or who are at risk of pancreatic insufficiency or who have been diagnosed with cystic fibrosis, to carry and self-administer prescribed pancreatic enzyme during school, if the school has been provided with parental and physician authorization. This bill would permit a student to use pancreatic enzyme prescription supplements while in school, at a school-sponsored activity, or while in transit to or from school or a school-sponsored activity if the student's parent and physician provided the school with authorization for the student's use of the supplement. The State Board of Education, in cooperation with the Department of Health, would be required to adopt rules for the use of the supplements.

The parents of a student who used pancreatic enzyme prescription supplements under the provisions of the bill would have to indemnify the school district, county health department, public-private partners, and their employees or volunteers for any and all liabilities arising from the student's use of the supplements.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

To the extent that a party could obtain a judgment against the school district or other government entity and the parents are judgment proof, there may be some fiscal risk at the local level.

VI. Technical Deficiencies:

The phrase “pancreatic enzyme prescription supplement” would indicate that the enzyme is supplemental to a prescription, but the bill describes the supplement as a prescribed substance. If the bill only authorizes the use of a prescribed substance, it should authorize the use of a “prescribed pancreatic enzyme supplement.”

VII. Related Issues:

The indemnity provision does not prohibit a person from filing suit against a school district, county health department, public-private partner, and their employees or volunteers if pancreatic enzyme supplements are used in a manner that results in injuries to the student or a third party. Moreover, the bill does not prevent a putative plaintiff in such a suit from executing judgment against the above mentioned parties. Instead, the indemnity provision merely provides that the aforementioned parties may recover from the parent of the student authorized to carry the enzyme supplements. As a practical matter, many parents may not have sufficient recoverable assets from which a school district, county health department, public-private provider, or their employees or volunteers could use to satisfy a judgment. Accordingly, there may be some legal exposure to these parties.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.