Joint Fiscal Office
VERMONT LEGISLATIVE

2023 Report on Possible Revenue Sources for Universal School Meals

FEBRUARY 1, 2023
As required by
Act 151 (2022), Sec. 7

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Introduction

In 2022 the General Assembly enacted, and the Governor signed, Act 151, "an act relating to universal school meals." Section 7 of the act requires the Joint Fiscal Office (JFO) to examine and report on possible on-going revenue sources to continue state funding of a universal school meals program. The authorizing language states:

On or before February 1, 2023, the Joint Fiscal Office (JFO) shall prepare a report examining possible revenue sources including expansion of the sales tax base, enactment of an excise tax on sugar sweetened beverages, and other sources of revenue not ordinarily used for General Fund purposes. The report shall include preliminary revenue estimates and other policy considerations.[1]

This report first provides background information, including a fiscal overview of universal school meals in Vermont, and a brief overview of Vermont's Education Fund (EF). It also explains how universal school meals would be funded if the program were to be included in the EF with no additional funding sources. This report does not provide an overview of the existing school meals program. To learn about the details of the current federal program, please review the Agency of Education (AOE) reports "Recommendations of the Universal School Meals Task Force" (2022) and "Impact and Implementation of the Universal School Meals Act from 2023" (2023).

The second part of this report examines possible revenue sources that are not ordinarily used for General Fund purposes. These include:

- Expansion of the sales tax base,
- Enactment of an excise tax on sugar sweetened beverages,
- Removing the exemption of candy from the Sales and Use tax,
- Removing the exemption of prewritten software accessed remotely from the Sales and Use tax, and
- Increasing the Sales and Use tax rate.

JFO provides preliminary revenue estimates and other policy considerations for these revenue sources.

[1] No. 151 (2022) – An act relating to universal school meals, Sec. 7. https://legislature.vermont.gov/Documents/2022/Docs/ACTS/ACT151/ACT151%20As%20Enacted.pdf

Background and Overview

Fiscal Overview of Universal Meals in Vermont

Act 151 (2022) established a one-year universal school meals (USM) program for FY 2023 that requires all public schools in Vermont to provide breakfast and lunch to all students at no charge to families. Vermont's USM program also allows approved independent schools located in Vermont to receive state reimbursement for school meals provided to all students attending on public tuition at no charge to the students or their families.[2]

$29 million was appropriated from Vermont's Education Fund (EF) to the Agency of Education (AOE) to fund the Vermont USM reimbursement program for both public and independent schools. This $29 million appropriation was based on the JFO's estimate for the provision of USM in FY 2023 as outlined in the Act 151. There are a variety of different factors that impact the program's cost.

There are three primary factors that drive the cost of a USM program:

1. the percentage of students eligible for free and reduced lunch through federal programs,
2. the average participation rate of students eating meals, and
3. the difference between federal school meal reimbursement rates and actual per meal costs.

A lower percentage of students participating in the USM program eligible for free and reduced lunch through the federal programs results in higher costs to the State. A higher participation rate of students eating meals also leads to higher costs to the State.

In response to the charge in Section 6 of Act 151 (2022), AOE published a January 2023 report on the "impact and implementation of the universal school meals act." In its report, AOE estimated that the FY 2023 costs would not exceed the appropriation, but noted that changes in behavior may increase the cost in future years. According to the report, "if free, reduced, and paid eligible children eat in equal proportion to their status, and participation does not increase beyond October 2022 ADP [Average Daily Participation]," then the cost of universal meals in FY 2023 is projected to be approximately $27.2 million.[3]

If the current USM program continued in its same structure in FY 2024, JFO estimates the cost would range from $26 million to $31 million. This range reflects potential changes to the three primary cost factors. Specifically, the range includes:

- eligibility and participation data from October 2022 which reflects the first and only month of complete data for the universal meals program in Vermont,
- potential increases in participation if the "factors suppressing participation" outlined

[2] Per Sec. 3 of Act 151 of 2022 the independent schools must follow Agency of Education guidelines in order to receive state reimbursement for meals provided to students attending on public tuition.

[3] Vermont Agency of Education (2022). "Impact and Implementation of the Universal School Meals Act". https://legislature.vermont.gov/assets/Legislative-Reports/edu-legislative-report-french-universal-school-meals-20230116.pdf

in AOE's 2023 report are addressed,
- eligibility percentage data from Fall 2019 which can be used as a proxy for the anticipated increase to eligibility rates from Vermont's participation in the Medicaid Direct Certification Pilot in July 2023, and
- federal reimbursement rates which have been adjusted for inflation by the estimated Consumer Price Index (CPI) from FY 2023 to FY 2024.

A more detailed overview of the range and the impact of associated assumptions is available in Appendix 2 of this report.

Overview of Education Fund

As outlined in the previous section, the $29 million for universal meals was appropriated from the EF to AOE, using one-time funds for a one-year program. Because extending the program would require a continuance of funding, the following section reviews EF Revenue Sources.

The EF funds the total aggregated costs of public education in Vermont. The majority of education expenditures are determined at the local level through voter-approved school district budgets. Because the EF is a self-balancing system, the total required revenues are a function of spending decisions. In other words, property tax rates are ultimately set to ensure all expenditures in the EF are fully funded.

Current Education Fund Revenue Sources

Vermont's EF has two categories of revenue streams – non-property tax revenue sources and property tax sources.

There are multiple non-property tax revenues dedicated to the EF. These include all revenues from the Sales and Use Tax, one-third of Purchase and Use Tax revenues, one-quarter of Meals and Rooms Tax revenues, all revenues from the State lotteries, certain school service-based Medicaid reimbursement funds, prior year fund balances (if available), and other miscellaneous revenue sources.[4] Together, these non-property tax revenue sources generally contribute less than 30% of EF revenue.

The remainder of the revenues are raised through property taxes. Property tax rates are set annually by the Legislature at the level necessary to fund all public education costs after accounting for all non-property tax revenues. The property taxes are broken into two distinct categories, homestead and nonhomestead, each with a distinct tax rate and rate design. Approximately 39% of the EF is funded by the nonhomestead property tax. 25% is funded by the net homestead education property tax.

Because education spending determines the level of required revenues, revenue streams need to be adjusted annually to ensure that all education expenditures are fully funded. Currently, the mechanism to ensure that revenues coming into the EF equal expenditures is the annual setting of the homestead yield and the nonhomestead tax rate. The homestead yield and the

[4] 16 V.S.A. § 4025.

nonhomestead tax rate may be adjusted up or down, depending on the performance of non-property tax revenue sources and the magnitude of education expenditures and appropriations. This means property taxes make up the difference between non-property tax revenues and all expenditures.

Universal Meals, the Education Fund, and Property Taxes

As mentioned in the previous section, property taxes are adjusted to ensure that all education expenditures are fully funded. This means that if non-property tax revenue sources are not adjusted, any additional costs to the EF will be funded by property tax revenues. If a USM program were established as an ongoing obligation of the EF, and no non-property tax revenue streams were adjusted, the General Assembly would have to raise property taxes to fund the program and keep the EF balanced. All else equal, funding USM through property taxes would result in an approximate $0.03 increase on both the homestead property tax rate and the nonhomestead property tax rate.

Possible Revenue Sources for USM Program

As required by the enabling legislation, below are estimates and a review of revenue sources that are not ordinarily used for General Fund Purposes. These sources include the Sales and Use tax, and new taxes that are currently not dedicated to any particular fund, such as a tax on sugar sweetened beverages. For the purpose of this report, JFO assumes any new taxes or changes in rates would become effective June 1, 2023, in order to capture a full 12 months of revenue into the fund. Due to the current timing of collection and remittance of funds, if any new taxes were made effective July 1, 2023 the State would only receive revenue for 11 out of the 12 months in FY 2024.

Table 1: Potential Universal School Meals Funding Options

Taxes	Tax Rate	FY 2024 Revenue Estimate
Sugar Sweetened Beverages Tax	$0.01 per ounce	$17.3 million
Sugar Sweetened Beverages Tax	$0.02 per ounce	$31.7 million
Candy	6% sales tax	$3.7 million
Prewritten Software Accessed Remotely	6% sales tax	$18.4 million
Increase in the Sales Tax Rate	per 0.1% increase	$9.1 million
Other Expansions to the Sales Tax Base	6% sales tax	Estimated up to $332.2 million

<u>**Sugar Sweetened Beverages Tax**</u>

Using past proposed legislation as a model, one funding option is a per ounce tax on sugar sweetened beverages. The proposed structure involves a tax at the wholesale level, meaning the tax would be collected by distributors of these products and remitted to the Vermont Department of Taxes. Past proposals [5] have levied anywhere from $0.01 to $0.02 per ounce

[5] In FY 2013 the following bill proposed a $0.01 excise tax on sugar sweetened beverages: <u>H.234 An act relating to the imposition of an excise tax on sugar sweetened beverages:</u>

of sugar sweetened beverage. For example, a 12 ounce can of soda would be taxed either $0.12 or $0.24 depending on whether a $0.01 or $0.02 tax per ounce was applied.

Sugar sweetened beverages are defined by the World Health Organization[6] as any nonalcoholic beverage, carbonated or noncarbonated, which is intended for human consumption and contains any added sweetener. This includes:

- soft drinks,
- fruit beverages,
- sports drinks
- ready-to-drink tea,
- energy drinks, and
- ready-to-drink coffee.

This tax would also apply to syrup or powder that is mixed with water; if a sugar sweetened beverage is sold as a syrup or powder that is added to water, the syrup or power are taxed at a volume equal to the manufacturer's instructions. For example, if a scoop of powdered lemonade mix is meant to be mixed in with 40 ounces of water, the taxable volume of that drink would be 40 ounces.

The definition of sugar sweetened beverages does not include things like diet soft drinks, ready-to-drink diet tea, or flavored water like a seltzer that has no added sweeteners. Past proposed legislation in Vermont also exempted drinks that consist of 100 percent natural fruit or vegetable juice with no added sweetener, infant formula, and milk with or without added sweeteners.

Because the tax is levied at the wholesale level, as in past proposed legislation, consumers would not see the tax levied at the point of purchase. However, the tax would likely be partially or fully passed on to consumers through the increased cost of stocking sugar sweetened beverages. JFO expects that increased costs will result in somewhat lower consumption as consumers decrease their demand as prices increase.

Currently, no state levies an excise tax on sugar sweetened beverages. However, as of 2021, 10 localities had what is colloquially called a "soda tax." Except for the District of Columbia, which applies an 8% sales tax to sugar sweetened beverages, these localities apply a $0.01 to $0.02 per ounce tax to sugar sweetened beverages. Philadelphia and the District of Columbia also apply their taxes to beverages that have sweeteners that do not have calories like diet soft drinks.

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https://legislature.vermont.gov/Documents/2014/Docs/BILLS/H-0234/H-0234%20As%20Introduced.pdf

[6] The World Health Organization released guidance on taxing and defining sugar sweetened beverages in 2022: https://apps.who.int/iris/rest/bitstreams/1485545/retrieve

Table 2: Sugar Sweetened Beverage Taxes

City	Tax Rate	Eligible Drinks	Paid By
Albany, CA	$0.01 per ounce	Sugar sweetened beverages	Distributors
Berkley, CA	$0.01 per ounce	Sugar sweetened beverages	Distributors
Boulder, CO	$0.02 per ounce	Sugar sweetened beverages	Distributors
Oakland, CA	$0.01 per ounce	Sugar sweetened beverages	Distributors
Philadelphia, PA	$0.015 per ounce	Sweetened Beverages (including diet drinks)	Distributors
San Francisco, CA	$0.01 per ounce	Sugar sweetened beverages	Distributors
Seattle, WA	$0.0175 per ounce	Sugar sweetened beverages	Distributors
Washington, D.C.	8% sales tax	Sweetened Beverages (including diet drinks)	Consumers

Source: Tax Policy Center, "The State of State (and Local) Tax Policy," May 2020, https://www.taxpolicycenter.org/briefing-book/how-do-state-and-local-soda-taxes-work

JFO estimates that a $0.01 per ounce tax on sugar sweetened beverages would result in $17.3 million in tax revenue in FY 2024 and a $0.02 per ounce tax would result in $31.7 million in tax revenue in FY 2024.

Considerations

- Because of elasticity of demand, introducing a new tax on sugar sweetened beverages may decrease the purchase of that product. The higher the tax, the greater the anticipated decrease of purchases.

Applying the Sales Tax to Candy

Generally speaking, the Sales and Use tax is regressive because the purchase of tangible personal property makes up a disproportionate share of low- and moderate-income Vermont household expenditures.[7] Groceries make up a high percentage of these purchases. Vermont currently exempts groceries from the Sales and Use tax because they are considered a consumer staple and basic necessity.[8] Under current law, candy is treated as a grocery item and is exempt from the Sales and Use tax.

While many states exempt grocery purchases from the Sales and Use tax, some do not consider candy to be a grocery item, meaning that candy purchases are subject to the Sales and Use tax. There are other states that do not exempt groceries at all. 27 states and Washington, D.C. apply the Sales and Use tax to candy. Table 3 outlines the taxation or exemption of candy in every state.

[7] The following article provides additional information on the regressive nature of sales taxes on groceries: https://www.cbpp.org/research/state-budget-and-tax/states-that-still-impose-sales-taxes-on-groceries-should-consider

[8] Recall that the Sales and Use tax is 100% dedicated to the Education Fund.

Table 3: Treatment of Groceries and Candy by State[9]

State	Sales Tax Rate	Groceries in the sales tax base? Or rate if different	Candy part of Groceries?	Tax Rate on Candy
Alabama	4.00%	Included in Sales Tax Base	Yes	4.00%
Arizona	5.60%	Exempt	Yes	N/A
Arkansas	6.50%	1.50%	No	6.50%
California (a)	7.25%	Exempt	Yes	N/A
Colorado	2.90%	Exempt	No	2.90%
Connecticut	6.35%	Exempt	No	6.35%
Florida	6.00%	Exempt	No	6.00%
Georgia	4.00%	Exempt	Yes	N/A
Hawaii	4.00%	Included in Sales Tax Base	Yes	4.00%
Idaho	6.00%	Included in Sales Tax Base	Yes	6.00%
Illinois	6.25%	1%	No	6.25%
Indiana	7.00%	Exempt	No	7.00%
Iowa	6.00%	Exempt	No	6.00%
Kansas	6.50%	Included in Sales Tax Base	Yes	6.50%
Kentucky	6.00%	Exempt	No	6.00%
Louisiana	5.00%	Exempt	Yes	N/A
Maine	5.50%	Exempt	No	5.50%
Maryland	6.00%	Exempt	No	6.00%
Massachusetts	6.25%	Exempt	Yes	N/A
Michigan	6.00%	Exempt	Yes	N/A
Minnesota	6.875%	Exempt	No	6.875%
Mississippi	7.00%	Included in Sales Tax Base	Yes	7.00%
Missouri	4.225%	1.225%	Yes	1.225%
Nebraska	5.50%	Exempt	Yes	N/A
Nevada	6.85%	Exempt	Yes	N/A
New Jersey	6.625%	Exempt	No	6.625%
New Mexico	5.125%	Exempt	Yes	N/A
New York	4.00%	Exempt	No	4.00%
North Carolina	4.75%	Exempt	No	4.75%
North Dakota	5.00%	Exempt	No	5.00%
Ohio	5.75%	Exempt	Yes	N/A
Oklahoma	4.50%	Included in Sales Tax Base	Yes	4.50%
Pennsylvania	6.00%	Exempt	Yes	N/A

[9] Five states that do not have a sales tax and are not included in this table: Alaska, Delaware, Montana, New Hampshire, and Oregon

State	Sales Tax Rate	Groceries in the sales tax base? Or rate if different	Candy part of Groceries?	Tax Rate on Candy
Rhode Island	7.00%	Exempt	No	7.00%
South Carolina	6.00%	Exempt	Yes	N/A
South Dakota	4.50%	Included in Sales Tax Base	Yes	4.50%
Tennessee	7.00%	5.00%	Yes	5.00%
Texas	6.25%	Exempt	No	6.25%
Utah	5.95%	3.00%	Yes	3.00%
Vermont	6.00%	Exempt	Yes	N/A
Virginia	5.30%	2.50%	Yes	2.50%
Washington	6.50%	Exempt	Yes	N/A
West Virginia	6.00%	Exempt	Yes	N/A
Wisconsin	5.00%	Exempt	No	5.00%
Wyoming	4.00%	Exempt	Yes	N/A
District of Columbia	5.75%	Exempt	No	5.75%

Source: Sales Tax Clearinghouse; Tax Foundation, Facts and Figures 2018: How Does Your State Compare; State Revenue Department websites; Bloomberg BNA.

JFO estimates that if the Sales and Use tax were applied to purchases of candy, the revenue generated would amount to $3.7 million in FY 2024.

Considerations

- Because of elasticity of demand, introducing a new tax on candy may decrease the purchase of that product. Furthermore, the higher the tax, the greater the anticipated decrease of purchases.

Applying the Sales and Use Tax to Prewritten Software Accessed Remotely

Currently prewritten software accessed remotely is exempt from the Sales and Use tax. For context, the Vermont sales tax applies to the retail sale of tangible personal property unless an exemption applies.[10] Per Vermont statute, "tangible personal property" means personal property which may be seen, weighed, measured, felt, touched, or in any other manner perceived by the senses.[11] Unlike tangible personal property, charges for a service are generally not taxable, unless specifically enumerated.[12] The exemption for prewritten software accessed remotely was established in session law in 2015 Acts and Resolves, No. 51 Sec. G.8.

Prewritten software that is hosted on the end-consumer's computer or device is considered tangible personal property and is subject to the Sales and Use tax. Software accessed remotely (and in turn hosted by the vendor) is exempt from the tax. Generally, if computer software is purchased on storage media or downloaded onto a computer in Vermont it is

[10] 32 V.S.A. § 9771(1)
[11] 32 V.S.A. § 9701(7)
[12] 32 V.S.A. § 9771

taxable. If the software is accessed remotely via the internet, it is not taxable.

Using proposed language found in the House Proposal of Amendment to S.53 of the 2021-2022 legislative session,[13] but ultimately not included in the final legislation (2022 Act 148), JFO estimated the additional revenue that would be generated by removing the Sales and Use tax exemption on prewritten software accessed remotely. Note that the proposed language continued the tax exemption for customized software and maintenance services.[14] Business to business purchases would also be taxable, but businesses would be able to write those off as expenses on their income taxes.

In estimating the total amount of revenue that would be raised if the current exemption on prewritten software accessed remotely was repealed, JFO included software as a service (SaaS), platform as a service (PaaS), and infrastructure as a service (IaaS) in its estimate of newly taxable purchases. SaaS, PaaS, and IaaS are not uniformly defined in law or in the computing industry. For the purpose of these estimates, JFO defined SaaS as a software application hosted by a service provider over the internet. This can also be referred to as cloud application services. PaaS provides developers a framework to build on and use to create customized applications. Finally, IaaS is when a service provider owns, maintains, operates, and houses equipment like hardware, servers, and network components used to support a customer's operations.

JFO estimates that removing the Sales and Use tax on prewritten software accessed remotely would raise approximately $18.4 million in revenue in FY 2024.

Considerations

- This market is rapidly growing as these types of software proliferate. It is likely that revenue from taxing this type of product would continue to grow in the future.

<u>Increasing the Sales and Use Tax Rate</u>

The Vermont Sales and Use tax rate is 6% on sales of tangible personal property. There are some towns in the state that also have a 1% local option sales tax, but that revenue is partially remitted to those municipalities and partially dedicated to the Payment in Lieu of Taxes (PILOT) fund. Local option taxes are not sent to the EF and are therefore not considered in this analysis.

The January 2023 consensus forecast projects Vermont will generate approximately $576 million in Sales and Use tax revenue in FY 2024. This equates to roughly $9.1 billion in taxable sales. Instead of expanding the taxable base by removing exemptions on certain goods, the Sales and Use tax rate could be increased.

JFO estimates that for each 0.1% increase in the Sales and Use tax rate, the State could expect to raise roughly $9.1 million. A 0.2% increase would raise $18.1 million, and

[13] https://legislature.vermont.gov/Documents/2022/Docs/BILLS/S-0053/S-0053%20House%20proposal%20of%20amendment%20Official.pdf

[14] If software was purchased as part of a bundle that included ongoing maintenances services, it would be incumbent on the vendor to itemize the software and services, or the full amount would be considered taxable.

a 0.3% rate would raise about $27.2 million.

Currently Vermont's sales tax ranks in the middle of the Northeastern states. After New Hampshire, which does not have a Sales and Use tax, New York has the lowest rate at 4%. This is the statewide rate; local sales taxes are common in New York. At the high end, Rhode Island has a 7% Sales and Use tax rate. If Vermont increased its rate by 0.2%, Vermont would still have the fourth-lowest Sales and Use tax rate in the Northeast

Table 4: Northeastern Statewide Sales and Use Tax Rates

Comparison of Sales Tax Rates	
New England States - Tax Year 2022	
State	**State Sales Tax Rate (does not include local rates)**
Vermont	6.00%
Connecticut	6.35%
Maine	5.50%
Massachusetts	6.25%
New Hampshire	None
New York	4.00%
Rhode Island	7.00%

Considerations

- In general, the Sales and Use tax is considered a regressive tax. Increasing the rate may also lead to increased regressivity.
- From a geographical competition standpoint, Vermont shares a large border with New Hampshire which is the only state in the region without a Sales and Use tax. Increasing the tax rate, even if the rate is in line with other Northeastern states, would exacerbate the difference in point of purchase costs between Vermont and New Hampshire, which could prompt more Vermonters to cross the border for purchases. However, Vermonters that make purchases in New Hampshire are still legally supposed to declare those purchases and pay use tax on them.

Other Expansion of the Sales and Use Tax

Vermont exempts many items from the Sales and Use tax. JFO, in collaboration with the Department of Taxes, publishes a biennial Tax Expenditure Report[15] that estimates the amount of forgone revenue that results from these exemptions. **38 of these exemptions will result in approximately $332.2 million in forgone revenue to the EF in FY 2024.**

The largest exemptions are for groceries, medical products, energy purchases for a residence, and clothing and footwear. These four exemptions alone account for an estimated $270.8 million in forgone revenue in FY 2024. These items are exempted to make the Sales and Use

[15] https://ljfo.vermont.gov/assets/Subjects/Tax-Expenditure-Reports/3f5011dba8/2023-Tax-Expenditure-Report-v2.pdf

tax less regressive. Changing the exemptions for consumer staple items like those mentioned above would make the Sales and Use tax more regressive in Vermont.

Considerations

- Depending on what exemptions are repealed, the regressivity of the Sales and Use tax may increase.
- Because of Vermont's membership in the Streamlined Sales Tax Agreement, any changes to the tax base would need to completely remove a class of items from the sales tax base. The agreement provides definitions for products. States can choose to either exempt those items or include them in the tax base but cannot treat items that fall under the same definition differently.[16]

Conclusion

As outlined above, JFO estimates the continuance of funding the USM program would be between $26 million and $ 31 million in FY 2024. If the Legislature chooses to extend the USM program, this program could be funded by a combination of the taxes outlined in this report. While there are different possible revenue sources, each of these come with a variety of considerations that should be part of the policy discussion.

[16] Prior to 2007 when Vermont joined the Streamlined Sales and Use Tax Agreement, the exemption for clothing only applied to items costing less than $110 as established in Act 49 of 1999. Due to the stipulations of the Streamlined Sales and Use Tax Agreement this way of treating clothing purchases was no longer allowed.

Appendix 1: Enabling Legislation

No. 151 (2022) – An act relating to universal school meals

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Sec. 7. JOINT FISCAL OFFICE; REPORT

On or before February 1, 2023, the Joint Fiscal Office (JFO) shall prepare a report examining possible revenue sources including expansion of the sales tax base, enactment of an excise tax on sugar sweetened beverages, and other sources of revenue not ordinarily used for General Fund purposes. The report shall include preliminary revenue estimates and other policy considerations

Appendix 2: Estimated Cost Range of Provision of Universal School Meals in Vermont

The cost of the provision of universal school meals largely depends on three factors:

1. the percentage of students eligible for free and reduced lunch from the Federal Government,
2. the average, participation rate of students eating meals, and
3. the difference between federal school meal reimbursement rates and actual per meal costs.

The following table outlines the range of costs given the different discussed assumptions.

Percentage of students eligible for free and reduced-price meals	Percentage of Student Participation	
	October 2022 Participation (38.63%, 60.55% participate)	**Increase to Oct 2022 Participation of ~ 5%** (45%, 65% participate)
Fall 2019 Percentage (38.23% qualified for free and reduced-price meals)	$26 million	$29 million
October 2022 Percentage (34.85% qualified for free and reduced-price meals)	$28 million	$31 million

Note: The more students that qualify for free and reduced lunch, the more federal funding available to support the USM program. The more students that eat school meals, the higher the cost of the USM program.